

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

AIMEE MADDONNA,	)	
	Plaintiff, )	
	)	
v.	)	<b>Civil Action No. 6:19-cv-03551-JD</b>
	)	
UNITED STATES DEPARTMENT OF	)	
HEALTH AND HUMAN SERVICES, <i>et</i>	)	
<i>al.</i> ,	)	
	Defendants. )	
_____	)	

**PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56, Plaintiff Aimee Maddonna through her undersigned counsel moves this Court to grant summary judgment in favor of Plaintiff against all Defendants in the above-captioned action and

- (1) declare that Governor McMaster’s Executive Order No. 2018-12 violates the Establishment Clause of the First Amendment to the U.S. Constitution;
- (2) issue a permanent injunction enjoining State Defendants from enforcing Executive Order No. 2018-12;
- (3) declare that the Federal Defendants’ Notice of Nonenforcement, published in 84 Fed. Reg. at 63,809 (Nov. 19, 2019), violates the Administrative Procedure Act;
- (4) vacate the HHS Notice of Nonenforcement; and
- (5) enter such other relief as the Court may deem just or appropriate.

This Motion is based on the accompanying Memorandum of Law in Support of Motion for Summary Judgment, the accompanying Statement of Undisputed Material Facts, and the accompanying declarations and exhibits.

Greenville, South Carolina  
November 21, 2022.

s/ Aaron J. Kozloski  
Aaron J. Kozloski (D.S.C. Bar No. 9510)

CAPITOL COUNSEL, LLC  
P.O. Box 1996  
Lexington, SC 29071-1996  
Tel: (803) 465-1400  
Fax: (888) 513-6021  
*aaron@capitolcounsel.us*

Richard B. Katskee (admitted *pro hac vice*)  
Kenneth D. Upton, Jr. (admitted *pro hac vice*)  
AMERICANS UNITED FOR SEPARATION OF CHURCH  
AND STATE  
1310 L Street NW, Suite 200  
Washington, DC 20005  
Tel: (202) 466-3234  
Fax: (202) 466-3353  
*katskee@au.org*  
*upton@au.org*

*Counsel for Plaintiff Aimee Maddonna*

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Civil Action No. 6:19-cv-03551-JD

PLAINTIFFS’ MEMORANDUM OF LAW  
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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Aaron J. Kozloski  
(D.S.C. Bar No. 9510)  
CAPITOL COUNSEL, LLC  
P.O. Box 1996  
Lexington, SC 29071-1996  
Tel: (803) 465-1400  
Fax: (888) 513-6021  
[aaron@capitolcounsel.us](mailto:aaron@capitolcounsel.us)

Richard B. Katskee \*  
Kenneth D. Upton, Jr. \*  
AMERICANS UNITED FOR SEPARATION OF  
CHURCH AND STATE  
1310 L Street NW, Suite 200  
Washington, DC 20005  
Tel: (202) 466-3234  
Fax: (202) 466-3353  
[katskee@au.org](mailto:katskee@au.org)  
[upton@au.org](mailto:upton@au.org)

\*Admitted *Pro Hac Vice*

*Counsel for Plaintiff Aimee Maddonna*

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## INTRODUCTION

Children need and deserve loving homes. Plaintiff Aimee Maddonna had long dreamed of welcoming foster children into the loving home she and her family have made. Yet when she sought to begin the process through Miracle Hill Ministries—at the time the largest and most prominent child-placing agency (CPA) licensed and funded by South Carolina to administer foster-care services on the State’s behalf in the region around Greenville, where the Maddonnas live, Mrs. Maddonna and her family were turned away. But not because of unsuitability to mentor or foster children. Quite the contrary: The CPA noted that Mrs. Maddonna seemed like the perfect person to help foster children, yet it refused to work with her and her family because the Maddonnas are Catholic. Although the CPA performed its foster-care duties on behalf of the State as part of a government program, it refused to work with any prospective mentors or foster parents who did not belong to a church of which the agency approved; and the CPA required prospective foster parents to affirm their agreement with and pledge to live according to its evangelical-Christian statement of faith.

South Carolina has a responsibility of the highest order to care for the children in its custody and under its control—children who often come into the foster-care system during tumultuous periods of transition and instability. In fulfilling its legal and ethical obligations to these children, the State should ensure that they have the best opportunities to be placed in safe, loving homes.

The State partners with faith-based organizations to assist it in running its foster-care program; and Mrs. Maddonna does not object. For many faith-based organizations provide important social services to people in need. The problem was that when South Carolina learned of Miracle Hill’s conduct, rather than serving the best interests of the children and protecting Mrs. Maddonna and other prospective foster parents from religious discrimination and religious coercion, the State instead sought to promote that discrimination. With the necessary approval of the U.S. Department of Health and Human Services (HHS), which provides and controls federal funding for foster-care services, Governor McMaster intervened to alter the very structure of the State’s foster-care program. He issued an executive order granting a blanket, prospective waiver

to all religious CPAs, allowing them to discriminate based on religious criteria, without asking them to show a substantial burden on their own religious exercise, and without putting in place any protections for prospective foster parents who might be turned away.

When South Carolina exercises its considerable power as *parens patriae* to intervene in the family unit and place children in state care, it bears a particular responsibility to respect constitutional limitations. It may delegate authority to private agencies, religious or not, to provide governmental services and perform governmental functions on its behalf, and the Defendants may pay those agencies for the services with federal and state dollars. But they must not sponsor or fund religious discrimination, or permit religious coercion of participants in the program; to do otherwise violates the Establishment Clause of the First Amendment to the U.S. Constitution. Yet South Carolina and HHS not only permitted Miracle Hill to discriminate in the provision of governmental services, but also compounded the constitutional violation by enacting structural changes to the foster-care program itself by granting unrestricted permission going forward to allow all religious CPAs to violate antidiscrimination laws based on the CPAs' religious beliefs.

The Court should declare these structural changes to the program unlawful and enjoin their enforcement.

## STATEMENT OF FACTS<sup>1</sup>

### A. South Carolina's Foster-Care System

To fulfill its duty to care for children in the State's legal custody, the South Carolina Department of Social Services contracts with private CPAs, which hold licenses from the State to facilitate placement of foster children with foster parents and receive reimbursements from state and federal funds for performing those governmental services. S.C. Code § 63-9-30(5); S.C. Code Regs. 114-4910; SUMF ¶ 5. DSS issues a standard, one-year license to qualifying foster-care CPAs

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<sup>1</sup> Except where background facts are established by reference to statute or regulation, this general summary of the facts, as well as other specific facts cited throughout this brief, will reference the Statement of Undisputed Material Facts (SUMF) filed contemporaneously with this Memorandum. Because this lawsuit seeks prospective injunctive relief, this summary of the South Carolina foster-care program includes changes to the program during the course of the litigation.

that satisfy its regulatory requirements, and then it monitors these licensed agencies to ensure their continuing compliance with federal and state laws and regulations. S.C. Code Regs. 114-4920(E), 114-4930(E).

If a CPA is temporarily unable to comply with a state foster-care-licensing requirement, DSS is authorized to grant the agency a temporary license if the agency provides it with a written plan detailing how, during a probationary period, the agency will correct the areas of noncompliance. S.C. Code Regs. 114-4930(F). DSS may deny or revoke a CPA's license if it determines that the agency cannot comply with state regulations or if the agency provides false information during the application or relicensing process. *See id.* at 114-4930(G)(1)(d)–(e).

Licensed CPAs perform a variety of services on behalf of the State: They conduct initial and relicensing foster-home investigations consistent with regulations established by DSS; make recommendations that DSS uses to determine whether a foster-family license should be issued, denied, reissued, or revoked; monitor the homes for compliance with DSS's foster-home regulations; investigate complaints about possible violations of those regulations; and provide DSS with written reports of their findings, conclusions, and any recommended actions affecting the investigated homes' licenses. S.C. Code Regs. 114-550(C)–(E), 114-4980(A).

CPAs also exercise substantial control over foster children's time in the system, including developing written case plans for all children assigned to them and determining which foster home is appropriate for a child based on the agency's assessments of foster families' strengths and children's needs. S.C. Code Regs. 114-4980(B)–(C).

In July 2020, DSS changed its internal practice to focus on kinship care, transitioning all non-kinship foster-parent applications—which would include applicants like Mrs. Maddonna's—to its contracted CPAs. SUMF ¶ 17. To make this change, DSS shifted a large portion of the private intake work to Heartfelt Calling, a program of the South Carolina Foster Parent Association. Heartfelt Calling serves as a central clearinghouse that potential foster parents may (but aren't required to) use. Heartfelt Calling provides a list of the CPAs and forward the intake to the one the family chooses from the list. If the CPA declines to work with the family, the family can then

return to Heartfelt Calling and pick another CPA from the list. DDS would not know that the family was turned away unless the family contacted DDS directly. DDS does not ask and does not know which CPAs are taking advantage of the Executive Order's exemption to exclude families on religious criteria.

**B. Miracle Hill Ministries**

Miracle Hill Ministries is an entity based in Greenville, South Carolina, that serves as a foster-care CPA for the State and provides government-funded services under contract with the State to those seeking to be licensed by DSS as foster parents. When this lawsuit was filed, Miracle Hill was the largest placement agency in region where Aimee Maddonna lives, and one of the largest across the entire State. SUMF ¶¶ 18-20, 28-29.

As a licensed CPA, Miracle Hill assists prospective foster parents and families in obtaining state foster-care licenses, provided home studies and assessments that DSS relied on in making foster-care-licensing decisions, helped determine the foster families with whom children should be placed, and influenced the State's assessment of whether prospective foster parents fit the needs of a child ready for placement. SUMF ¶¶ 6 - 11. Unlike DSS, Miracle Hill permitted children as well as adults to volunteer with children awaiting placement in a foster home, allowing for families like the Maddonnas to volunteer as a family. Volunteering helps families establish the types of relationships with children in foster care that lead to long-term foster placements and even adoptions. SUMF ¶¶ 65-66.

Miracle Hill is a religiously affiliated organization that administered its foster-care services in a Christ-centered environment. SUMF ¶¶ 21-26. Miracle Hill believes that foster parents are in a position of spiritual influence over the children in their homes, and hence it required prospective foster parents and volunteer mentors to attest that they read and agreed with Miracle Hill's doctrinal statement. SUMF ¶ 27, 74.

When reviewing Miracle Hill's application to renew its CPA license for 2018, DSS determined that Miracle Hill was using religious information that it gathered about prospective

foster parents and families to refuse to provide services as a licensed CPA to families who did not adhere to its evangelical-Christian beliefs or did not attend Miracle Hill-approved Christian churches. DSS determined that Miracle Hill's policies and practices constituted discrimination based on religion, in contravention of federal and state law, and that Miracle Hill was violating its own nondiscrimination policies submitted to DSS as part of the organization's license-renewal process. SUMF ¶ 36. For these reasons, in January 2018 DSS issued Miracle Hill a temporary (rather than regular) CPA license and requested that Miracle Hill submit, within thirty days, a written plan for resolving the legal violations that DSS had identified and for complying with applicable laws, regulations, and policies. Miracle Hill never issued any compliance plan. SUMF ¶ 38. Instead, it sought the Governor's intervention. SUMF ¶ 39.

### **C. Governor McMaster's Intervention and Executive Order**

Rather than require Miracle Hill to comply with federal and state law—which would ensure that the State's continued funding and licensing of Miracle Hill does not violate the Constitution—in March 2018 Governor McMaster issued Executive Order No. 2018-12, which prohibited DSS from taking any action against a CPA in South Carolina that failed to comply with antidiscrimination requirements if the agency believed doing so violated its religious beliefs. SUMF ¶ 42. The Executive Order expressly permits faith-based subgrantees to associate only with “foster parents and homes who share the [subgrantee's] faith” “in recruiting, training, and retaining foster parents.” SUMF ¶ 44. The Executive Order also directs DSS to “review and revise its policies and manuals in accordance with this Order and ensure that [DSS] does not directly or indirectly penalize religious identity or activity in applying” the State's licensure requirements. SUMF ¶ 42 at 4. The governor did not even consult DSS's Director of Permanency Management, one of the top policymakers for foster care in the state, before deciding to authorize CPAs to discriminate based on religion. SUMF ¶ 46.

CPAs are not required to inform DSS or take any steps to make use of the waiver. SUMF ¶¶ 56-57. DDS does not know or bother to inquire about which CPAs might be taking advantage

of the Executive Order to discriminate on the basis of religion; nor does it have any process in place to monitor or learn whether that is the case. SUMF ¶¶ 49-52. DSS has never bothered to assess the effect of the blanket waiver. SUMF ¶¶ 47-48.

#### **D. HHS’s Facilitation of South Carolina’s Discriminatory Scheme**

To ensure that his authorizing CPAs to discriminate based on religion didn’t jeopardize South Carolina’s federal funding, Governor McMaster reached out to HHS’s Administration for Children and Families to obtain an exemption from any funding conditions that might prohibit that discrimination in the State’s foster care program. SUMF ¶ 40. HHS approved the exception request in January 2019. SUMF ¶ 41.

Once South Carolina received the federal exception letter, DSS replaced Miracle Hill’s temporary, probationary CPA license with a regular license, thus allowing Miracle Hill to continue offering publicly funded foster-care services on behalf of the State in a discriminatory manner. To this day, Miracle Hill continues to be listed on the Heartfelt Calling website as a DSS Licensing Partner authorized by the State, expressly noting it will serve only Christian foster parents and require families to agree to live in accordance with a statement of faith. <https://bit.ly/3XnVDkn>.

In November 2019, HHS went further, announcing a pair of agency actions to eliminate the protections of the 2016 Grants Rule (from which South Carolina had already been granted an exemption).<sup>2</sup> First, HHS proposed a rule that would remove the nondiscrimination prohibitions in the 2016 Grants Rule (later finalized as the 2021 Grants Rule). *See* Office of the Assistant Secretary for Financial Resources, HHS Grants Regulation, 84 Fed. Reg. 63,831, 63,832 (Nov. 19, 2019). Second, HHS published a Nonenforcement Policy to inform the public that HHS would no longer enforce any of the still-valid grants provisions at issue in the 2016 Grants Rule—including the nondiscrimination provisions—pending the agency’s decision on the proposed rulemaking (the

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<sup>2</sup> The 2016 Grants Rule, 45 C.F.R. § 75.300(c) (2016), provides: “It is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services based on non-merit factors such as . . . religion . . . . Recipients must comply with this public policy requirement in the administration of programs supported by HHS awards.”

NNGR). Notification of Nonenforcement of Health and Human Services Grants Regulation, 84 Fed. Reg. 63809 (Nov. 19, 2019). By its own terms, the NNGR was meant to end on finalization of the 2021 Rule. *Id.* It was never meant to outlast the 2021 Rule and become permanent policy.

In January 2021, HHS finalized the replacement Rule for the 2016 Grants Rule. HHS Grants Regulation, 86 Fed. Reg. 2257 (Jan. 12, 2021). Although the new 2021 Grants Rule was promulgated, it never went into effect, because HHS ultimately confessed error as to the process that led to it and agreed to a court order vacating it. Order, *Facing Foster Care in Alaska v. HHS*, 21-cv-308-JMC (D.D.C. June 29, 2022), ECF No. 44. Thus the 2016 Rule is currently effective, and HHS has not issued any new notice of proposed rulemaking.

**E. Aimee Maddonna**

Aimee Maddonna, her husband, and their three children live in Simpsonville, South Carolina, just outside Greenville. Mrs. Maddonna father's childhood experiences in the foster-care system led him as an adult to take in and care for foster children so that he could provide them with the type of foster family that he wished he had. Mrs. Maddonna thus grew up with both biologically related and foster siblings, and her parents instilled in her the importance of providing a safe, loving home to children in need of a foster family. She intends to share with and pass on to her own children these fundamental values of charity and service. SUMF ¶¶ 62-65.

Accordingly, building on her own experience growing up with foster siblings, Mrs. Maddonna contacted Miracle Hill to see whether her family could volunteer to work with foster children. Through volunteering, Mrs. Maddonna hoped that her family would get to know and develop relationships with children who might be good matches for foster placement in their home, and that the family would ultimately provide a loving home for a child or children in need. Because the Maddonna children have special needs, volunteering as a family was especially important to ensure that any foster child that the family would welcome into their home would be a good fit with the whole family. The Maddonnas were and are particularly experienced and willing to work with special-needs kids and older children—who are the hardest to place. SUMF ¶¶ 66-67.

In February 2019, Mrs. Maddonna reached out to Miracle Hill to apply as a family to be volunteer mentors to foster children in Miracle Hill's care, with the ultimate hope of fostering a child. Miracle Hill rejected the Maddonna family because they are Catholic. Miracle Hill believes that mentors and foster families play an important role in providing spiritual as well as emotional support, guidance, and counsel, to children in State care, and that only evangelical Protestants are suitable to fulfill that role. Thus, Miracle Hill requires mentors and foster parents to agree with and attest to Miracle Hill's Protestant statement of faith, share its distinctly Protestant beliefs and convictions, and belong to a Miracle-Hill approved Protestant church. Miracle Hill told Mrs. Maddonna that she could go someplace else to become a mentor, or that the Maddonnas could do other charitable work through Miracle Hill that didn't involve being around the foster children assigned to Miracle Hill by DSS. SUMF ¶¶ 73-76.

While Miracle Hill later lifted its formal, absolute bar on Catholics' participating in its foster-care Services (while still excluding Jews, Muslims, other minority faiths, and nonbelievers), it continues to require prospective foster parents to agree to and live in accordance with its Protestant statement of faith. Mrs. Maddonna has reviewed that doctrinal statement and found it inconsistent with her religious beliefs and her understanding of her faith. Were she to attest to and agree to practice in accordance with that doctrinal statement, she would be forced either to misrepresent her faith and falsely affirm commitments to religious beliefs that are not her own, or else abandon her own beliefs to adopt the religious beliefs and practices that Miracle Hill favors. SUMF ¶¶ 77-82.

### **STANDARD ON SUMMARY JUDGMENT**

The question on summary judgment is whether, based on the undisputed material facts, the moving party is entitled to judgment as a matter of law. *S. Appalachian Mountain Stewards v. A&G Coal Corp.*, 758 F.3d 560, 562 (4th Cir. 2014).

## ARGUMENT

Federal and state laws provide a clear path for granting individualized religious accommodations and avoiding a delegation of governmental authority to religious organizations that can be used to harm others. Sadly, this case is a textbook example of how *not* to follow that lawful path. In 2018, the state and federal defendants, in concert, changed the South Carolina foster-care program for the sole purpose of permitting religious discrimination. To be clear, only one CPA, Miracle Hill, sought an exemption. Yet Defendants did not simply consider an individualized exception for Miracle Hill. Rather, through a state executive order and a federal waiver, they changed the program in a sweeping way that operates prospectively and permits *any* CPA to engage in future acts of religious discrimination, without notice to the state, the federal government, or those who are victims of the discrimination—and without safeguards against harm to foster-parent applicants or the children in state care. These changes are still in effect nearly five years later—a sad situation that this Court, for reasons presented below, can and should remedy.

### **I. The Governor’s Executive Order Modified South Carolina’s Foster-Care Program to Authorize Discriminatory Exclusion of Participants Who Fail to Satisfy Religious Criteria, Thus Violating the Establishment Clause.**

As the Supreme Court recently reaffirmed, the First Amendment’s Religion Clauses “have ‘complementary’ purposes, not warring ones where one Clause is always sure to prevail over the others.” *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2426 (2022). Animating both Religion Clauses is governmental neutrality respecting religion, which is essential to protect religious exercise and maintain separation of religion and government. Determining religious neutrality under both Clauses triggers an equal-protection mode of analysis, to identify any discriminatory object of governmental action, including by looking to the historical background of the government’s decision and the specific series of events leading to the government’s policy. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 540 (1993). Here, the un rebutted evidence is that the line of neutrality has been crossed repeatedly: Time and again, South Carolina has favored and ratified CPAs’ religious beliefs over the interests of children and

prospective parents in the foster-care system.

Government must remain neutral between religion and religion, and between religion and nonreligion. See *Larson v. Valente*, 456 U.S. 228, 244 (1982); *Bd. of Educ. of Kiryas Joel Village Sch. Dist. v. Grumet*, 512 U.S. 687, 703 (1994). Hence, the state “may not place its prestige, coercive authority, or resources behind a single religious faith or behind religious belief in general.” *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 9 (1989) (plurality opinion). Yet contrary to these well-established constitutional principles, the state program and state and federal funding here are knowingly being used to disfavor a class of people because they are religiously objectionable and fail to satisfy a particular denomination’s litmus test. This practice is at the heart of what the First Amendment proscribes: It directly contravenes the constitutional principles that protect us all against government-sponsored, religion-based harm.

Government may not coerce anyone in matters of religion or religious practice. If the state delegates “important, discretionary governmental powers” to religious organizations, *Larkin v. Grendel’s Den, Inc.*, 459 U.S. 116, 127 (1982), it must put adequate “safeguard[s]” in place to ensure that its delegated power is used only for secular, neutral, nonideological purposes, *Grumet*, 512 U.S. at 703. For government “may not induce, encourage or promote private persons to accomplish what it is constitutionally forbidden to accomplish.” *Norwood v. Harrison*, 413 U.S. 455, 465 (1973). Nor may the state accommodate religion by imposing undue burdens on others. *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 710 (1985) (governmental action crosses the line from permissible religious accommodation to unconstitutional establishment if it shifts burdens or harms from benefited religious exercise to nonbeneficiaries); see also *Cutter v. Wilkinson*, 544 U.S. 709, 722 (2005). Failing to account for that burden forces Mrs. Maddonna to subsidize the CPA’s religious beliefs that are contrary to her own—and subsidize discriminating against *her*. Imposing such undue burdens are especially problematic when there is no assessment of whether there has been any substantial burden on religion in the first place.

South Carolina’s approach to religious CPAs like Miracle Hill violates the Establishment Clause principally in three ways. First, it coerces religious belief and exercise by prospective foster

parents and foster youth alike. Second, it delegates governmental power to religious entities without safeguards against use of the power for religious purposes, impermissibly fusing governmental and religious functions. Finally, because the blanket waiver is not tailored to any substantial burden on religious exercise and burdens third parties, it cannot be understood as a permissible religious accommodation but instead is impermissible governmental favoritism toward CPAs' religion.

**A. South Carolina's blanket waiver allowing faith-based CPAs to discriminate based on religion encourages and underwrites religious coercion of participants in the state's foster-care program.**

The fundamental guarantee of the Establishment Clause is that "government may not coerce anyone to support or participate in religion or its exercise." *Lee v. Weisman*, 505 U.S. 577, 587 (1992). For coercion "was among the foremost hallmarks of religious establishments the framers sought to prohibit when they adopted the First Amendment." *Kennedy*, 142 S. Ct. at 2429; accord *Shurtleff v. City of Boston*, 142 S. Ct. 1583, 1609 (2002) (Gorsuch, J., concurring) (explaining that many "traditional hallmarks" of forbidden religious establishments "reflect forms of 'coerc[ion]'" of religious belief or practice (quoting *Lee*, 505 U.S. at 587)). Thus, it has long and unequivocally been the law that "the machinery of the State" must not be used "to enforce a religious orthodoxy." *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 312 (2000). And government "may not place its prestige, coercive authority, or resources behind a single religious faith or behind religious belief in general, compelling nonadherents to support the practices or proselytizing of favored religious organizations." *Texas Monthly*, 489 U.S. at 9; cf. *Town of Greece v. Galloway*, 572 U.S. 565, 589 (2014) (plurality opinion) ("Nothing in the record indicates that town leaders allocated benefits and burdens based on participation in the prayer, or that citizens were received differently depending on whether they joined the invocation or quietly declined.").

"[T]he type of coercion that violates the Establishment Clause need not involve either the forcible subjection of a person to religious exercises or the conditioning of relief from punishment on attendance at church services." *DeStefano v. Emergency Hous. Grp., Inc.*, 247 F.3d 397, 412

(2d Cir. 2001). Rather, “subtle coercive pressure” is sufficient. *Lee*, 505 U.S. at 592. For government (and those to whom government delegates its authority) “may no more use social pressure to enforce orthodoxy than [they] may use more direct means.” *Id.* at 594; accord *Herndon ex rel. Herndon v. Chapel Hill-Carrboro City Bd. of Educ.*, 89 F.3d 174, 180 (4th Cir. 1996) (“[T]he degree of involuntariness needed to invoke the Establishment Clause is exceedingly low, and includes . . . ‘subtle and indirect’ pressure.” (quoting *Lee*, 505 U.S. at 593)).

1. *The blanket waiver authorizes and encourages religious coercion of prospective foster parents.*

By authorizing religious CPAs to turn away prospective foster parents based on religious criteria, South Carolina’s blanket waiver ties participation in a state program to religion, pressuring prospective foster parents to adhere to agencies’ religious beliefs to participate fully in South Carolina’s foster-care program. Miracle Hill’s history shows the harms wrought by the 2018 changes—adopted specifically to enable Miracle Hill’s conduct, and still in effect for all religiously affiliated CPAs today and the religious discrimination that they intentionally enable. Mrs. Maddonna was subjected to that coercion when, solely because of her Catholic faith, Miracle Hill twice rejected her as a mentor or foster parent, even though Miracle Hill otherwise determined that she was a perfect candidate. And when she reached out to Miracle Hill again in 2019 to ask whether it still refused to work with her because of her religion, she was rejected yet again. This rejection put her to an impossible choice: To work with the CPA best suited to her family’s needs, she would have to forsake her faith.

Miracle Hill’s later policy only underscored the coercion: Miracle Hill declared that it would work with Catholics if, but only if, they agreed and attested to the agency’s evangelical Protestant statement of faith. To be clear, it would not be enough simply to sign that statement of faith, for Miracle Hill requires more than mere agreement: Prospective foster parents must commit to adhere to the statement of faith “in faith and in practice.” SUMF ¶¶ 27, 79. And just as Miracle Hill would refuse to work with those who don’t believe something in the statement of faith, it would also refuse to work with those whose religious “practices might not align with [its] doctrinal

statement.” SUMF ¶ 79. And Miracle Hill also still required that prospective foster parents regularly attend a Christian church that Miracle Hill determines meets its narrow definition of “Christian.” SUMF ¶ 80. These assessments of “the home’s spiritual health and well-being” were built into Miracle Hill’s home studies. SUMF ¶ 24.

These requirements pressured prospective foster parents to affirm religious beliefs and practices with which they may not agree—and to adjust their conduct accordingly—on pain of being denied participation in the state program. Mrs. Maddonna explained that she cannot sign Miracle Hill’s doctrinal statement, for the faith that she grew up with, what she was taught, and what she believes are not consistent with that statement of faith. Agreeing to it would be tantamount to abandoning her Roman Catholic faith. SUMF ¶¶ 81.

Nor was Mrs. Maddonna the only Catholic facing this dilemma. Miracle Hill turned away approximately 25 to 30 families between 2017 and its policy change—the majority of whom were Catholic. SUMF ¶¶ 37, 79. Even after the change, Miracle Hill accepted only one Catholic family. SUMF ¶ 79. And prospective foster parents of other faiths and the nonreligious faced the same choice: Agree to live by Miracle Hill’s statement of faith and attend a Miracle-Hill-approved Christian church, or else be denied equal participation in South Carolina’s foster-care program. The state’s continued greenlighting of religious discrimination authorizes religious CPAs to pressure prospective foster parents to conform to the CPAs’ religious beliefs. The Establishment Clause prohibits government from putting people to that disgraceful test.

2. *The blanket waiver leaves foster youth vulnerable to religious coercion.*

In addition to enabling and promoting religious coercion of prospective parents, South Carolina’s blanket waiver enables religious coercion of foster children. Again, Miracle Hill is the poster child for what the state’s 2018 changes were intended to permit, for the CPA repeatedly explained that it would not work with Mrs. Maddonna to mentor or foster children because it “believe[s] mentors play an important role in providing spiritual as well as emotional support, guidance, and counsel,” and it therefore restricts these roles to those who agree to practice and

raise the children in the agency’s preferred faith. SUMF ¶¶74, 75 (explaining that “there are a few roles involving spiritual influence, teaching, and formation, that we reserve for those who share our distinctly Protestant beliefs and convictions,” and noting that, in foster care, they would allow Mrs. Maddonna to perform “administrative work only”); *id.* (explaining that non-Protestants could not volunteer as mentors for foster youth in part because Miracle Hill “hope[s] that spiritual teachers and volunteers will bring introduce[sic] clients to their churches and integrate them into their church families” and believes that “[t]o allow spiritual teaching by volunteers from non-protestant churches will damage our relationships with the churches to whom we are accountable”). During initial home studies, Miracle Hill employees ask about church attendance and involvement of the prospective parents and any children they have, because Miracle Hill “would want the family to be attending church together and . . . would want to see what they’re teaching their children.” SUMF ¶ 21. Miracle Hill wants foster parents expose foster children to those particular religious teachings and exercise spiritual influence—Protestant Christian influence—over the children. SUMF ¶ 22. Miracle Hill does not require that a child’s biological parents’ consent (or even be consulted) before requiring foster parents to provide a foster child with the agency’s preferred religious teachings. SUMF ¶ 26. Unless the biological parent or child specifically objects, Miracle Hill expects foster parents to teach the Christian religion to their foster children and “share the gospel of Jesus Christ” with them—even if those foster children and their biological families are adherents of a different religion. SUMF ¶ 23. And DSS itself does not track the religions of foster children or their biological parents unless the family or the child makes a specific request related to practicing their religion. SUMF ¶ 12.

**B. State Defendants have impermissibly delegated governmental functions to religious entities without adequate—or any—safeguards to prevent turning away disfavored persons based on the entities’ religious beliefs.**

The Establishment Clause prohibits governments from delegating government power to religious entities in ways that would “fus[e] . . . governmental and religious functions” and enable religious entities to exercise the delegated power in furtherance of religious ends. *Larkin*,

459 U.S. at 126 (quoting *Sch. Dist. v. Schempp*, 374 U.S. 203, 222 (1963)). History has long taught that when government uses religious institutions “to carry out certain civil functions,” the Establishment Clause’s protections are triggered. *Shurtleff*, 142 S. Ct. at 1609 (Gorsuch, J., concurring) (citing Michael W. McConnell, *Establishment and Disestablishment at the Founding, Part I: Establishment of Religion*, 44 Wm. & Mary L. Rev. 2105, 2131–81 (2003)). For when the state “delegat[es] important, discretionary governmental powers to religious bodies” without any “effective means of guaranteeing that the delegated power would be used exclusively for secular, neutral, and nonideological purposes,” it impermissibly entangles government and religion in violation of the First Amendment. *Grumet*, 512 U.S. at 697 (internal quotation marks and alteration omitted). Hence, a state may not delegate to churches a veto power over liquor-license applications in the churches’ vicinity. *Larkin*, 459 U.S. at 117, 125, 127; *see also Shurtleff*, 142 S. Ct. at 1609 (Gorsuch, J., concurring) (identifying founding-era historical underpinnings of *Larkin*). Nor may a state delegate its authority over public schools to a religious group by drawing a school district to include only members of that group. *Grumet*, 512 U.S. at 698 (plurality opinion).

South Carolina has crossed this line, “enmesh[ing] churches in the exercise of substantial governmental powers” in its foster-care program. *Larkin*, 459 U.S. at 126. It authorizes and invests private CPAs with the governmental authority “to provide foster care services” “for the state.” SUMF ¶ 4. These agencies “recruit, train, and license families or make recommendations for licensure to [DSS].” *Id.* They handle initial inquiries and applications from prospective foster parents. SUMF ¶ 7. They guide prospective parents through the application process. And they perform home studies for the state, “conduct[ing] a walk-through of the home, assess[ing] the family, interview[ing] . . . applicable household members,” and submitting a “written home study assessment” to DSS along with a recommendation whether the family is suitable to be licensed as foster parents. SUMF ¶ 8. The agencies’ home-study assessments are a “big piece” of the information DSS has on applicants. SUMF ¶ 9. Generally, “if there is nothing glaring that . . . causes [DSS] to ask more questions,” it relies on the home study and other application materials sent by the CPA in deciding whether to license foster families. SUMF ¶ 10. DSS rarely goes against

the recommendations of its CPAs in deciding whether to license a foster family. SUMF ¶ 11.

Thus, under the system that South Carolina has set up, “DSS works with CPAs who cull out families . . . based on their own set of religious criteria . . . , and then DSS relies on CPAs to recommend whoever has made it past that screening process to become a prospective foster parent in South Carolina.” SUMF ¶ 13. By making CPAs the gateway to the state’s foster-care program, South Carolina has delegated its “important, discretionary governmental powers” over recruitment and screening of foster parents to religious agencies while expressly permitting them to exercise those powers to further the CPAs’ religion. *Grumet*, 512 U.S. at 697.

Nor does the delegation end at the screening and application stages. Once a foster family is licensed, the CPA keeps that family and home “under their supervision,” ensuring that the family continues to meet state requirements and, once the family receives a foster-child placement, “making sure that the child gets the care that he needs.” SUMF ¶¶ 14. Child-placement agencies also help DSS decide where to place particular children: DSS sends the agencies information about children in need of homes, and the agencies respond if they have a family that might be a good match. SUMF ¶ 15. Because “[t]he child-placing agencies know those families better than [DSS] know[s] those families,” DSS considers these recommendations valuable information. SUMF ¶ 16.

Notably too, DSS has since July 2020 shifted most of its in-house efforts to applicants for kinship care—that is, people looking to foster a child who is related to them or with whom they already have a close relationship. DSS has worked with very few, if any non-kinship applicants since implementing this change. Because of DSS’s focus on recruiting kinship families, it relies even more heavily on CPAs to work with non-kin prospective parents. SUMF ¶ 17.

And the State has “not suggested any ‘effective means of guaranteeing’ that the delegated power ‘will be used exclusively for secular, neutral, and nonideological purposes.’” *Larkin*, 459 U.S. at 125 (quoting *Comm. for Pub. Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756, 780 (1973)). On the contrary, through Executive Order 2018-12 the State invited and authorized Miracle Hill and all other faith-based CPAs to use their delegated powers for religious purposes, including subjecting prospective foster parents to religious litmus tests in order to participate in a

government program. Miracle Hill, for example, incorporates religious tests into several components of its foster-care program, with the state's approval. First, it uses religious criteria to screen applicants, refusing even to begin working with prospective foster parents, such the Maddonnas, who hold religious beliefs that differed from its own. And even after Miracle Hill begins working with prospective foster parents, religion continues to factor into its work. The agency incorporates religious questions into its initial home study, assessing "the home's spiritual health and well-being" through questions about the family's beliefs and spiritual life. SUMF ¶ 24. Its employees ask about "how [the family] follow[s] Christ on a day-to-day basis," what Jesus and the cross mean to them, and what their involvement is in their church. SUMF ¶ 25. It requires foster parents to adhere to its doctrinal statement "in faith and in practice." SUMF ¶ 27. It "expects foster parents to provide Christian teachings to the children in their care" absent an explicit objection from the biological parents or the child; and it does not even seek parental consent before doing so, instead imposing its own religious choices unless biological parents figure out on their own that they should raise objections. SUMF ¶26. Miracle Hill does not use its delegated governmental authority in a religiously neutral way, and South Carolina makes no attempt to establish guardrails in its blanket waiver to prevent Miracle Hill and other CPAs from doing so. Rather, Governor McMaster's Executive Order expressly authorizes and invites that religious favoritism. The blanket waiver is thus an impermissible delegation under the Establishment Clause.

**C. The Executive Order's prospective licensing of contracted CPAs to administer the foster-care program in a discriminatory manner is not a permissible religious accommodation.**

Though government may in some circumstances accommodate religion by exempting it from generally applicable legal requirements, "accommodation is not a principle without limits." *Grumet*, 512 U.S. at 706. "The principle that government may accommodate the free exercise of religion does not supersede the fundamental limitations imposed by the Establishment Clause." *Santa Fe*, 530 U.S. at 302 (quoting *Lee*, 505 U.S. at 587).

To be constitutional, religious accommodations (1) must alleviate substantial, government-imposed burdens on the exercise of religion and (2) must not impose undue burdens on third parties. *See Texas Monthly*, 489 U.S. at 15 (plurality opinion); *Caldor*, 472 U.S. at 709-10. For if the state has not imposed a “significant” burden on religious exercise to begin with, an exemption from a generally applicable law is an unconstitutional religious preference. *Texas Monthly*, 489 U.S. at 15 (plurality opinion); *accord Caldor*, 472 U.S. at 709–10. If, in purporting to accommodate the religious exercise of some, the state imposes costs and burdens of that religious exercise on others, it favors the faith of the benefitted over the benefits and rights of the burdened. *See Cutter*, 544 U.S. at 722; *Texas Monthly*, 489 U.S. at 15, 18 n.8 (plurality opinion); *Caldor*, 472 U.S. at 709–10.

Neither requirement is met here. Thus, all other considerations aside, South Carolina cannot “accommodate” CPAs’ religious beliefs by contracting with them to provide government services while exempting them from the nondiscrimination requirements that apply to the State itself and therefore to its contractors.

*1. The blanket waiver is not tailored to lift substantial, government-imposed burdens on religious exercise.*

The first fatal flaw of the Executive Order’s scheme is that it is not designed to lift substantial, government-imposed burdens on religious exercise. South Carolina asserts that its blanket waiver was called for and justified by the state’s Religious Freedom Act, which prohibits the state from “substantially burden[ing] a person’s exercise of religion” unless it is the least restrictive means of furthering a compelling state interest. S.C. Code § 1-32-40; *see also* Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1 (similar test).

But the Federal Defendants have admitted that, to be permissible, any RFRA-type exception or exemption “should be tailored to reduce the burden on a religious organization *while accounting for harms to other parties.*” Letter from Joo Yeun Chang 6, ECF No. 91-1 (emphasis added). South Carolina utterly failed to do so: Miracle Hill was the only agency that ever requested a waiver of DSS’s nondiscrimination requirements. SUMF ¶ 45. Yet the governor waived the

requirements for *all* faith-based CPAs in the state. The state did not assess whether any other agency's religious beliefs were substantially burdened by nondiscrimination requirements. It did not require CPAs to submit requests explaining why they believe that their religious rights are substantially burdened. It did not even require agencies to inform DSS, or anyone else, that they intend to take advantage of the blanket waiver. And even today, DSS does not know and chooses not to ask which CPAs might be taking advantage of the Executive Order to further their own religious beliefs in their administration of the program. In short, the prospective blanket exception runs afoul of the constitutional stricture that accommodations must be limited to the particular application of the legal requirement to which the claimant objects. *Cf. Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 439 (2006) (compelling-interest test requires government to address specific practice at issue).

The across-the-board waiver cannot be justified under South Carolina's Religious Freedom Act, nor can it be deemed constitutional. Indeed, Federal Defendants have agreed that "creat[ing] class-wide regulatory exceptions that apply throughout a state, as the exception to South Carolina provide[d] (even when not requested by the other CPAs), runs contrary to" the organization-specific analysis required by RFRA and similar laws. Letter from Joo Yeun Chang 5, ECF No. 91-1. Because it cannot be justified as the lifting of a government-imposed substantial burden on specific agencies' religious exercise, it must instead be understood as unconstitutional religious favoritism.

2. *The blanket waiver unconstitutionally burdens third parties.*

In addition to lacking any tie to actual, individualized, substantial burdens on religious exercise, South Carolina's blanket waiver blatantly—and unconstitutionally—disregards the harms to third parties. The Establishment Clause bars religious exemptions from neutral, generally applicable laws if the exemptions would shift costs, harms, or other burdens to nonbeneficiaries. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693, 729 n.37 (2014) ("Nor do we hold . . . that . . . corporations have free rein to take steps that impose 'disadvantages . . . on others' or

that require ‘the general public [to] pick up the tab.’”); *Texas Monthly*, 489 U.S. at 18 n.8 (plurality opinion) (sales-tax exemption for religious periodicals impermissibly “burden[ed] non-beneficiaries by increasing their tax bills . . . to offset the benefit bestowed on subscribers to religious publications”); *Caldor*, 472 U.S. at 710 (invalidating religious accommodation for Sabbath-observing employees in part because it imposed “substantial economic burdens” on employers and “significant burdens on other employees”).

South Carolina’s blanket waiver seriously burdens nonbeneficiaries—i.e., prospective foster parents who seek to participate in the program and foster children in the state’s care. It subjects prospective foster parents like Mrs. Maddonna to discrimination based on their religion, stigmatizing them and discouraging them from fostering children. It also subjects prospective foster parents to practical hurdles, as different agencies have different locations and provide different services and support. And compounding these burdens, South Carolina has established no safeguards to shield prospective foster parents from these burdens—nor has it even tried to learn what the burdens are.

Being turned away from a CPA on a religious litmus test is a serious burden and harm for prospective foster parents. It sends the message that their religion makes them somehow less suitable or less worthy to be a foster parent, and that others are better parents solely because they adhere to a preferred faith. Take Mrs. Maddonna’s experience: Before Miracle Hill knew Mrs. Maddonna’s religion, its representative was enthusiastic to get Mrs. Maddonna connected with Miracle Hill’s program. Yet as soon as Mrs. Maddonna said that she was Catholic and attended a Catholic church, Miracle Hill did an about-face and informed her that she was no longer welcome. And even under Miracle Hill’s changed requirements, the message remains the same: If you don’t share our religious beliefs, you can’t be trusted to volunteer with children or be a foster parent.

That rejection hurts. As Mrs. Maddonna explained when asked why she didn’t just go to a different CPA after being turned away,

I was harmed. The children were harmed. Just because I wasn’t—just because I guess I could have tried to scout out other opportunities that I’m not aware of existed, that doesn’t mean that I wasn’t harmed in the process. Being told that I’m

perfect in—that I sound perfect for [the] opportunity in every way and going through the motions of—of planning for that, of looking forward to that, of feeling like I have the opportunity to do something that my—that I always wanted to do and then being told that I can’t do that because of my—because of the parish I belong to, I can’t imagine that that’s not harmful.

SUMF ¶ 85 (Ex. 1 Maddonna Tr. 51:22-52:9).

Indeed, as with Mrs. Maddonna’s experience, the rejection may cause so much pain and distress that prospective foster parents give up on fostering altogether rather than risk facing similar rejections again. Mrs. Maddonna’s experiences offer a prime example: She had not known that Miracle Hill would turn her away. After it did, she has not felt comfortable reaching out to other CPAs, for she has no assurance that other agencies aren’t going to do the same thing. SUMF ¶ 84. There are no policies or protections to “ensure [she is] not going to be turned away for the same reason[.]”—her faith. Trying again with other agencies that “may or may not take [her] faith into account” is a “major hurdle” for her because she does not want to have her family be rejected yet again by another agency. “It doesn’t matter how long the list [of CPAs] is . . . . That part of that list might include somebody’s criteria I still can’t meet. And I guess that if you haven’t been there you don’t understand . . . . I don’t want to go through that again.” SUMF ¶ 85 (Ex. 1 Maddonna Tr. 82:8-83:10). South Carolina’s blanket waiver does nothing to protect Mrs. Maddonna or other prospective foster parents from this devastating harm. SUMF ¶¶ 85-86.

Rejection by a CPA also creates practical burdens for prospective foster parents. Different CPAs have different locations and offer different kinds of resources and support to prospective parents as they apply for licenses, seek to have a child placed with them, and take care of any foster children with whom they are entrusted. CPAs are thus not interchangeable. Different families have different needs, and what might be sufficient resources for one family may not suit the needs of another. SUMF ¶ 53.

Working with a CPA with an office close to one’s home is particularly important for many because that makes it more likely that the agency can offer help—or send it quickly when needed. Miracle Hill, for example, offers 24-hour emergency support services, which can include in-person visits as needed. Ready access to your caseworker is important. SUMF ¶ 54.

Nor is the potential alternative of working directly with DSS to foster children enough to negate these practical burdens. As noted above, DSS has largely shifted its focus and resources to kin-based placements, leaving the bulk of non-kinship applicants to the private CPAs. And DSS does not provide the same levels of services and support that the private agencies do. For example, some CPAs provide free monthly cleaning services or doctor-appointment set-up and transportation assistance. SUMF ¶ 55. So even if prospective parents were able to go through DSS rather than a private CPA, they still would likely receive different (and lesser) support than if they had been of the “right religion” to work with a CPA that discriminates. Those who are the right religion have all the options and can select the agency that best suits their needs. Those who, like Mrs. Maddonna, are the wrong religion, don’t and can’t.

Again, Miracle Hill provides a prime example of why the State’s contracted CPAs are not all equivalent or interchangeable. Miracle Hill had standout success when it came to foster-home licenses and placements. From 2017 to 2021, Miracle Hill had the highest number of new foster-home licenses among nontherapeutic agencies (*i.e.*, those that don’t do placements for children with the most severe medical conditions). SUMF ¶ 28. And in both 2017 and 2020, Miracle Hill had the highest number of new licenses overall, even counting the therapeutic agencies. *Id.* Miracle Hill likewise had the highest number of nontherapeutic foster-child placements from 2017 to 2021. SUMF ¶ 29. The only providers that had higher placement numbers during any of those years were therapeutic agencies, and their counts of *nontherapeutic* placements were lower than Miracle Hill’s. *Id.* Miracle Hill’s success in child placements is no surprise. It has a placement coordinator who recommends families to DSS who may be a good fit for a particular foster child, and then meets with the family once a placement is made to help with the paperwork and provide additional support. SUMF ¶ 30. Those placement visits are not required by DSS, and Miracle Hill is unaware of other CPAs that provided the service. *Id.*

In addition to its success in guiding families through the process of applying to become licensed foster parents and helping them obtain placements, families working with Miracle Hill also receive other benefits and support. Miracle Hill sometimes will provide tangible support, like

if the family needs a bed, dresser, or other similar items. SUMF ¶ 31. After a child is placed with a Miracle Hill family, Miracle Hill continues to provide support above and beyond what is required by DSS. For example, it helps connect foster families with educational support and resources for their foster child. SUMF ¶ 32. A Miracle Hill employee was not aware of any other CPAs that provide that kind of support. *Id.* Miracle Hill also gives its foster families tickets to events and other community activities. SUMF ¶ 33. Miracle Hill has care coordinators who prepare individual service plans for the children (not required by DSS) and meet with the assigned families monthly (not just the quarterly meetings required by DSS). SUMF ¶ 34. And Miracle Hill offers respite care to its foster families, during which another licensed foster family takes care of the foster child while the regular foster family is away. SUMF ¶ 35. Miracle Hill's ability to offer respite support depends on the agency's large number of licensed foster families, including roughly thirty families licensed solely for respite care. *Id.*

Mrs. Maddonna did not know of any other CPAs that offered the same resources, support, and other benefits as Miracle Hill does. But because Mrs. Maddonna could not sign Miracle Hill's statement of faith, she could not work with the agency or the children that the State entrusted to its care. Mrs. Maddonna's Catholic faith meant that she had far fewer and substantially poorer opportunities compared to those who can sign Miracle Hill's Statement of Faith, driving home that the mere existence of other CPAs does not alleviate the burdens and disadvantages when one's religion disqualifies one from the full range of government CPAs that people of the "right religion" enjoy.

As explained, under the Governor's Executive Order South Carolina does not require agencies to inform DSS—or anyone—that they intend to make use of the blanket waiver. Agencies are not required to inform DSS that they have turned someone away, much less confirm that they have done so for religious reasons rather than because the family is unfit to foster children. And DSS has not required CPAs making use of the waiver "to take any steps when they turn away an applicant based on religion," such as referring the rejected applicants to DSS or other CPAs. SUMF

¶ 50.<sup>3</sup> Yet this is exactly how the South Carolina foster-care program, under the 2018 changes, is intended to work.

Neither does DSS's recent partnership with Heartfelt Calling lift the burdens on prospective foster parents who try to navigate the various CPAs. As one DSS employee explained, Heartfelt Calling does not direct prospective parents toward specific agencies. Instead, it sends them to the page on its website that lists all the CPAs available. SUMF ¶¶ 59-61. Prospective parents must then roll the dice, hoping not to suffer discrimination and painful rejection yet again. And though Heartfelt Calling's website might for some agencies include limited information about the kinds of parents the agency is willing to work with, Heartfelt Calling does not have accurate information for every CPA, meaning that prospective parents likely have no way to know an agency's religious criteria until they contact that agency. SUMF ¶ 60. If an agency turns them away based on religious criteria, Heartfelt Calling will once again merely direct the prospective parents back to the listings on its website. SUMF ¶ 61. Hence, the burdens always end up being on the prospective parents to reach out to agencies one by one, hoping eventually to find one that won't inflict yet more invidious rejection. The process thus utterly fails to protect prospective parents from the harms and burdens inflicted by religious discrimination.

South Carolina didn't simply fail to establish safeguards against these harms to prospective foster parents—it expressly chose to ignore the harms. As explained, the governor did not consult with top policymakers for foster care before deciding to issue the Executive Order and request a waiver from HHS allowing CPAs to discriminate based on religion. And before issuance of the blanket waiver, DSS did not study what effects that waiver would have on the foster system in general or foster youth in particular. Nor has DSS assessed the effect after the blanket waiver took

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<sup>3</sup> But even if it did, prospective foster parents would continue to face the risk of being turned away from the next agency, and the next—if they even feel comfortable trying again at all. For example, though Miracle Hill typically informs rejected parents of other CPAs in the region, that includes other faith-based agencies that Miracle Hill believes might also discriminate based on religion. SUMF ¶ 58. And Miracle Hill does not know or track whether those who fail its religious test end up reaching out to other CPAs or DSS. *Id.* Nor does it know whether the people it turned way find another CPA that offers comparable services and support. *Id.*

effect.

The State does not even know which other CPAs discriminate based on religious criteria. It assumes that other agencies likely are not discriminating because invidious discrimination is not obvious on the face of agencies' written policies, and the State has not received complaints. But state workers were likewise unaware of Miracle Hill's having turned away 25 to 30 families on religious bases since 2017. Now they know—and don't care.

It is not hard to understand how South Carolina would fail to know which agencies are discriminating, given the state's structuring of its foster-care program to include a blanket prospective waiver that protects all religious CPAs who wish to engage in religious discrimination. The CPAs do not have to request anything. Nor are they required to report to the State when they turn someone away or decide not to recommend someone as a foster parent. DSS neither tracks whether people turned away on religious grounds try applying to work with another CPA, nor monitors whether CPAs using the waiver make referrals. Following the 2018 changes, South Carolina has failed to incorporate *any* safeguards into its foster-care program to protect potential foster parents against religious discrimination.

**II. The HHS Notice of None Enforcement Enables South Carolina and Its Contracted Providers to Continue Operating the Foster-Care Program in Violation of the Establishment Clause.**

Title IV-E of the Social Security Act authorizes HHS to provide federal funding to states for foster-care services. HHS thus funds South Carolina's DSS, which directs the federal dollars to South Carolina's licensed CPAs for the governmental foster-care services that the agencies provide to the State. In order to receive these federal funds, DSS and its subgrantees (the licensed CPAs) must comply with federal law. HHS regulations for grants awarded under Title IV-E previously required that "no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services based on non-merit factors such as . . . religion." 45 C.F.R. § 75.300(c) (2016). Under 45 C.F.R. § 75.101(b)(1), the antidiscrimination provisions of § 75.300 follow federal grant dollars

through grantees, such as South Carolina, to subgrantees, including the CPAs that DSS licenses and contracts with. Federal and state law allow religiously affiliated organizations to become licensed CPAs and receiving public funds to provide governmental foster-care services as long as the religiously affiliated organizations adhere to all applicable laws and requirements, just as their nonreligious counterparts must do. *See* 45 C.F.R. § 87.3. HHS regulations prohibit religiously affiliated agencies from “engag[ing] in any explicitly religious activities (including activities that involve overt religious content such as . . . proselytization) as part of the programs or services funded with direct financial assistance from the HHS awarding agency.” 45 C.F.R. § 87.3(b). Further, whatever other federal and state laws and regulations govern the funding and administration of foster-care services, HHS and the State—and therefore also their subgrantee CPAs performing state foster-care services—are always bound by the requirements of the U.S. Constitution, which prohibits government from funding religious discrimination. In other words, people like Mrs. Maddonna who seek federally funded foster-care services from providers such as South Carolina’s licensed CPAs cannot be turned away based on their religion or be proselytized or religiously coerced in or by those programs.

That’s how things are supposed to work, anyway.

In 2019, however, when Ms. Maddonna was turned away from participation in the State’s foster-care program because she and her family are Catholic, South Carolina was operating under the HHS Approval of Exception to these funding conditions, ECF No. 79-3, that Governor McMaster had requested, ECF No. 79-1. When HHS withdrew the exception on November 18, 2021, as improperly granted and inconsistent with the constitutional requirements for religious accommodations, ECF No. 91-1, that *could* have mooted the case against HHS: South Carolina could choose to withdraw its Executive Order and get federal funding, or not, and either way, the federal government would be in compliance with constitutional mandates. But instead, the Federal Defendants’ “giving [was] of such a character, that the right hand gives, but the left hand takes.” Martin Luther, *Commentary on the Sermon on the Mount* 236 (Charles Hay trans. 1892). Enter the NNGR—HHS’s Notice of Nonenforcement, 84 Fed. Reg. 63809 (Nov. 19, 2019). HHS assured

South Carolina that it no longer needed the wrongfully granted exception because the State’s discriminatory foster-care scheme under the Governor’s Executive Order enjoys the broader, nationwide protection afforded by the NNGR—a policy action that effectively rescinds the conditions on funding altogether. Thus, the case against HHS continues because Federal Defendants continue to protect South Carolina’s discriminatory foster-care scheme—now relying on a Notice of Nonenforcement that violates the Administrative Procedure Act.

Correctly foreseeing this very issue, this Court observed, “Plaintiff alleges that the nonenforcement effectively allows for continued discrimination in violation of her constitutional rights. . . . [T]he notice of nonenforcement appears, in essence, to be a blanket waiver for all states, much like the HHS Waiver for South Carolina. . . . [T]he notice of nonenforcement . . . effectively reimplements and extends the HHS Waiver’s previous provisions, which Plaintiff alleges caused her present injuries.” Order at 28, ECF No. 43, August 10, 2020. Enjoining Defendants from implementing the notice of nonenforcement would redress Mrs. Maddonna’s injuries.

**A. HHS substituted a blanket, nationwide nonenforcement policy for the agency’s admittedly unlawful RFRA exception, fully intending to continue funding religious discrimination by the South Carolina foster-care program.**

*1. HHS’s Notice of Nonenforcement is reviewable under the APA.*

Agency action is generally subject to judicial review. *See Elecs. of N.C., Inc. v. Se. Power Admin.*, 774 F.2d 1262, 1266 (4th Cir. 1985). It is nonreviewable only if judicial review is precluded by statute (5 U.S.C. § 701(a)(1)) or the challenged action is “committed to agency discretion by law” (*id.* § 701(a)(2)), the instances of which are “rare” (*Elecs. of N.C.*, 774 F.2d at 1267). Here, neither exception applies.

While *Heckler v. Chaney*, 470 U.S. 821 (1985), held that an agency’s decision in an individual case “not to prosecute or enforce, whether through civil or criminal process,” is presumptively immune from judicial review under § 701(a)(2), 470 U.S. at 831, that narrow rule applies when, as with a prosecutor’s decision not to indict, an agency decides not to take enforcement action in a specific instance against a particular regulated entity, because the exercise

of that prosecutorial discretion is “regarded as the special province of the Executive Branch.” *Id.* at 832. *Heckler* did not hold, and the APA does not afford absolute discretion for an agency categorically to refuse to enforce all violations of a legal requirement. Neither did *Heckler* give agencies free rein to authorize violations of the law prospectively and permanently. For those are acts of policymaking, not discretionary enforcement. Thus, *Heckler* made clear that “Congress did not set agencies free to disregard legislative direction in the statutory scheme that the agency administers.” *Id.* at 833. Nor, importantly, did the Court deny reviewability when an agency “‘consciously and expressly adopt[s] a general policy’ that is so extreme as to amount to an abdication of its statutory responsibilities.” *Id.* at 833 n.4 (quoting *Adams v. Richardson*, 480 F.2d 1159, 1162 (D.C. Cir. 1973) (en banc) (per curiam) (agency’s wholesale failure to enforce Title VI of the Civil Rights Act of 1964 not committed to agency discretion)); *see also, e.g., N. Ind. Pub. Serv. Co. v. FERC*, 782 F.2d 730, 745 (7th Cir. 1986) (“[W]e do not think that the Commission can essentially abandon its regulatory function . . . under the guise of unreviewable agency inaction.”). Indeed, Justice Brennan wrote separately in *Heckler* to underscore the narrowness of nonreviewability, further explaining that the Court did not address whether nonenforcement decisions might evade judicial review when “(1) an agency flatly claims that it has no statutory jurisdiction to reach certain conduct”; “(2) an agency engages in a pattern of nonenforcement of clear statutory language”; “(3) an agency has refused to enforce a regulation lawfully promulgated and still in effect”; or “(4) a nonenforcement decision violates constitutional rights.” 470 U.S. at 839 (Brennan, J., concurring). The third and fourth factors are clearly implicated here.

In keeping with these limitations, and the logic of the prosecutorial-discretion analogy underlying them, the courts have drawn a line between “single-shot non-enforcement decision[s]” like the one in *Heckler*, which are presumptively immune from judicial review, and an agency’s “general policy of refusing to enforce [a] provision of substantive law,” which is reviewable. *Casa de Md. v. U.S. Dep’t of Homeland Sec.*, 924 F.3d 684, 699 (4th Cir. 2019) (quoting *OSG Bulk Ships, Inc. v. United States*, 132 F.3d 808, 811–12 (D.C. Cir. 1998)). Whereas individual

enforcement decisions involve “the sort of mingled assessments of fact, policy, and law” that are “peculiarly within the agency’s expertise and discretion,” general enforcement or nonenforcement policies are “direct interpretations of the commands of . . . substantive statute[s]” that are subject to judicial review. *Id.* (quoting *Crowley Caribbean Transp., Inc. v. Pena*, 37 F.3d 671, 677 (D.C. Cir. 1994)).

*Heckler* does not bar judicial review of HHS’s broad, nationwide NNGR, which is a prospective, categorical policy not to enforce the antidiscrimination requirements of 45 C.F.R. § 75.300(c) (2016)—requirements that are intended to apply to all recipients and subrecipients of HHS funds. The NNGR is not a case-specific determination resting on an individualized assessment of facts and agency enforcement priorities. *Cf. Casa de Md.*, 924 F.3d at 699; *Sierra Club v. Larson*, 882 F.2d 128, 130–33 (4th Cir. 1989). Rather, it is a “refus[al] to enforce a regulation lawfully promulgated and still in effect” (*Heckler*, 470 U.S. at 839 (Brennan, J., concurring)), and hence constitutes “abandon[ment of HHS’s] regulatory function” (*N. Ind. Pub. Serv. Co.*, 782 F.2d at 745). Like the earlier South Carolina exemption, it is a statement of general enforcement policy that nullifies the rules for the whole class of regulated entities. It is agency rulemaking by another name, which is subject to judicial review.

*Casa de Maryland* is controlling Circuit precedent. There, the court of appeals held that the Department of Homeland Security’s decision to rescind the Deferred Action for Childhood Arrivals policy was reviewable agency action, for DHS was neither “exercis[ing its] discretion in an individual case” nor determining that its resources would be best spent pursuing one violation over another. 924 F.3d at 698–99. Instead, the agency had rescinded “a general enforcement policy in existence for over five years and affecting hundreds of thousands of enrollees based on the view that the policy was unlawful.” *Id.* at 699. Its action was therefore reviewable. So too here, where HHS has as a matter of policy categorically and prospectively refused to enforce its own regulations “with respect to any grantees.” 84 Fed. Reg. at 63,811 (Nov. 19, 2019).

Any argument by HHS that the NNGR is like the individualized discretionary act in *Heckler* (see Fed. Defs.’ Memo. in Supp. of Mot. to Dismiss 19, ECF No. 34-1) would simply be

wrong. In *Heckler*, the Court declined to disturb a determination by the FDA not to enforce a statute that it administered when applied to the specific context of lethal injections. 470 U.S. at 838. Here, HHS has not merely exercised agency discretion under the rules but instead has wholly—and impermissibly—abdicated its responsibility to enforce the law. *Heckler* does not foreclose judicial review in situations like this one. *See* 470 U.S. at 839 (Brennan, J., concurring); *see also infra* Section II.B.

2. *Even if the Notice of Nonenforcement were nonreviewable for illegality under § 706(2)(A), it, and HHS’s funding of religious discrimination generally, are reviewable for unconstitutionality.*

Even if the Court were to hold that the challenged NNGR was somehow a gaggle of individual discretionary nonenforcement decisions that are each unreviewable for illegality under 5 U.S.C. § 706(2)(A), Mrs. Maddonna’s claims that HHS’s actions are unconstitutional and thus also violate 5 U.S.C. § 706(2)(B) would still be reviewable under that subsection.

Although *Heckler* did not expressly decide whether any presumption of nonreviewability might apply to agency action or inaction that is alleged to violate the Constitution, the Court took pains to point out that “[n]o colorable claim was made . . . that the agency’s refusal to institute proceedings violated any constitutional rights of respondents.” 470 U.S. at 838. And Justice Brennan underscored that the Court’s holding did not foreclose judicial review where “a nonenforcement decision violates constitutional rights.” *Id.* at 839 (Brennan, J., concurring). For as he explained: “It may be presumed that Congress does not intend administrative agencies . . . to ignore clear jurisdictional, regulatory, statutory, or constitutional commands.” *Id.* In other words, unless Congress says otherwise—and indeed, even if it does—agency action should be reviewable for unconstitutionality.

Moreover, Professor Sunstein has pointed out that the day before *Heckler* was decided the Supreme Court held that prosecutorial discretion is cabined by constitutional constraints; so the prosecutor analogy underscores that HHS’s actions here are reviewable for unconstitutionality. *See* Cass R. Sunstein, *Reviewing Agency Inaction After Heckler v. Chaney*, 52 U. Chi. L. Rev. 653,

676, 676 n.131 (1985) (citing *Wayte v. United States*, 470 U.S. 598, 608 (1985)). Any argument that *Heckler* bars review here cannot be squared with the Supreme Court's contemporaneous holding in *Wayte*.

Nor can it be squared with binding Circuit precedent: The court of appeals has held that even “‘agency action which is committed to agency discretion by law’ is not completely shielded from judicial review.” *See Elecs. of N.C.*, 774 F.2d at 1267 (brackets omitted). “[C]ourts may review agency actions for certain types of errors that fall within the APA’s Section 701(a)(2) exception to judicial review. For example, an agency decision that violates a statutory or constitutional command . . . is not immune from judicial review” even when a “lawful exercise” of that agency decision would be. *Id.* As the court explained, that rule is also consistent with earlier precedents setting the bounds of agency discretion. *See id.* (“[E]ven where action is committed to absolute agency discretion by law, courts have assumed the power to review allegations that an agency exceeded its legal authority, acted unconstitutionally, or failed to follow its own regulations.” (quoting *Garcia v. Neagle*, 660 F.2d 983, 988 (4th Cir. 1981))); *see also, e.g., WWHT, Inc. v. FCC*, 656 F.2d 807, 815 n.15 (D.C. Cir. 1981) (“In no event would a finding of nonreviewability on the ground that an action is committed to agency discretion preclude judicial review when constitutional violations have been alleged.”). In short, when colorable claims of unconstitutionality are made, agency action is reviewable. *Cf. Webster v. Doe*, 486 U.S. 592, 603 (1988) (interpreting statute to permit challenges, to “avoid the ‘serious constitutional question’ that would arise if a federal statute were construed to deny any judicial forum for a colorable constitutional claim” (quoting *Bowen v. Mich. Acad. of Family Physicians*, 476 U.S. 667, 681 n.12 (1986))). Constitutional claims are among the class of “exceptional cases” identified by the Supreme Court “where judicial review of agency action would always be available, even if Congress did not specifically authorize it (through the APA or otherwise) or actually precluded it explicitly, or at least . . . where the presumption in favor of judicial review is particularly strong.” *Reg’l Mgmt. Corp. v. Legal Servs. Corp.*, 186 F.3d 457, 461 n.3 (4th Cir. 1999); *cf. Collins Music Co. v. United States*, 21 F.3d 1330, 1336–37 (4th Cir. 1994) (analyzing regulatory action by IRS

for procedural-due-process violation but concluding that, because plaintiff’s constitutional claim was not colorable, *Heckler*’s presumption of nonreviewability applied).<sup>4</sup>

HHS’s nonenforcement notice—which replaced the unlawful exemption—and its ongoing funding of religious discrimination are unconstitutional and thus also violate 5 U.S.C. § 706(2)(B). Judicial review is available as a matter of law.

**B. The Notice of Nonenforcement is procedurally invalid for lack of notice and comment.**

The NNGR also independently violates the APA’s procedural requirements for an entirely separate reason: It rescinds a notice-and-comment rule without undergoing notice-and-comment rulemaking. *See Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 101 (2015) (“[T]he APA . . . mandate[s] that agencies use the same procedures when they amend or repeal a rule as they used to issue the rule in the first instance.”). HHS’s failure to act through notice-and-comment rulemaking thus violated the APA, requiring vacatur of the NNGR. 5 U.S.C. § 553(b)-(c). HHS has categorically declared that the Department will not enforce the relevant provisions of the 2016 Grants Rule. 84 Fed. Reg. at 63,811 (Nov. 19, 2019). This categorical refusal to enforce the existing regulations “is ‘tantamount to amending or revoking a rule,’ and ‘an agency action which has the effect of suspending a duly promulgated regulation . . . is normally subject to APA rulemaking requirements.’” *Nat. Res. Def. Council v. Wheeler*, 955 F.3d 68, 83–84 (D.C. Cir. 2020) (quoting *Clean Air Council v. Pruitt*, 862 F.3d 1, 6 (D.C. Cir. 2017); *Env’t Def. Fund, Inc. v. Gorsuch*, 713 F.2d 802, 816 (D.C. Cir. 1983)) (citations omitted); *see also Elec. Priv. Info. Ctr. v. U.S. Dep’t of Homeland Sec.*, 653 F.3d 1, 7 (D.C. Cir. 2011) (an agency action with “present binding effect” is a legislative rule); *McLouth Steel Prods. Corp. v. Thomas*, 838 F.2d 1317, 1320 (D.C. Cir. 1988) (“[W]hether a statement is a rule of present binding effect . . . depends on whether the statement constrains the agency’s discretion.”). Just as agencies cannot unilaterally delay the

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<sup>4</sup> This principle also disposes of the core problem on which the doctrine of nonreviewability is premised: that courts cannot review agency action when there is no judicially manageable standard, *i.e.*, when there is “no law to apply” (*see Sierra Club v. Larson*, 882 F.2d at 131, 132). “Here, there is clearly ‘law to apply’—the Constitution.” *Nat’l Fed’n of Fed. Emps. v. Weinberger*, 818 F.2d 935, 941 n.11 (D.C. Cir. 1987); Sunstein, *supra*, at 676 (same).

effective dates of final rules, *Clean Air Council*, 862 F.3d at 6, or unilaterally rescind rules without proper process, “the APA . . . mandate[s] that agencies use the same procedures when they amend or repeal a rule as they used to issue the rule in the first instance.” *Perez*, 575 U.S. at 101. Hence, HHS could not categorically refuse to enforce its final regulations without notice-and-comment rulemaking or a showing of good cause. 5 U.S.C. § 553(b). Because it did neither, the Non-enforcement Policy was promulgated unlawfully and must be vacated.

### CONCLUSION

Defendants put in place an unconstitutional foster-care system through two independent but concerted actions:

- The Governor’s Executive Order granting prospective, blanket permission to all CPAs to apply their own religious criteria when delivering foster-care services on the State’s behalf, and
- HHS’s blanket, nationwide Notice of Nonenforcement of regulations that prohibit discrimination based on religion in programs that receive federal funds.

The remedy is simple: declare the Executive Order and Notice of Nonenforcement unlawful, and enjoin their enforcement.

The Court should grant summary judgment in favor of Plaintiff and against the Defendants.

Greenville, South Carolina  
November 21, 2022.

s/ Aaron J. Kozloski  
Aaron J. Kozloski (D.S.C. Bar No. 9510)

CAPITOL COUNSEL, LLC  
P.O. Box 1996  
Lexington, SC 29071-1996  
Tel: (803) 465-1400  
Fax: (888) 513-6021  
[aaron@capitolcounsel.us](mailto:aaron@capitolcounsel.us)

*and*

Richard B. Katskee (admitted *pro hac vice*)  
Kenneth D. Upton, Jr. (admitted *pro hac vice*)

AMERICANS UNITED FOR SEPARATION OF CHURCH  
AND STATE

1310 L Street NW, Suite 200

Washington, DC 20005

Tel: (202) 466-3234

Fax: (202) 466-3353

[katskee@au.org](mailto:katskee@au.org)

[upton@au.org](mailto:upton@au.org)

*Counsel for Plaintiff Aimee Maddonna*

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

AIMEE MADDONNA,	)	
	Plaintiff,	)
	)	
v.	)	Civil Action No. 6:19-cv-03551-JD
	)	
UNITED STATES DEPARTMENT OF	)	
HEALTH AND HUMAN SERVICES, <i>et</i>	)	
<i>al.</i> ,	)	
	Defendants.	)
_____	)	

**PLAINTIFF’S STATEMENT OF UNDISPUTED MATERIAL FACTS**

**Foster Care in South Carolina**

1. As of November 14, 2024, more than 3,800 children are in South Carolina’s foster-care system. Greenville County, where Mrs. Maddonna and her family live, has the second highest number of children in care of any other county in the state. And South Carolina’s Upstate Region, which includes Greenville County, is home to nearly one third of all children in foster care in the State. (<https://bit.ly/3Ot3ZD5>.)

2. To help it operate its foster-care program, South Carolina, through DSS, contracts with and licenses private agencies to serve as child-placing agencies (CPAs) and to recruit, screen, and support foster families. (Ex. 4 Lowe Tr. 36:11-37:3). Some of these CPAs are religiously affiliated, faith-based organizations. (Ex. 12 McMaster Letter, at 1.)

3. South Carolina is divided into regions for purposes of DSS’s work (Ex. 4 Lowe Tr. at 30:6-8), and the Greenville area is part of the Upstate Region. (Ex. 4 Lowe Tr. 30:9-18).

4. DSS authorizes and invests private CPAs with the governmental authority “to provide foster care services” “for the state.” (Ex. 4 Lowe Tr. 36:11-25.)

5. CPAs receive federal and state government funding for their services. (Ex. 16 DSS Summary of CPA Administrative Fees from July 1, 2016 through January 31, 2022 (10545-

G-001 to -002).)

6. These agencies “recruit, train, and license families or make recommendations for licensure to [DSS].” (Ex. 4 Lowe Tr. 36:11-25.)

7. They handle initial inquiries and applications from prospective foster parents. (Ex. 4 Lowe Tr. 37:4-23.)

8. They guide prospective parents through the application process. And they perform home studies for the state, “conduct[ing] a walk-through of the home, assess[ing] the family, interview[ing] . . . applicable household members,” and submitting a “written home study assessment” to DSS along with a recommendation whether the family is suitable to be licensed as foster parents. (Ex. 4 Lowe Tr. 37:12-38:3; Ex. 2 Barton Tr. 56:10-15.)

9. The agencies’ home-study assessments are a “big piece” of the information DSS has on applicants. (Ex. 2 Barton Tr. 57:3-58:10.)

10. Generally, “if there is nothing glaring that . . . causes [DSS] to ask more questions,” it relies on the home study and other application materials sent by the CPA in deciding whether to license a foster family. (Ex. 2 Barton Tr. 57:3-59:7.)

11. DSS rarely goes against the recommendations of its CPAs in deciding whether to license foster families. (Ex. 5 Staudt Tr. 30:25-31:15.)

12. DSS generally does not track the religions of foster children or their biological parents unless the family or the child makes a specific request related to practicing their religion. (Ex. 3 Tester Tr. 145:3-146:7.)

13. Thus, under the system that South Carolina has set up, “DSS works with CPAs who cull out families . . . based on their own set of religious criteria . . . , and then DSS relies on CPAs to recommend whoever has made it past that screening process to become a prospective foster parent in South Carolina.” (Ex. 2 Barton Tr. 118:6-13.)

14. Once a foster family is licensed, the CPA keeps that family and home “under their supervision,” ensuring that the family continues to meet state requirements and, once the family receives a foster-child placement, “making sure that the child gets the care that he needs.” (Ex. 5

Staudt Tr. 22:24-23:14; *see also* Ex. 2 Barton Tr. 67:19-68:1.)

15. CPAs also help DSS decide where to place particular children: DSS sends the agencies information about children in need of homes, and the agencies respond if they have a family that might be a good match. (Ex. 2 Barton Tr. 68:2-11.)

16. Because “[t]he child-placing agencies know those families better than [DSS] know[s] those families,” DSS considers their recommendations to be valuable information. (Ex. 2 Barton Tr. 68:22-69:14.)

17. Notably too, DSS has since July 2020 shifted most of its own focus to applicants for kinship care—that is, people looking to foster a child who is related to them or with whom they already have a close relationship. (Ex. 2 Barton Tr. 31:15-32:11; Ex. 4 Lowe Tr. 53:14-54:5; *see also* Ex. 2 Barton Tr. 138:7-24 (noting that DSS has worked with “very few, . . . if any” non-kinship applicants since implementing this practice change).) Because of DSS’s focus on recruiting kinship families, it relies yet more heavily on CPAs to work with non-kin prospective parents. (Ex. 2 Barton Tr. 33:6-34:22.)

#### Child Placing Agency Miracle Hill Ministries

18. As of the commencement of this lawsuit, Miracle Hill, a CPA located in the Upstate Region of South Carolina, has been the state’s largest provider of foster care services for children requiring nontherapeutic foster care. (Ex. 12 McMaster Letter at 2,)

19. From July 1, 2016 through January 31, 2022, Miracle Hill has received more than \$3,000,000 in state funds and just under \$300,000 in federal funds. (Ex. 16 DSS Summary of CPA Administrative Fees, at 1.)

20. Miracle Hill is also well-known in the community. In the Greenville area, “the only [CPA] that anybody is aware of is Miracle Hill. . . . That’s the option that is discussed. That’s . . . still the one that’s the most known.” (Ex. 1 Maddonna Tr. 142:10-14.)

21. During initial home studies, Miracle Hill employees ask about church attendance and involvement of the prospective parents and any children they have, because Miracle Hill “would want the family to be attending church together and . . . would want to see what they’re

teaching their children.” (Ex. 6 Betts Tr. 26:2-12, 28:20-29:2, 209:15-210:16.)

22. Miracle Hill considers it important that foster parents expose foster children to its preferred religious teachings and expected foster parents to exercise spiritual influence—Protestant Christian influence—over the children in its care. (Ex. 6 Betts Tr. 210:17-211:9.)

23. Unless the biological parents or children specifically object, Miracle Hill intends for foster parents to teach the Christian religion to their foster children and “share the gospel of Jesus Christ” with them—even if those foster children and their biological families are adherents of a different religion. (Ex. 6 Betts Tr. 213:13-23, 214:19-25, 217:13-218:9.)

24. Miracle Hill incorporates religious questions into its initial home study, assessing “the home’s spiritual health and well-being” through questions about the family’s beliefs and spiritual life. (Ex. 6 Betts Tr. 24:12-25:8, 28:20-29:2.)

25. Miracle Hill employees asks about “how [the family] follow[s] Christ on a day-to-day basis,” what Jesus and the cross mean to them, and what their involvement is in their church. (Ex. 6 Betts Tr. 24:12-26:12.)

26. Miracle Hill “expects foster parents to provide Christian teachings to the children in their care” absent an explicit objection from the biological parents or the child; and it does not even seek parental consent before doing so, instead taking their beliefs and wishes into account only if the biological parents specifically and affirmatively raise objections on their own. (Ex. 6 Betts Tr. 213:5-23.)

27. Miracle Hill requires foster parents to adhere to its doctrinal statement “in faith and in practice.” (Ex. 6 Betts Tr. 94:1-2, 169:7-170:16.)

28. From 2017 to 2021, Miracle Hill had the highest number of new foster-home licenses among nontherapeutic agencies (i.e., those that don’t do placements for children with the most severe medical conditions). And in both 2017 and 2020, Miracle Hill had the highest number of new licenses overall, even counting the therapeutic agencies. (Ex. 8 DSS Summary of New Foster Home Licenses.)

29. Miracle Hill likewise had the highest number of nontherapeutic placements of

foster children from 2017 to 2021. The only providers that had higher placement numbers during any of those years were therapeutic agencies, and their counts of *nontherapeutic* placements were lower than Miracle Hill's. (Ex. 9 DSS Summary of Placements by Provider.)

30. Miracle Hill has a placement coordinator who recommends families to DSS that may be a good fit for a particular foster child and then meets with the family once a placement is made to help with the paperwork and provide additional support. (Ex. 6 Betts Tr. 58:14-59:17.) Those placement visits are not required by DSS, and Miracle Hill is unaware of other CPAs that provided the service. (*Id.*)

31. In addition to guiding families through the process of applying to become licensed foster parents and helping them obtain placements, families working with Miracle Hill also receive other benefits and support. Miracle Hill sometimes provides tangible support, including if the family needs a bed, dresser, or other similar items. (Ex. 6 Betts Tr. 55:3-21.)

32. After a child is placed with a Miracle Hill family, Miracle Hill continues to provide support above and beyond what is required by DSS. For example, it helps connect foster families with educational support and resources for their foster child. (Ex. 6 Betts Tr. 56:22-57:14.) Miracle Hill is not aware of any other CPAs that provide that kind of support. (*Id.*)

33. Miracle Hill also gives its foster families tickets to events and other community activities. (Ex. 6 Betts Tr. 56:6-21.)

34. Miracle Hill has care coordinators who prepare individual service plans for the children (not required by DSS) and meet with the assigned families monthly (not just the quarterly meetings required by DSS). (Ex. 6 Betts Tr. 59:18-61:20.)

35. Miracle Hill offers respite care to its foster families, during which another licensed foster family takes care of the foster child while the regular foster family is away. (Ex. 6 Betts Tr. 63:19-64:23.) Miracle Hill's ability to offer respite support depends on the agency's large number of licensed foster families, including roughly thirty families licensed solely for respite care. (Ex. 6 Betts Tr. 66:2-6; Ex. 8 DSS Summary of New Foster Home Licenses.)

### **Miracle Hill's Troubles with DSS and Govern McMaster's 2018 Intervention**

36. When reviewing Miracle Hill's application to renew its CPA license for 2018, DSS determined that Miracle Hill was using religious information that it gathered about prospective foster parents and families to refuse to provide services as a licensed child-placement agency to families who did not adhere to Miracle Hill's evangelical-Christian beliefs and those who did not attend Miracle Hill-approved Christian churches. (Ex. 4 Lowe Tr. at 77:6-78:10; Ex. 14 DSS Letter from Lowe to Miracle Hill.)

37. State workers, unaware of the full scope of the discrimination, would later learn that Miracle Hill had turned away roughly 25 to 30 families on religious bases since 2017. (Ex. 2 Barton Tr. 146:22-147:14; Ex. 6 Betts Tr. 97:11-98:15.)

38. DSS determined that Miracle Hill's policies and practices constitute discrimination based on religion in contravention of federal and state law and that Miracle Hill was violating its own nondiscrimination policies submitted to DSS as part of the organization's license-renewal process. For these reasons, on January 26, 2018, DSS issued Miracle Hill a temporary (rather than regular) CPA license and requested that Miracle Hill issue, within thirty days, a written plan for resolving the legal violations that DSS had identified and for complying with applicable laws, regulations, and policies. (Ex. 14 DSS Letter from Lowe to Miracle Hill.)

39. After DSS informed Miracle Hill that it would need to comply with non-discrimination requirements to receive a permanent license, Miracle Hill reached out to Governor McMaster for help. (Ex. 7 Lehman Tr. 125:4-12.)

40. On February 27, 2018, Governor McMaster sent a letter to then-HHS Administration for Children and Families Principal Deputy Assistant Secretary Steven Wagner requesting a waiver from the federal nondiscrimination requirements for South Carolina, including faith-based organizations like Miracle Hill that operate under South Carolina's Title IV-E Foster Care Program. (Ex. 12 McMaster Letter.)

41. On January 23, 2019, HHS ACF Principal Deputy Assistant Secretary Wagner granted South Carolina the requested exception from the federal nondiscrimination requirements. (Ex. 13, Wagner Letter.)

42. On March 13, 2018, Governor McMaster issued Executive Order No. 2018-12, exempting all faith-based foster-care CPAs in South Carolina from complying with state antidiscrimination requirements. (Ex. 10 Executive Order.)

43. The Executive Order directs that, “to the fullest extent permitted by state and federal law,” “DSS shall not deny licensure to faith-based CPAs solely on account of their religious identity or sincerely held religious beliefs.” (*Id.*)

44. The Executive Order expressly permits faith-based child-placement subgrantees to associate only with “foster parents and homes who share the same faith” as the subgrantee “in recruiting, training, and retaining foster parents.” (*Id.*)

45. Miracle Hill was the only agency that ever requested a waiver of DSS’s nondiscrimination requirements. (Ex. 4 Lowe Tr. 160:1-7.)

46. The governor did not consult DSS’s Director of Permanency Management, one of the top policymakers for foster care in the state, before deciding to waive South Carolina’s requirements and request a waiver from HHS allowing CPAs to discriminate based on religion. (Ex. 2 Barton Tr. 217:10-24, 220:20-24.)

47. Before issuing the blanket waiver, DSS did not study what effects that waiver would have on the foster system in general or foster youth in particular. (Ex. 4 Lowe Tr. 157:14-158:2; Ex. 3 Tester Tr. 18:4-19:21, 26:25-27:5.)

48. DSS has not assessed the effect of the blanket waiver since it took effect. (Ex. 3 Tester Tr. 19:24-20:19, 39:1-13, 44:16-23.)

49. The State does not know which other CPAs discriminate based on religious criteria; it assumes that other agencies likely are not discriminating because invidious discrimination is not obvious on the face of agencies’ written policies, and the State has not received complaints. (Ex. 14 Def. Leach’s Ans. to 2d Interrog. No. 3.)

50. Under the State’s blanket prospective waiver that protects all religious CPAs that wish to engage in religious discrimination, the CPAs do not have to request anything. Nor are CPAs required to report to the State when they turn someone away or decide not to recommend someone as a foster parent. (Ex. 4 Lowe Tr. 44:6-14; Ex. 2 Barton Tr. 38:23-39:10.) The only way DSS would know whether a CPA follows federal and state nondiscrimination requirements or the CPA’s own stated policies with respect to whether it discriminates against prospective parents would be if a prospective parent filed a complaint. (Ex. 4 Lowe Tr. 256:18-257:8.)

51. The state has no other mechanism through which to learn whether a CPA turned someone away on religious grounds. (Ex. 2 Barton Tr. 115:16-116:4.) And it does not track whether people turned away on religious grounds try applying to work with another CPA. (Ex. 3 Tester Tr. 142:9-144:3.) DSS does not monitor whether CPAs using the waiver make referrals when they turn prospective foster parents away for religious reasons. (Ex. 4 Lowe Tr. 165:19-168:3.) The only way that DSS would know whether someone was turned away and whether they received any referrals would be if they self-reported to DSS. (*Id.*)

52. DSS does not know how many prospective foster parents have been turned away by CPAs based on religious criteria. (Ex. 3 Tester Tr. 153:19-154:1.)

53. Rejection by a CPA also creates practical burdens for prospective foster parents. Different CPAs have different locations and offer different kinds of resources and support to prospective parents as they apply for licenses, seek to have a child placed with them, and take care of any foster children with whom they are entrusted. (*See, e.g.*, Ex. 5 Staudt Tr. 35:25-38:25, 167:3-19. CPAs are not “interchangeable.” Ex. 5 Staudt Tr. 35:25-36:2; *see also* Ex. 1 Maddonna Tr. 141:1-5 (explaining that “different families have different needs” and “what might be fabulous resources in one may still not suit the needs of somebody else”).)

54. Working with a CPA with an office close to one’s home is particularly important for many because that makes it more likely that the agency can offer help or send it quickly when needed. (Ex. 5 Staudt Tr. 34:11-19; *see also* Ex. 6 Betts Tr. 87:13-88:22 (Miracle Hill offers 24-hour emergency support services, which could include in-person visits as needed); Ex. 1

Maddonna Tr. 156:7-24 (noting importance of “ready access to your case worker”).)

55. Nor is the potential alternative of working directly with DSS to foster children enough to negate these practical burdens. As noted above, DSS has largely shifted its focus and resources to kin-based placements, leaving the bulk of non-kinship applicants to the private CPAs. (Ex. 4 Lowe Tr. 53:14-54:5; Ex. 2 Barton Tr. 32:6-34:22.) And DSS does not provide the same levels of services and support that the private agencies do. (Ex. 2 Barton Tr. 291:13-17 (free monthly cleaning services); Ex. 5 Staudt Tr. 32:6-25 (doctor-appointment set-up and transportation assistance).)

56. South Carolina does not require CPAs to inform DSS—or anyone—that they intend to make use of the blanket waiver. Agencies are not required to inform DSS that they have turned someone away, much less confirm that they have rejected and turned away a family based on the family’s religion. (Ex. 10 S.C. Exec. Order No. 2018-12.)

57. DSS has not required CPAs making use of the waiver “to take any steps when they turn away an applicant based on religion,” such as referring the rejected applicants to DSS or other CPAs. (Ex. 2 Barton Tr. 147:15-148:5.)

58. Though Miracle Hill typically informs rejected parents of other CPAs in the region, that includes other faith-based agencies that Miracle Hill believes might also discriminate based on religion. (Ex. 5 Staudt Tr. 159:22-161:14.) Miracle Hill does not know or track whether those who fail its religious test ended up reaching out to other CPAs or DSS. (Ex. 6 Betts Tr. 102:23-103:22.) Nor does it know whether the people it turns away will be able to find another CPA that offers comparable services and support. (Ex. 6 Betts Tr. 303:10-304:7; Ex. 7 Lehman Tr. 49:6-8.)

59. DSS’s recent partnership with Heartfelt Calling does not alleviate the religious burdens on prospective foster parents who try to navigate the various CPAs. As one DSS employee explained, Heartfelt Calling does not direct prospective parents toward specific agencies. (Ex. 2 Barton Tr. 40:14-41:9.) Instead, it sends them to the page on the organization’s website that lists all CPAs. (*Id.*; *see also* Ex. 2 Barton Tr. 140:16-141:11.)

60. Though Heartfelt Calling's website might for some agencies include limited information about the kinds of parents the agency is or isn't willing to work with, Heartfelt Calling does not have accurate information for every CPA, meaning that prospective parents might not be aware of an agency's religious criteria until they contact the agency. (Ex. 2 Barton Tr. 136:7-137:4, 141:3-19.)

61. If an agency turns a prospective parent away based on religious criteria and the prospective parents then return to Heartfelt Calling, that organization will once again direct the prospective parent back to the listings on its website. (Ex. 2 Barton Tr. 146:5-21, 150:8-153:3.)

### **Aimee Maddonna and Miracle Hill**

62. Aimee Maddonna is a resident of Simpsonville, South Carolina, outside of Greenville. (Ex. A Maddonna Decl. ¶ 1.)

63. Her father's experiences in the foster-care system as a child led him as an adult to take in and care for foster children so that he could provide them with the type of foster family that he wished he had. Mrs. Maddonna, therefore, grew up alongside both biologically related and foster siblings. (Ex. A Maddonna Decl. ¶ 4.)

64. Mrs. Maddonna's parents instilled in her the importance of providing a safe, loving home to children in need of a foster family. She always intended to share with and pass on to her own children these fundamental values of charity and service. (Ex. A Maddonna Decl. ¶ 5.)

65. To do so, and building on her own experience growing up with foster siblings, Mrs. Maddonna contacted Miracle Hill, a Greenville CPA for the State of South Carolina, to see whether her family could volunteer to work with foster children so that, through volunteering, her family would get to know and develop relationships with children who might be good matches for foster placement in their home, with the objective that her family could ultimately provide a loving home for a child or children in need. (Ex. A Maddonna Decl. ¶ 6.)

66. Because the Maddonnas' children have special needs, it was and is important to Mrs. Maddonna to ensure that any foster child the family would welcome into their home would

be a good fit with the whole family. Volunteering as a family was therefore especially important. (Ex. A Maddonna Decl. ¶ 7.)

67. Mrs. Maddonna's family is particularly experienced and willing to work with special-needs kids and older children—who are the hardest to place. (Ex. A Maddonna Decl. ¶ 8.)

68. In September or October 2014, Mrs. Maddonna began communicating with Miracle Hill Ministries about the opportunity to volunteer with foster children. They corresponded over the course of the next few weeks, into November 2014. (Ex. A Maddonna Decl. ¶ 9.)

69. During this period, Mrs. Maddonna told her children about the exciting opportunities that they could have to provide love and care to children in foster care, and her family planned activities that they could do with foster children. (Ex. A Maddonna Decl. ¶ 10.)

70. In November 2014, in the course of their correspondence, Miracle Hill's representative asked Mrs. Maddonna to provide the name of her church, which she did, giving the name of her Catholic parish. (Ex. A Maddonna Decl. ¶ 11.)

71. The following day, Miracle Hill informed Mrs. Maddonna that she and her family were no longer welcome to volunteer because Miracle Hill would not accept Catholics as volunteer mentors or foster parents. The representative expressed disappointment because, but for their Catholic faith, she explained, the Maddonnas were a great fit with the program. (Ex. A Maddonna Decl. ¶ 12.)

72. In December 2014, a different representative of Miracle Hill informed Mrs. Maddonna that only Christians who attended the right type of Protestant church were permitted to volunteer and work with the children that the South Carolina Department of Social Services placed in Miracle Hill's care. (Ex. A Maddonna Decl. ¶ 13.)

73. On February 12, 2019, Mrs. Maddonna again reached out to Miracle Hill to revisit the possibility that her family be accepted as volunteer mentors to foster children in its care, with the ultimate aim to foster a child. (Ex. A Maddonna Decl. ¶ 14.)

74. On February 20, 2019, a representative of Miracle Hill sent Mrs. Maddonna an e-mail that once again rejected the Maddonna family as volunteer mentors, informing Mrs. Maddonna that because “mentors play an important role in providing spiritual as well as emotional support, guidance, and counsel,” Miracle Hill requires them to “agree with [its] Protestant statement of faith” and “share [its] distinctly Protestant beliefs and convictions.” (Ex. A Maddonna Decl. ¶ 15 (and referenced attachment to declaration).)

75. The representative told Mrs. Maddonna that she could go someplace else to become a mentor or that she could do other charitable work through Miracle Hill but could not mentor or foster any children assigned to Miracle Hill by DSS. Miracle Hill entrusted roles that involved the spiritual influence, teaching, and formation of children to Protestants only. (Ex. A Maddonna Decl. ¶ 16.)

76. Mrs. Maddonna clearly understood that she and her family were turned away by Miracle Hill because they do not share its evangelical-Christian beliefs and cannot affirm its statement of faith. (Ex. A Maddonna Decl. ¶ 17.)

77. When Mrs. Maddonna requested in February 2019 that she and her family be permitted to volunteer, Miracle Hill had not yet lifted its formal bar on Catholics’ participating in its foster-care services. (Ex. A Maddonna Decl. ¶ 18.)

78. Miracle Hill later did lift its ban on Catholics’ participating in its foster-care services (while still excluding Jews, Muslims, other minority faiths, and nonbelievers), but only if Catholics signed and affirmed Miracle Hill’s Protestant statement of faith and agreed to live in accordance with that doctrinal statement. (Ex. A Maddonna Decl. ¶ 19; Ex. 6 Betts Tr. 92:11-15; Ex. 7 Lehman Tr. 24:25-25:21.)

79. From 2017 to the time Miracle Hill changed its policy in 2019, it had turned away approximately 25 to 30 families—the majority of whom were Catholic. As of June 2021, Miracle Hill had only one licensed foster family that was Catholic. (Ex. 6 Betts Tr. 97:14-98:15, 165:25-166:14.)

80. Under Miracle Hill’s revised policy, it would not be enough simply to sign the

statement of faith; prospective foster parents must also adhere to the statement of faith “in faith and in practice.” Just as Miracle Hill previously could refuse to work with those who don’t believe something in the statement of faith, it would also refuse to work with those whose religious “practices might not align with Miracle Hill’s doctrinal statement.” Ex. 6 Betts Tr. 94:1-2, 169:7-170:16.

81. Miracle Hill also requires that prospective foster parents regularly attend a Christian church that Miracle Hill determines meets its narrow definition of “Christian.” (Ex. 6 Betts Tr. 27:14-28:19.)

82. Mrs. Maddonna reviewed Miracle Hill’s doctrinal statement and found that it was and is inconsistent with her religious beliefs and her understanding of her faith. If she were to attest to and agree to live in accordance with that doctrinal statement, she would be forced either to misrepresent her faith and falsely affirm commitments to religious beliefs that are not her own, or else abandon her own beliefs to adopt the religious beliefs and practices that Miracle Hill favored. (Ex. A Maddonna Decl. ¶ 20.)

83. Because of the religious requirements that Miracle Hill inserted into its provision of foster-care services, Mrs. Maddonna’s family was prevented from becoming volunteer mentors to children in the State’s care that DSS assigned to Miracle Hill. They were thereby deprived of the opportunity to open their loving home to a child in need. (Ex. A Maddonna Decl. ¶ 21.)

84. Because the state permits the agencies with which it contracts to enforce their own religious beliefs in providing foster-care services, Mrs. Maddonna has no assurance or expectation that another religious agency would treat her in a nondiscriminatory way. And she could not put her family through another round of preparing to and getting excited about getting to know and help foster children but then being told that they aren’t good enough to do that because of their religion. (Ex. A Maddonna Decl. ¶ 22.)

85. The experience of being rejected from the state’s foster-care program because the Maddonnas are Catholic was and is hurtful to Mrs. Maddonna and her children. The thought of

going through the motions again of planning and scouting out other opportunities—ones she wasn't even sure existed—and risking suffering religious discrimination that she knew the state didn't prohibit seemed futile. (Ex. A Maddonna Decl. ¶ 23; Ex. 1 Maddonna Tr. 51:22-52:9, 82:8-83:10.)

86. If the state were to provide assurance that religious foster-care agencies would not turn away families like the Maddonnas based solely on the agency's religious beliefs, the family would welcome the opportunity in the future to open their home to a child in need. (Ex. A Maddonna Decl. ¶ 24.)

Greenville, South Carolina  
November 21, 2022.

s/ Aaron J. Kozloski  
Aaron J. Kozloski (D.S.C. Bar No. 9510)

CAPITOL COUNSEL, LLC  
P.O. Box 1996  
Lexington, SC 29071-1996  
Tel: (803) 465-1400  
Fax: (888) 513-6021  
*aaron@capitolcounsel.us*

Richard B. Katskee (admitted *pro hac vice*)  
Kenneth D. Upton, Jr. (admitted *pro hac vice*)  
AMERICANS UNITED FOR SEPARATION OF CHURCH  
AND STATE  
1310 L Street NW, Suite 200  
Washington, DC 20005  
Tel: (202) 466-3234  
Fax: (202) 466-3353  
*katskee@au.org*  
*upton@au.org*

*Counsel for Plaintiff Aimee Maddonna*

## DECLARATION A

Declaration of AIMEE MADDONNA  
executed on November 18, 2022.

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

AIMEE MADDONNA, )  
Plaintiff, )  
)  
v. )  
)  
UNITED STATES DEPARTMENT OF )  
HEALTH AND HUMAN SERVICES, *et* )  
*al.*, )  
Defendants. )  
\_\_\_\_\_)

Civil Action No. 6:19-cv-03551-JD

**DECLARATION OF AIMEE MADDONNA IN SUPPORT OF  
PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

Pursuant to 28 U.S.C. § 1746(2), I, Aimee Maddonna, declare the following:

1. My name is Aimee Maddonna. I am a citizen of the United States and a resident of Simpsonville, South Carolina, outside of Greenville. I am over eighteen years of age and fully competent to make this declaration, which I make based on my personal knowledge.

2. I am the Plaintiff in the above-captioned action.

3. I submit this declaration in support of Plaintiff’s Motion for Summary Judgment.

4. I grew up alongside both biologically related and foster siblings. My father’s own experiences in the foster-care system as a child led him as an adult to take in and care for foster children so that he could provide them with the type of foster family that he wished he had.

5. My parents instilled in us the importance of providing a safe, loving home to children in need of a foster family. I have always intended to share with and pass on to my own children these fundamental values of charity and service.

6. To do so, and building on my own experience growing up with foster siblings, I contacted Miracle Hill, a Greenville child-placement agency for the State of South Carolina, to

see whether my family could volunteer to work with foster children so that, through volunteering, my family would get to know and develop relationships with children who might be good matches for foster placement in our home, so that my family could ultimately provide a loving home for a child in need.

7. Because my children have special needs, it was and is important to me to ensure that any foster child the family would welcome into our home would be a good fit with the whole family. Volunteering as a family was therefore especially important.

8. Our family is particularly experienced and willing to work with special-needs kids and older kids—who are the hardest to place.

9. In September or October 2014, I began communicating with Miracle Hill Ministries about the opportunity to volunteer with foster children. We corresponded over the course of the next few weeks, into November 2014.

10. During this period, I told my children about the exciting opportunities that they could have to provide love and care to children in foster care, and my family planned activities that we could do with foster children.

11. In November 2014, in the course of our correspondence, Miracle Hill's representative asked me to provide the name of my church, which I did, giving the name of my Catholic parish.

12. The following day, Miracle Hill informed me that my family and I were no longer welcome to volunteer because Miracle Hill would not accept Catholics as volunteer mentors or foster parents. The representative expressed disappointment because, but for our Catholic faith, she explained, we were a great fit with the program.

13. In December 2014, a different representative of Miracle Hill informed me that

only Christians who attended the right type of Protestant church were permitted to volunteer and work with the children that the South Carolina Department of Social Services placed in Miracle Hill's care.

14. On February 12, 2019, I again reached out to Miracle Hill to revisit the possibility that my family be accepted as volunteer mentors to foster children in its care, with the ultimate aim to foster a child.

15. On February 20, 2019, a representative of Miracle Hill sent me an e-mail (attached to this declaration) that once again rejected my family as volunteer mentors, informing me that because "mentors play an important role in providing spiritual as well as emotional support, guidance, and counsel," Miracle Hill requires them to "agree with [its] Protestant statement of faith" and "share [its] distinctly Protestant beliefs and convictions."

16. The representative told me that I could go someplace else to become a mentor or that I could do other charitable work through Miracle Hill but could not mentor or foster any children assigned to Miracle Hill by DSS. Miracle Hill only entrusted roles that involved the spiritual influence, teaching, and formation of children to Protestants.

17. I clearly understood that my family and I were turned away by Miracle Hill because we do not share its evangelical-Christian beliefs and cannot affirm its statement of faith.

18. When I requested in February 2019 that my family be permitted to volunteer, Miracle Hill had not yet lifted its formal bar on Catholics' participating in its foster-care services.

19. Miracle Hill later lifted its ban on Catholics' participating in its foster-care services (while still excluding Jews, Muslims, other minority faiths, and nonbelievers), but only if I signed and affirmed its Protestant statement of faith and agreed to live in accordance with its doctrinal statement.

20. I reviewed Miracle Hill’s doctrinal statement, and I found that it was and is inconsistent with my religious beliefs and my understanding of my faith. If I were to attest to and agree to live in accordance with that doctrinal statement, I would be forced either to misrepresent my faith and falsely affirm commitments to religious beliefs that are not my own, or else abandon my own beliefs to adopt the religious beliefs and practices that Miracle Hill favored.

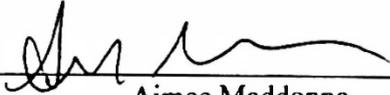
21. Because of the religious requirements that Miracle Hill inserted into its provision of foster-care services, my family was prevented from becoming volunteer mentors to children in the State’s care that DSS assigned to Miracle Hill. We were thereby deprived of the opportunity to open our loving home to a child in need.

22. Because the state permits the agencies with which it contracts to enforce their own religious beliefs in providing foster-care services, I have no assurance or expectation that another religious agency would treat us in a nondiscriminatory way. And I could not put my family through another round of preparing to and getting excited about getting to know and help foster children but then being told that we aren’t good enough to do that because of our religion.

23. The experience of being rejected from the state’s foster-care program because we are Catholic was and is hurtful to me and to my children. The thought of going through the motions again of planning and scouting out other opportunities—ones I wasn’t even sure existed—and risking suffering religious discrimination that I knew the state didn’t prohibit seemed futile.

24. If the state were to provide assurance that religious foster-care agencies would not turn away families like mine based solely on the agency’s religious beliefs, we would welcome the opportunity in the future to open our home to a child in need.

I declare under penalty of perjury that the foregoing is true and correct.  
Executed on NOV. 18, 2022.

  
\_\_\_\_\_  
Aimee Maddonna



Aimee Maddonna &lt;amaddonna@gmail.com&gt;

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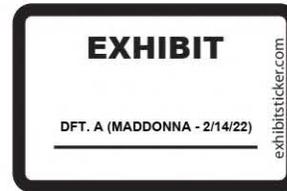
**Re: Mentoring Question**

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**Beth Sevilla** <bsevilla@miraclehill.org>  
To: "amaddonna@gmail.com" <amaddonna@gmail.com>

Wed, Feb 20, 2019 at 11:32 AM

Hi Aimee,



I apologize in the delayed response. We appreciate your desire to volunteer to serve those in need, and Miracle Hill Ministries has an abundance of opportunities for you to serve. Everything from helping to feed the hungry, shelter the needy, teach and support those recovering from abusive pasts or life-dominating addictions, and more. I've provided more information about those opportunities below. In addition, because you asked particularly about mentoring, I've included some information specifically about mentoring.

Miracle Hill facilitates mentoring relationships in partnership with Fostering Great Ideas (FGI). FGI has a goal of making the lives of youth in foster care better. Mentors commit to seeing the one youth with whom they are matched twice a month. The mentor is essentially a friend to the young person — offering encouragement, support, and guidance when appropriate. Mentors demonstrate what healthy relationship with a trusted adult can look like.

Mentors usually take the youth off site for visits, which vary based on the interests of the youth and mentor, but the goal is quality time. Mentors can also eventually include the youth in some family activities (i.e. a baseball game or dinner out), if appropriate for youth & the family. Mentors are not able to take a child to their home or any secluded locations. Mentors should also focus on one-on-one time with the youth before introducing family activities.

The youth served by Miracle Hill are referred to us by the Department of Social Services & are currently in foster care. The nature of foster care is that life is sometimes very transient for the children — one child may stay with us for a year or more, while another is only here for a brief stay. It's important to know this up front, because mentors are asked to commit to the child for as long as they remain in care. Consistency and commitment are important to youth in foster care.

FGI Mentors can be matched with youth in the Upstate at a variety of locations. Because Miracle Hill is a distinctly Christian ministry, and because we believe mentors play an important role in providing spiritual as well as emotional support, guidance, and counsel, we ask that Mentors who wish to mentor a youth served in a Miracle Hill facility agree with our Protestant [statement of faith](#).

However, FGI partners with many agencies whose children can be served by mentors of any religious or non-religious preference, so you are still absolutely able to pursue mentoring a youth in foster care. I would encourage you to talk with David White ([david.white@fgi4kids.org](mailto:david.white@fgi4kids.org)) and pursue mentoring with FGI! Fostering Great Ideas also has a program called "Care to Foster" that is working to increase the number of available foster homes in South Carolina. There are a [number of licensing agencies](#) available to you and to any willing volunteers regardless of their religious beliefs or affiliation.

As a note, we exercise caution talking about mentoring in relation to fostering youth—the mentor relationship is designed as a committed friendship with clear boundaries so that youth do not get their hopes up to be fostered or adopted by their mentor. Many youth are in the process of being returned home to their families, so it's also important to guard yourself

against any unrealistic expectations of bringing a child into your family who is planning to return to their own family. There are times when a mentee may be considered for foster care, but that is the exception.

If you (or any other person who is interested in volunteering as a mentor with us) want to take the next steps toward becoming a mentor, you should contact David White at FGI (whose email address is above) to begin the training process.

**Regarding the requirements for Fostering Great Ideas Mentor Program: What is required to become a mentor?**

- **Around 5 Hours of Mentor Training:** The focus is on understanding why children enter foster care, what are their rights and needs, and how can a mentor provide incredible value.
- **Background checks:** The volunteer process is thorough and extensive, as we offer very high quality care. At any point in the process, we may decline your application with a simple statement "We have decided to not move forward with your application." Thank you for your grace in allowing us this right and thank you for accepting such a decision, should it arise. Not everyone is a good fit for this work or for our high expectations. As a mentor, you will commit to staying in a youth's life while he/she lives in foster care. You will do your best to see this youth twice / month, go out to ball park, coffee, dinner, throw a ball, do volunteer work together, champion their school activities. We do not allow visits into your home. The visits are in public places. Most of our mentors stay involved - and the youth really appreciate these relationships.
  - 4 References. Online, 4 individuals who have known you for 1+ year and who are not related. Their statements will remain confidential. (Will collect at training).
  - 30 minute Diana screen. A sexual risk screening test to protect children. A valid tool used by many quality agencies in child welfare.
  - National felony and sex offender check, Child abuse check, and Department of Motor Vehicle check. For the DMV, we screen for DUI/DWI and reckless driving records.

You mentioned that you were told several years ago that you weren't eligible to work with Miracle Hill because of your Catholic faith. I wanted to clarify that we do gladly work with those of other faiths (or no faith at all) in a wide variety of volunteer roles! We have many facilities whose volunteer opportunities can be viewed on our website, and we would love for you and your family to find a way to volunteer or serve with us. The vast majority of our volunteer opportunities are open to all, and we would welcome your service. Because we are a Protestant ministry by definition, conviction, and mission, there are a few roles involving spiritual influence, teaching, and formation, that we reserve for those who share our distinctly Protestant beliefs and convictions. We likewise believe that other organizations who operate under their own religious convictions (including [Catholic Charities](#), whose courage of conviction we greatly admire) should be granted this freedom.

As I mentioned above, we have numerous opportunities and several shelters and programs at Miracle Hill that utilize the help of volunteers and which currently would love to welcome you and your family to serve with us. We ask that all volunteers under the age of 18 be accompanied by an adult. Volunteer opportunities exist at many of our locations, which are listed below. You can view the needs listed for the facilities by going here: <https://miraclehill.galaxydigital.com/need/>

- Administrative Office & Special Events
- Children's Home (ages 7-21)
- Foster Care (administrative work only)
- Greenville Rescue Mission (homeless men)
- Overcomers' Center (men's addiction recovery)
- Renewal Center (women's addiction recovery)
- Shepherd's Gate (homeless women)

- Boys Shelter (boys ages 12-21)
- Cherokee County Rescue Mission (homeless men and women)
- Homes for Life (young adult males 18-21)
- Spartanburg Rescue Mission (homeless men and women)
- Thrift Operations – 8 stores located in Greenville, Mauldin, Greer, and Powdersville area

Thanks so much for your desire to serve Christ by caring for children and those in need. There are many volunteer roles we would love for you to fill with Miracle Hill! In addition, I believe if you will reach out to David White at Fostering Great Ideas, you will find there are countless ways for you to get involved with and serve youth in foster care in our area. May God use you greatly in the lives of the needy you serve.

Kind regards,



*Beth Sevilla*

Parent Support Specialist | Foster Care

Mentor Coordinator | Development

**Miracle Hill**  
MINISTRIES

490 S. Pleasantburg Drive | Greenville, SC 29607

Office: 864-631-0142

**Shelter, food and miracles. Every day.**



**Miracle Hill exists that homeless children and adults receive food and shelter with compassion, hear the Good News of Jesus Christ and move toward healthy relationships and stability.**

*This electronic communication (including attachments) may contain confidential information intended only for the use of the named recipient. If you are not the intended recipient, you are not authorized to intercept, read, print, retain, copy, forward, or disseminate this communication. If you have received this communication in error, please immediately notify us by return message or by telephone and delete this communication from your system. Thank you.*

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## DECLARATION B

Declaration of KENNETH D. UPTON, JR.  
executed on November 21, 2022.

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

AIMEE MADDONNA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 UNITED STATES DEPARTMENT OF )  
 HEALTH AND HUMAN SERVICES, *et* )  
 *al.*, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

Civil Action No. 6:19-cv-03551-JD

DECLARATION OF KENNETH D. UPTON, JR. IN SUPPORT OF  
PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT

Pursuant to 28 U.S.C. § 1746(2), I, Kenneth D. Upton, Jr., declare the following:

1. My name is Kenneth D. Upton, Jr. I am a citizen of the United States and a resident of Chicago, Illinois. I am over eighteen years of age and fully competent to make this declaration, which I make based on my personal knowledge.

2. I am an attorney with Americans United for Separation of Church and State, based in Washington, D.C., which represents Plaintiff Aimee Maddonna in the above-captioned action.

3. I submit this declaration in support of Plaintiff’s Motion for Summary Judgment.

4. Attached as **Exhibit 1** to this Declaration is a true and correct copy of excerpts from the transcript of the deposition of Aimee Maddonna, which was taken in this case on February 14, 2022.

5. Attached as **Exhibit 2** to this Declaration is a true and correct copy of excerpts from the transcript of the Rule 30(b)(6) deposition of the South Carolina Department of Social Services, through its designee, Dawn Barton, which was taken on December 17, 2021, in the related case *Rogers v. U.S. Dept. of Health & Human Services*, 6:19-cv-01567-JD (D.S.C.).

6. Attached as **Exhibit 3** to this Declaration is a true and correct copy of excerpts from the transcript of the Rule 30(b)(6) deposition of the South Carolina Department of Social Services, through its designee, Diana Tester, which was taken on December 16, 2021, in the related case *Rogers v. U.S. Dept. of Health & Human Services*, 6:19-cv-01567-JD (D.S.C.).

7. Attached as **Exhibit 4** to this Declaration is a true and correct copy of excerpts from the transcript of the Rule 30(b)(6) deposition of the South Carolina Department of Social Services, through its designee, Jacqueline Lowe, which was taken on June 3, 2021, in the related case *Rogers v. U.S. Dept. of Health & Human Services*, 6:19-cv-01567-JD (D.S.C.).

8. Attached as **Exhibit 5** to this Declaration is a true and correct copy of excerpts from the transcript of the Rule 30(b)(6) deposition of the South Carolina Department of Social Services, through its designee, Lauren Collins Staudt, which was taken on June 4, 2021, in the related case *Rogers v. U.S. Dept. of Health & Human Services*, 6:19-cv-01567-JD (D.S.C.).

9. Attached as **Exhibit 6** to this Declaration is a true and correct copy of excerpts from the transcript of the Rule 30(b)(6) deposition of Miracle Hill Ministries through its designee, Sharon Betts, which was taken on June 17, 2021, in the related case *Rogers v. U.S. Dept. of Health & Human Services*, 6:19-cv-01567-JD (D.S.C.).

10. Attached as **Exhibit 7** to this Declaration is a true and correct copy of excerpts from the transcript of the Rule 30(b)(6) deposition of Miracle Hill Ministries through its designee, Reid David Lehman, which was taken on June 17, 2021, in the related case *Rogers v. U.S. Dept. of Health & Human Services*, 6:19-cv-01567-JD (D.S.C.).

11. Attached as **Exhibit 8** to this Declaration is a true and correct copy of DSS Summary of New Foster Home Licenses issued from 2017 through 2021 by Provider (MADDONNA-SCDSS-0006)

12. Attached as **Exhibit 9** to this Declaration is a true and correct copy of DSS Summary of Placements by Provider from 2017 through 2021 (MADDONNA-SCDSS-0004)

13. Attached as **Exhibit 10** to this Declaration is a true and correct copy of S.C. Exec. Order No. 2018-12 (ECF No. 79-2).

14. Attached as **Exhibit 11** to this Declaration is a true and correct copy of Defendant Leach's Answers to Second Interrogatories, No. 3.

15. Attached as **Exhibit 12** to this Declaration is a true and correct copy of Letter from Governor McMaster to Steven Wagner (ECF No. 79-1).

16. Attached as **Exhibit 13** to this Declaration is a true and correct copy of Letter from Steven Wagner to Governor McMaster (ECF No. 79-3).

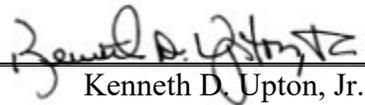
17. Attached as **Exhibit 14** to this Declaration is a true and correct copy of DSS Letter dated January 26, 2018, from Lowe to Miracle Hill (10545-B-012 through -014).

18. Attached as **Exhibit 15** to this Declaration is a true and correct copy of HHS Withdrawal of Approval of Exception dated November 18, 2021 (ECF No. 91-1).

19. Attached as **Exhibit 16** to this Declaration is a true and correct copy of DSS Summary of CPA Administrative Fees paid from July 1, 2016 through January 31, 2022 (10545-G-0001 through -0002).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 21, 2022.

  
\_\_\_\_\_  
Kenneth D. Upton, Jr.

## EXHIBIT 1

Excerpts from the Transcript of the Deposition of  
AIMEE MADDONNA  
taken on February 14, 2022.

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

AIMEE MADDONNA,  
Plaintiff,  
vs. CIVIL ACTION NO. 6:19-cv-03551-JD  
UNITED STATES DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, ET AL.,  
Defendants.

VIDEO TELECONFERENCE

DEPOSITION OF: AIMEE MADDONNA  
DATE: February 14, 2022  
TIME: 9:12 A.M.  
  
LOCATION: Residence of Aimee Maddonna  
208 Dante Lane  
Simpsonville, SC  
  
TAKEN BY: Counsel for the Defendants Governor  
Henry McMaster and Director Michael  
Leach  
  
REPORTED BY: LORI S. MORTGE,  
Certified Court  
Reporter, CCR

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APPEARANCES OF COUNSEL:

ATTORNEYS FOR THE PLAINTIFF  
AIMEE MADDONNA:

AMERICANS UNITED FOR SEPARATION OF  
CHURCH AND STATE  
BY: KENNETH D. UPTON, JR. (Appearing by  
VTC)  
ADRIANNE SPOTO (Appearing by VTC)  
1310 L Street NW  
Suite 200  
Washington, DC 20005  
(202) 466-3234  
upton@au.org  
spoto@au.org

ATTORNEYS FOR THE DEFENDANT  
UNITED STATES DEPARTMENT OF HEALTH AND  
HUMAN SERVICES:

NELSON MULLINS RILEY & SCARBOROUGH, LLP  
BY: MILES E. COLEMAN (Appearing by VTC)  
2 West Washington Street  
Fourth Floor  
Greenville, SC 29601  
(864) 373-2300  
miles.coleman@nelsonmullins.com

ATTORNEYS FOR THE DEFENDANT  
UNITED STATES DEPARTMENT OF JUSTICE:  
UNITED STATES DEPARTMENT OF JUSTICE  
BY: CHRISTIE V. NEWMAN (Appearing by  
VTC)

1441 Main Street  
Suite 500  
Columbia, SC 29201  
(803) 929-3030  
christie.newman@usdoj.gov

(INDEX AT REAR OF TRANSCRIPT)

1 \* \* \* \* \*

2 AIMEE MADDONNA

3 being first duly sworn, testified as follows:

4 EXAMINATION

5 BY MR. COLEMAN:

6 Q. All right. Good morning, Aimee -- is  
7 that all right if I call you Aimee?

8 A. Of course.

9 Q. Okay. Thank you for getting on with us  
10 today and wrestling with technology. We're happy we  
11 at least have that option and...

12 A. Yeah.

13 Q. Have a little less travel time. Before  
14 we get into the meat of the deposition let me just  
15 kind of go over some introductory materials and just  
16 sort of orient you to what we'll be doing today.

17 A. Yes, sir.

18 Q. Have you ever -- have you ever given a  
19 deposition before?

20 A. No.

21 Q. Okay. Well, to start, then, let me kind  
22 of go over what we might think of as kind of the  
23 ground rules, most of which have to do with making  
24 it easier for Lori, the court reporter, to  
25 accurately take down what I say and what you say and

1 sure, but they are certainly the ones that seem to  
2 have the most opportunities. They are certainly --  
3 they're absolutely the most well-known in the area.

4 Q. If it turned out that in 2014, and again  
5 in 2019, there were other comparable volunteering  
6 opportunities with other organizations, then you  
7 weren't harmed by not being able to do it with  
8 Miracle Hill when you could have done it with  
9 another organization; right?

10 A. I --

11 MR. UPTON: I object to the form of the  
12 question. You can answer it, Aimee.

13 THE WITNESS: Can you ask it again? I'm  
14 sorry.

15 BY MR. COLEMAN:

16 Q. Sure. If it turns out that both in 2014  
17 and 2019 there were other comparable volunteering  
18 opportunities with other child placement agencies,  
19 then you weren't harmed by not being able to go with  
20 Miracle Hill when you could have done it with  
21 another agency; right?

22 A. I was harmed. The children were harmed.  
23 Just because I wasn't -- just because I guess I  
24 could have tried to scout out other opportunities  
25 that I'm not aware of existed, that doesn't mean

1 that I wasn't harmed in the process. Being told  
2 that I'm perfect in -- that I sound perfect for  
3 opportunity in every way and going through the  
4 motions of -- of planning for that, of looking  
5 forward to that, of feeling like I have the  
6 opportunity to do something that my -- that I always  
7 wanted to do and then being told that I can't do  
8 that because of my -- because of the parish I belong  
9 to, I can't imagine that that's not harmful.

10 Q. Did you ever apply to Miracle Hill or  
11 any other CPA or DSS or inquire with them about  
12 becoming a foster parent, or was your communication  
13 with Miracle Hill and others -- did it have to do  
14 with volunteering as a mentor to foster children?

15 A. It was to become -- it was to start the  
16 process of becoming a mentor with the intention to  
17 move into that area. Like I said, we have -- we  
18 have special needs kids and being able to get our  
19 feet wet, you know, first with just me and then, you  
20 know, as a family thing would have made all the  
21 difference in the world to build relationships and  
22 to get our feet in the door, so to speak.

23 Q. Excuse me.

24 A. You're fine. I'm with you.

25 Q. So you had inquired with Miracle Hill

1 working with foster children.

2 Q. Knowing, as you did, from this e-mail  
3 that there are other opportunities through other  
4 agencies or through Fostering Great Ideas to mentor  
5 children in foster care, why did you not pursue any  
6 of them knowing that they were available to people  
7 of any religion including Roman Catholics?

8 A. I'm going to answer it in the same way  
9 and it's the only answer that I can give. It is a  
10 hurdle for me, a major hurdle for me, to go into  
11 something where my religion had -- comes into play  
12 when -- that there are still agencies or people that  
13 will work with me, even though I'm Catholic, okay,  
14 despite of whatever, does not make me feel better  
15 about going into these situations.

16 That's not -- I feel like you're asking  
17 the same question over and over again and I'm sorry,  
18 I can't give you the answer that you want. I don't  
19 feel comfortable working with agencies that have --  
20 may or may not take my faith into account. It's  
21 great that there are some that don't.

22 But it would -- but the preferable thing  
23 would be if, you know, working with children who are  
24 in state custody, working with agencies who are  
25 receiving State or Federal funding, okay, if my

1 religion doesn't come into play at all. Doesn't  
2 matter to me that some will work with me despite  
3 that. It doesn't matter how long the list is; okay?  
4 That part of that list might include somebody's  
5 criteria I still can't meet.

6 And I guess that if you haven't been  
7 there you don't understand -- when I say you that's  
8 just a general you, not you specifically, it's  
9 not -- I don't want to go through that again. But I  
10 shouldn't have to go through that again.

11 Q. And you didn't have to go through that  
12 again if you had pursued one of the other  
13 opportunities that were available to you regardless  
14 of your faith; right?

15 A. That might work with me even though I'm  
16 Catholic. Working -- opportunities that are  
17 available to a person, even though they are a thing  
18 are not -- that's not any -- I'm sorry, hold on. I  
19 see other people in the room and there's a child  
20 running through to get a drink. Hold on.

21 THE WITNESS: (Speaking with her  
22 children.) Okay. They're not technically in the  
23 room. It's an open concept house and I don't know  
24 how specific that is, so...

25 BY MR. COLEMAN:

1 more than one agency is presumably because different  
2 families have different needs, different children  
3 have different needs. So what might be fabulous  
4 resources in one may still not suit the needs of  
5 somebody else.

6           Miracle Hill offered resources that at  
7 the time their specific programs were not, to the  
8 best of my knowledge, offered anywhere else. That's  
9 not to say that other CSAs may not have had great  
10 resources, just that it's my understanding that  
11 different CSAs exist to meet the needs of different  
12 types of people.

13           Similarly -- or not similarly but also  
14 to answer the question, the resources being offered  
15 don't take away from that. It's -- if in order to  
16 garner those resources you have to pass a religious  
17 litmus test, that doesn't open any doors in my  
18 opinion. That's -- so I don't...

19           Q. Sure. And I'm not saying that the  
20 availability of support and resources is the only  
21 issue. Obviously -- we spent hours already this  
22 morning talking about the fact there's this other  
23 piece of the religious selectivity. I'm not saying  
24 that doesn't exist. I'm just trying to say --  
25 figure out what the other categories of difference

1 or harm are.

2 Do you know whether other CPAs offer  
3 similar types of support and resources to Miracle  
4 Hill, or are you just --

5 A. Well, no, no, but that's also why I said  
6 that for me this is -- this is -- Miracle Hill is  
7 the name in everybody's mouth. It's great that  
8 other CSAs are coming open or becoming more  
9 surfaced; okay? But I can -- I can still say that  
10 in my community the only one that anybody is aware  
11 of is Miracle Hill. Those are the resources that  
12 are talked about. That's the option that is  
13 discussed. That's the -- that's still the one  
14 that's the most known.

15 So I don't know what -- I can't speak to  
16 what resources are -- and I can't even speak to  
17 what's comparable because the whole point of having  
18 more than one CSA in an area would be, I presume,  
19 because my idea of best resources, even comparable  
20 resources, is going to depend on the needs of me and  
21 my family and the children that that CSA serves.

22 I can't speak to -- I can't even, not in  
23 good conscious, speak as far as comparable services  
24 and everything else because there are different  
25 types of CSAs that offer different things. I don't

1 colors everything in the way that I feel like you're  
2 getting at. It colors everything for me because,  
3 like you just said, you're not saying that they're  
4 all equally accessible geographically. You're not  
5 saying they're all comparable -- or that they all  
6 have the same resources.

7 You're saying that the resources, I  
8 guess, are just -- just as good or -- but that's  
9 relative to what the families need; okay? And if,  
10 like you said a minute ago, the resources are not  
11 the same as each other, and one might be in, say,  
12 Anderson and another one in Spartanburg and another  
13 one in Greenville, okay, and say -- say you are  
14 interested in one set of resources more than the  
15 other, okay, and say that the other one is an hour  
16 out of the way. There's one that's ten minutes down  
17 the road, but you can't sign the Statement of Faith  
18 and they don't offer the specific resources that,  
19 you know, the one in Spartanburg doesn't offer those  
20 specific -- so what is the one with the resources  
21 that you need, the one that's ten minutes away, the  
22 one where you would have -- and that does matter --  
23 the one where you would have ready access to your  
24 case worker or, you know, any of those things, you  
25 don't have -- there's no way, in my opinion, to

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CERTIFICATE OF REPORTER

I, Lori S. Mortge, Certified Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 27th day of February, 2022 at West Columbia, Lexington County, South Carolina.



Lori S. Mortge  
Certified Court  
Reporter, CCR  
My Commission expires  
December 13, 2026

## EXHIBIT 2

Excerpts from the transcript of  
the Rule 30(b)(6) deposition of the  
SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES  
through its designee  
DAWN BARTON  
taken on December 17, 2021

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UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION  
EDEN ROGERS AND BRANDY WELCH,  
Plaintiffs,

vs. C/A No. 6:19-cv-01567-JD

UNITED STATES DEPARTMENT OF HEALTH &  
HUMAN SERVICES; XAVIER BECERA, IN HIS  
OFFICIAL CAPACITY AS SECRETARY OF THE  
UNITED STATES DEPARTMENT OF HEALTH &  
HUMAN SERVICES; ADMINISTRATION FOR  
CHILDREN AND FAMILIES; JOOYEUN CHANG, IN  
HER OFFICIAL CAPACITY AS THE SENIOR  
OFFICIAL PERFORMING THE DUTIES OF THE  
ASSISTANT SECRETARY OF THE  
ADMINISTRATION FOR CHILDREN AND  
FAMILIES; JOOYEUN CHANG, IN HER 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; AND MICHAEL  
LEACH, IN HIS OFFICIAL CAPACITY AS STATE  
DIRECTOR OF THE SOUTH CAROLINA  
DEPARTMENT OF SOCIAL SERVICES,  
Defendants.

VTC 30(b)(6) SC DSS, Through its agent:  
DEPOSITION OF: DAWN BARTON

DATE: December 17, 2021  
TIME: 9:33 a.m.  
LOCATION: Zoom - Columbia, SC

TAKEN BY: Counsel for the Plaintiffs  
REPORTED BY: Roxanne Easterwood, RPR  
VIDEOGRAPHER: Roosevelt Hamilton

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**APPEARANCES OF COUNSEL:**

**ATTORNEYS FOR PLAINTIFFS:**

**Cravath Swaine & Moore**  
**By: Rebecca Schindel**  
**Serena Candelaria**  
**(Appearing by VTC)**  
**825 Eighth Avenue, Suite 4043B**  
**New York, NY 10019**  
**rschindel@cravath.com**  
**scandelaria@cravath.com**  
**(212) 474-1989**

**Lambda Legal**  
**By: Currey Cook**  
**Maia Zelkind**  
**(Appearing by VTC)**  
**120 Wall Street, Floor 19**  
**New York, NY 10005**  
**ccook@lambdalegal.org**  
**mzelkind@lamddalegal.org**  
**(212) 809-8585**

**American Civil Liberties Union (ACLU)**  
**By: Leslie Cooper**  
**(Appearing by VTC)**  
**125 Broad Street, 18th Floor**  
**New York, NY 10004**  
**lcooper@aclu.org**

**ATTORNEYS FOR UNITED STATES DEPARTMENT OF  
HEALTH & HUMAN SERVICES, ET AL.:**  
**United States Attorney's Office South  
Carolina**

**By: Marshall Prince**  
**(Appearing by VTC)**  
**1441 Main Street, Suite 500**  
**Columbia, SC 29201**  
**marshall.prince@usdoj.gov**  
**(803) 929-3000**

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ATTORNEYS FOR HENRY MCMASTER, IN HIS  
OFFICIAL CAPACITY AS GOVERNOR OF THE  
STATE OF SOUTH CAROLINA; and MICHAEL  
LEACH, IN HIS OFFICIAL CAPACITY AS  
STATE DIRECTOR OF THE SOUTH CAROLINA  
DEPARTMENT OF SOCIAL SERVICES:

Nelson Mullins Riley & Scarborough  
By: Miles Coleman  
(Appearing by VTC)  
2 W Washington Street, Suite 400  
Greenville, SC 29601  
miles.coleman@nelsonmullins.com  
(864) 373-2300

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P R O C E E D I N G S

\* \* \* \* \*

VIDEOGRAPHER: Good morning. We are now on the record. The time on the monitor is 9:33 a.m. Eastern Standard Time. Today's date is December 17th, 2021. This is the video-recorded deposition of Ms. Dawn Barton, in the matter of Eden Rogers and Brandy Welch versus the United States Department of Health & Human Services, et al. This deposition is being held remotely, via Zoom.

Counsel, please introduce yourselves, after which the court reporter will swear in the witness.

MS. SCHINDEL: This is Rebecca Schindel, for plaintiffs.

MS. CANDELARIA: Serena Candelaria, for plaintiffs.

MS. SCHINDEL: I'm sorry. Serena and I are both from Cravath Swaine & Moore. Apologies.

MS. COOPER: Leslie Cooper, from the ACLU, for plaintiffs.

MR. COOK: Currey Cook, from Lambda Legal, for plaintiffs.

MS. ZELKIND: Maia Zelkind, from

1 Lambda Legal, for plaintiffs.

2 MR. COLEMAN: This is Miles Coleman,  
3 on behalf of defendants Henry McMaster and Michael  
4 Leach.

5 MR. PRINCE: This is Marshall Prince,  
6 on behalf of the United States Office, Department  
7 of Justice.

8 DAWN BARTON  
9 being first duly sworn, testified as follows:

10 EXAMINATION

11 BY MS. SCHINDEL:

12 Q. Are we ready to proceed? Great. Good  
13 morning, Ms. Barton. Could you please state your  
14 full name for the record?

15 A. Dawn Barton.

16 Q. And what is your current address?

17 A. My home address or my office address?

18 Q. Oh, home address.

19 A. 120 Runnymede, R-U-N-N-E-Y-M-E-D-E,  
20 Drive, Blythewood, South Carolina 29016.

21 Q. Thank you. I'm going to ask you a  
22 series of questions today as part of this  
23 deposition, but before I do that, I'm going to set  
24 a few ground rules, and please let me know if any  
25 of this is unclear or if you have any questions.

1 Q. Is that -- I'm sure that's something  
2 that DSS has.

3 A. Yeah, I would -- I would say that --  
4 that either Susan Roben or Dawn Grant could  
5 provide that information.

6 Q. Great. Thank you. And does DSS  
7 license potential foster parents?

8 A. Yes.

9 Q. Is DSS the only entity that can  
10 license foster parents in South Carolina?

11 A. Yes.

12 Q. Can potential foster parents apply to  
13 become foster parents directly through DSS?

14 A. Yes.

15 Q. And you mentioned this earlier, but  
16 what is kinship care?

17 A. So kinship care is -- is the agency's  
18 effort to place children and youth that can't  
19 remain with their -- in their family homes, place  
20 them with people who they're already connected to  
21 and know, and that could look like -- we define  
22 kinship care as relations through blood, marriage,  
23 or adoption, but we -- we ex- -- we extend that in  
24 South Carolina to also consider fictive kin  
25 underneath the kinship umbrella.

1           So those could be -- those could be  
2 close friends, coaches, teachers, people children  
3 are connected to in their communities that may not  
4 be related to them by blood, marriage, or  
5 adoption.

6           Q.     And at some point was there a change  
7 made in DSS's policies such that it only handled  
8 -- now handles applications for kinship care?

9           A.     Yes.

10          Q.     And when did that change take place?

11          A.     Last July.    So July of 2020.

12          Q.     Okay.    And before July 2020, did DSS  
13 state agency work with both kinship and  
14 non-kinship prospective foster parents?

15          A.     Yes.

16          Q.     And so under this change, does this  
17 mean that potential foster parents who do not  
18 qualify as kin under the definition you provided a  
19 moment ago no longer have the option of applying  
20 directly through DSS to become licensed?

21          A.     Can you repeat that question again?

22          Q.     Sure.    Let me try -- let me see if I  
23 can just read it back.

24                 So under the change of policy, does it  
25 mean that potential foster parents who are not

1 kin, under- -- understanding it's a broader  
2 definition of kin, based on what DSS considers  
3 kin, can parents who are not kin -- potential  
4 foster parents who are not kin no longer apply  
5 directly through DSS to become licensed?

6 A. So this was a -- this was a practice  
7 change and not a policy change. Let me clarify  
8 that. This was something that we decided to -- we  
9 needed to build some capacity to be able to really  
10 intensify our search and engagement and  
11 recruitment of kinship families. And so we  
12 transitioned all of that work to our child-placing  
13 agencies.

14 And so with that being said, we -- we  
15 wouldn't deny somebody the ability to come --  
16 to -- to still come, and if they didn't want to  
17 work with any of our CPAs today, they -- we would  
18 still support them through the licensure process.  
19 They could still -- they could still come through  
20 DSS if for some reason they did not want to work  
21 with one of the child-placing agencies. So we  
22 wouldn't deny anybody that -- that ability.

23 Q. Was the reason for the change in  
24 practice because DSS didn't have the capacity to  
25 handle all of these applications itself; it needed

1 to offload some of this work onto the CPAs?

2 A. The change of practice was so that we  
3 could really intensify our focus and efforts on  
4 kinship care.

5 Q. But -- but just so I understand, the  
6 idea being that you couldn't do both; you couldn't  
7 focus your efforts on kinship care and also handle  
8 all of these non-kinship applications?

9 A. Yes. It was a way for us to be able  
10 to have the capacity to -- to do a targeted focus  
11 on recruiting and licensing and engaging our  
12 kinship opportunities for our kids, and it also  
13 was a way to really try to build our placement  
14 array, frankly, because if you -- if you're just  
15 focused on recruiting non-kin families, A, kids do  
16 better when they're with people that they're  
17 connected to and they already know. It's less  
18 traumatic. There's so many benefits to kinship  
19 care; and B, if you have kinship and non-kin  
20 families that you are able to place kids with,  
21 that just expands your family-like settings for --  
22 for kids.

23 Q. Right. But assuming that -- that  
24 people who previously were able to work with DSS  
25 are now able to work with CPAs; is that right?

1 we started transitioning that work over to the  
2 child-placing agencies. They have a breakdown  
3 of -- of what that is.

4 Q. Okay. And -- and then, hopefully,  
5 there would also be a breakdown for the private C-  
6 -- for the direct channel in --

7 A. Yes.

8 Q. -- the Heartfelt Calling -- okay.  
9 Terrific.

10 MS. SCHINDEL: So, Miles, I may not  
11 call this out every time, but I will -- we will  
12 make sure to gather all of this up and make sure  
13 that we're following up with you afterwards.

14 MR. COLEMAN: Yes. That's on -- I  
15 think this one, too, we can -- we can figure it  
16 out, you know, next week. I think we may -- if  
17 I'm understanding what you're looking for, you may  
18 already have that data from Diana's deposition  
19 yesterday, but we -- we can -- we can figure that  
20 out Monday or something like that.

21 MS. SCHINDEL: Okay. Great. Thank you.

22 BY MS. SCHINDEL:

23 Q. And if -- if someone applied to work  
24 directly with a CPA and were turned away by that  
25 CPA for whatever reason, would DSS learn about

1 that?

2 A. The only way we would learn about it  
3 would be if -- if the family contacted us or --  
4 or -- and -- and that's the only way we would know  
5 about it.

6 Q. Okay. So DSS wouldn't -- there's no,  
7 sort of, tracking mechanism for DSS to account for  
8 who's applying and being turned away?

9 A. Each CPA, as I understand, tracks  
10 that, but that is not something that we track.

11 Q. And when you say each CPA tracks that,  
12 is it tracked -- what makes you say that each CPA  
13 tracks that data?

14 A. I mean, I'm -- I'm making a large  
15 assumption that -- that that would be something  
16 that a CPA would track, but we do not -- we do not  
17 track that. We actually don't even get -- from --  
18 from a child-placing agency, we -- we don't get  
19 the actual packet for licensure. That's kind of  
20 when we become aware that -- that -- that an  
21 applicant has applied and -- and the CPA has been  
22 working with them.

23 Now, Heartfelt Calling, obviously,  
24 collects data on the front end. So if that  
25 applicant came in through Heartfelt Calling,

1 Heartfelt Calling would -- would track -- they  
2 follow up with the child-placing agencies that  
3 these families have chosen to go to, and they  
4 follow up to -- to -- to determine, because  
5 they're tracking how -- you know, when -- when  
6 they actually finish the process. So when they  
7 started the application and then when an -- when a  
8 license was actually issued.

9 So if they came through Heartfelt  
10 Calling, I'd say, again, starting last July to  
11 current, we probably would be able to have that  
12 information, but otherwise, prior to that time we  
13 would not have necessarily known.

14 Q. Got it. And what -- why don't you  
15 explain, sort of, what Heartfelt Calling is?

16 A. So we have a contract with the South  
17 Carolina Foster Parent Association, and there's  
18 several components within that contract that they  
19 provide support to the agency for, and one of the  
20 components is Heartfelt Calling.

21 And so it is the centralized  
22 application and intake line that they have. It's  
23 HeartfeltCalling.org. There's a, like, 1-88 (sic)  
24 number that people can call. They have a couple  
25 of folks on staff that, if you call, if you email,

1 they will walk you through the application  
2 process, and they have -- and so they do all of  
3 that upfront work, and then they -- they send that  
4 application to whatever -- today, to whatever  
5 child-placing agency a family chooses.

6 So they don't choose the family for --  
7 choose the CPA for the family. The family is  
8 given a list of all of the available CPAs, and --  
9 and they -- they then choose their own.

10 Q. And did Heartfelt Calling exist before  
11 July 2020?

12 A. Oh, yes.

13 Q. But it played, it sounds like, a  
14 different -- a slightly different role before that  
15 time; is that right?

16 A. They were -- they were just main -- I  
17 mean, at that time, prior to last July -- prior to  
18 July 2020, they were just screening applicants for  
19 us, for -- for DSS, and then we -- when we shifted  
20 some of that work and shared that work with the  
21 CPAs, they began doing that upfront screening and  
22 -- and work for -- to help -- help the CPAs and  
23 the families get to where they wanted to go.

24 Q. So I'm going to ask you a couple of  
25 more state-related questions, and you can just

1 Q. Sure. Well, I think the -- the core  
2 question I want to know is, do private CPAs  
3 provide recommendations for the prospective foster  
4 families that they work with?

5 A. So there's a home study, which I  
6 mentioned before, that's a part of that licensing  
7 process. So certainly the -- the assessment  
8 that's conducted by -- by a child-placing agency  
9 are taken into consideration for licensure.

10 Q. And as part of that process, do CPAs  
11 indicate whether they've determined that a foster  
12 parent is suitable or not?

13 A. The assessment would reflect that.

14 Q. And how much weight does DSS give  
15 to -- to that assessment?

16 MR. COLEMAN: Objection to the form of  
17 the question, and the preceding one.

18 But you can answer it.

19 THE WITNESS: Can you repeat that  
20 question? I'm sorry.

21 BY MS. SCHINDEL:

22 Q. Sure. The question was, how much  
23 weight does the DSS give to the CPA's assessment  
24 that a foster parent is suitable?

25 MR. COLEMAN: Object to the form of the

1 question.

2 But you can answer.

3 THE WITNESS: So, again, you -- you  
4 have an individual who is doing an assessment on a  
5 family. They're going out to the family home.  
6 They're asking lots and lots of questions. You  
7 take into account, you know, all of the  
8 information within the assessment itself. So,  
9 certainly, that's the bulk of the information we  
10 have to make a decision on whether to issue a  
11 license.

12 The bottom line is, is we have foster  
13 home regulations that govern a license, and so --  
14 and within those regulations there are -- there  
15 may -- there are things that -- that the agency  
16 may say, we have to go back and ask more  
17 questions, and -- and so -- but in general, the  
18 assessment that is done by a child-placing agency  
19 or whether -- or whether it's DSS that's doing  
20 that assessment, that is -- that is what -- that  
21 and the foster home regulations both all -- both  
22 govern the recommendations, or the decision to  
23 issue a license, I should say.

24 BY MS. SCHINDEL:

25 Q. Got it. And so when you say that's --

1 that's the bulk of the information you have, what  
2 you're saying is the CPA's assessment is the bulk  
3 of the information you have about a prospective --  
4 a prospective foster parent?

5 MR. COLEMAN: Object to the form of the  
6 question.

7 But you can answer.

8 THE WITNESS: I wouldn't say it's  
9 the -- the bulk, but it -- but it's certainly a --  
10 a big piece of it. But, again, you have foster  
11 home regulations. So the home study is just a  
12 piece of meeting those foster home regulations.

13 There are other regulatory  
14 requirements that families must meet and have to  
15 pass to be considered in order for the agency to  
16 determine whether a license can be issued.

17 BY MS. SCHINDEL:

18 Q. So if a CPA recommends an applicant,  
19 does DSS conduct a separate evaluation of the  
20 application?

21 MR. COLEMAN: Object to the form of the  
22 question.

23 But you can answer.

24 THE WITNESS: We would not -- I  
25 wouldn't say we would necessarily -- I mean, we --

1 we could. We would -- we could certainly ask more  
2 questions, but if -- if there is nothing glaring  
3 that cause -- that -- that causes us to ask more  
4 questions, then, again, we would -- we would take  
5 that assessment and all of the other items  
6 required for a license and determine -- and  
7 determine whether the license could be issued.

8 BY MS. SCHINDEL:

9 Q. So are you aware -- or I -- I should  
10 ask, is DSS aware of any instances where DSS has  
11 rejected a foster family that a CPA recommended?

12 A. I'm not -- I'm not aware of any, but  
13 that doesn't mean that there hasn't been any.

14 Q. Is that information that DSS would  
15 have?

16 A. We -- I mean, I would imagine, yes, I  
17 mean, denials, you know.

18 Q. And it would be a denial from a person  
19 who is or a family that was recommended by a  
20 private CPA, that would be something that DSS has  
21 --

22 A. We would -- we try -- we would have  
23 all denials, regardless.

24 MS. SCHINDEL: Okay. So we'll --  
25 we'll -- we'll want to grab that -- that

1 A. Yes.

2 Q. So then am I understanding correctly  
3 that DSS decides which children are placed in  
4 which foster homes?

5 A. Yes. We are the placement authority.

6 Q. And what does it mean to be in the  
7 care of a private CPA?

8 A. Can you expand on your question?

9 Q. Sure. Well, does it mean that a --  
10 if -- if a child is in the care of a private CPA,  
11 would it mean that that child is in a facility run  
12 by the private CPA?

13 A. The child is in the -- in the -- in  
14 the custody and care of the -- of DSS. The  
15 child's case managed by -- the child has a foster  
16 care case manager. The child has a guardian ad  
17 litem, many other folks involved with -- with  
18 that -- with a child in foster care.

19 The child-placing agency is supporting  
20 the foster family in -- in the home that -- that  
21 is -- that DSS has placed that child with. So --  
22 so we place children with foster families. CPAs  
23 are really a pathway, right, for families to get  
24 support and to help them through preparation to be  
25 licensed, and then when they're licensed, continue

1 in that support.

2 Q. So do CPAs assist at all with the  
3 child-placement process?

4 A. So they are sent referrals, and they  
5 are asked to review referrals in our children,  
6 and -- that are in need of placement, and -- and  
7 then they -- they send -- they send us families  
8 that they feel like perhaps would be a good match  
9 for the child and the youth, and ultimately DSS  
10 is -- is -- is -- is the placement authority and  
11 gets to decide where the child is placed.

12 Q. Does DSS play -- place -- let me think  
13 about how to phrase this.

14 Does DSS place weight on the referrals  
15 that private CPAs offer in terms of who they think  
16 would be well suited to take care of a particular  
17 foster child?

18 A. I mean, we're just given the  
19 information about the -- about the family, and --  
20 I don't -- I don't really understand your question  
21 about placing weight.

22 Q. Let me look over your answer. You  
23 said that -- that CPAs send you families that they  
24 feel would perhaps be a good match for a  
25 particular child, and my question is, does that --

1 does that information factor into DSS's decision  
2 about where to place the child?

3 A. So, certainly, it's information that  
4 we -- that we take into consideration. The  
5 child-placing agencies know those families better  
6 than we know those families, because they are  
7 supporting those families, and they have taken  
8 those -- they have taken that family kind of from  
9 start all the way to the point in which DSS has to  
10 review whether or not to issue a license, and  
11 then -- and then once that license is issued, that  
12 CPA is continuing to support that family and work  
13 with that family directly. Whereas, our placement  
14 teams wouldn't know those families.

15 Q. Has DSS ever rejected a recommendation  
16 for a placement made by a private CPA?

17 MR. COLEMAN: Object to the form of the  
18 question.

19 But you can answer.

20 THE WITNESS: I don't -- I don't know  
21 that information, and I don't know whether we  
22 tried that information.

23 BY MS. SCHINDEL:

24 Q. Do all CPAs offer the type of referral  
25 or recommendation process that you mentioned

1 that? No, I don't think we're concerned about  
2 that, because I think that families have a variety  
3 of choices of pathways for all -- for different  
4 organizations that -- that are the pathway to  
5 support them towards the licensure process.

6 BY MS. SCHINDEL:

7 Q. Is DSS aware of -- of families that  
8 have been discriminated against by CPAs based on  
9 sexual orientation or faith?

10 A. We're aware of each organization -- of  
11 organizations' criteria in which they lay out  
12 within their -- their organizations of the kinds  
13 of families that they want to work with, but I --  
14 I'm not -- other than this particular case, I'm  
15 not -- I'm not aware of anyone.

16 Q. Are CPAs that turn away families based  
17 on faith or sexual orientation required to tell  
18 DSS that they have done so, that they have turned  
19 away families who applied, on those -- based on  
20 those criteria?

21 A. I'm not -- I'm not aware of a  
22 mechanism in which that's reported back to us,  
23 unless -- unless -- unless the family themselves  
24 contact our state office and make us aware.

25 Q. So does -- DSS doesn't require CPAs to

1 notify DSS when they turn away families based on  
2 religion or sexual orientation so that DSS -- DSS  
3 could follow up with those families?

4 A. No.

5 Q. Is allowing CPAs to exclude families  
6 based on religious criteria consistent with best  
7 practices in the field of child welfare?

8 A. Can you repeat the question?

9 Q. Is allowing CPAs to exclude families  
10 based on religious criteria consistent with best  
11 practices in the field of child welfare?

12 A. No.

13 Q. Why not?

14 A. Again, we -- we don't -- we don't --  
15 we don't believe in discrimination. That's not --  
16 that's not a part of -- that's not a part of -- of  
17 what -- of what we do in -- in the -- in the  
18 licensing process.

19 Our -- our regulations, our policies  
20 specifically -- specifically say that -- you know,  
21 around the licensing piece related to this matter,  
22 that we -- we will -- we, the agency, will not  
23 discriminate.

24 Q. And so it sounds like DSS itself will  
25 not discriminate on the basis of religion or

1 question.

2 But you can answer.

3 THE WITNESS: And I'm going to need you  
4 to repeat that. It was a lot.

5 BY MS. SCHINDEL:

6 Q. DSS -- DSS works with CPAs who cull  
7 out families, screen out families, based on their  
8 own set of religious criteria or criteria based on  
9 sexual orientation, and then DSS relies on CPAs to  
10 recommend whoever has made it past that screening  
11 process to become a prospective foster parent in  
12 South Carolina; is that right?

13 A. Yes.

14 Q. If there were a CPA that had a  
15 religious objection to working with black or  
16 interracial families, would DSS permit it to do  
17 so?

18 MR. COLEMAN: Object to the form of the  
19 question.

20 You can answer, if you're able.

21 THE WITNESS: Can you repeat the  
22 question?

23 BY MS. SCHINDEL:

24 Q. If -- if a CPA had a religious  
25 objection to working with black or interracial

1 information about each of those CPAs the CPA has  
2 provided about their organizations, so the  
3 families can make the right -- you know, make the  
4 right fit for their family for who they want to  
5 work with on collecting all of the requirements  
6 for licensure.

7 Q. So does that -- that website that  
8 you're referring me to, does it say Miracle Hill  
9 will not work with same-sex couples?

10 A. I have not looked at -- looked at that  
11 in some time. So I -- I can't say that it says  
12 that specifically or not. I would -- I would have  
13 to -- I would have to look at it.

14 Q. Then how do you reconcile those two  
15 statements that you just gave me? You said a  
16 family can go to the website and know exactly who  
17 they can work with, but you actually don't know if  
18 the website, in fact, does provide that  
19 information; is that right?

20 MR. COLEMAN: Object to the form of the  
21 question.

22 You can answer.

23 THE WITNESS: It gives information  
24 about the organization, which could include that.

25 BY MS. SCHINDEL:

1 Q. Right. But the information might not  
2 actually tell families who they can and cannot  
3 work with; is that right?

4 A. That's correct.

5 Q. In total, how many non-therapeutic  
6 CPAs serve Region 1?

7 A. I don't have -- I don't have that  
8 information. I -- I didn't -- I don't have those  
9 numbers.

10 MR. COLEMAN: Same objection. I object  
11 to --

12 (Crosstalk.)

13 THE WITNESS: I mean, we have those  
14 numbers. I just don't have those numbers here  
15 today.

16 BY MS. SCHINDEL:

17 Q. If DSS learns that most of the  
18 non-therapeutic CPAs that serve Region 1 excludes  
19 same-sex couples, would that concern DSS?

20 A. I think it would -- I -- I think it  
21 would concern us, but I also would say that, in  
22 the same light, families always have another  
23 option. They can always come through DSS.

24 Q. If most of the non-therapeutic CPAs  
25 that serve Region 1 excluded same-sex couples,

1 could that harm efforts to grow the pool of foster  
2 families in Region 1?

3 A. I -- I would say, no, because we would  
4 serve -- we would serve those families. There --  
5 there's still an option for those families through  
6 the department.

7 Q. Since DSS changed its practice to  
8 handle just kinship applicants, you said that, and  
9 you're saying now, that DSS would handle  
10 non-kinship applicants if the family didn't want  
11 to work with a particular CPA; is that right?

12 A. Yes.

13 Q. Has DSS handled any non-kinship  
14 applicants since the change in policy?

15 A. I -- I don't -- I don't know. I would  
16 have to look at -- at each region to make that  
17 determination, if -- if we've actually accepted.  
18 It's been very few, if -- if any.

19 MS. SCHINDEL: Okay. Well, this is  
20 definitely Topic 5. So this -- this is  
21 information we absolutely will need to get from  
22 DSS, which is whether DSS has handled any non- --  
23 non-kinship applicants since the change in  
24 practice or policy. And if so, how many.

25 BY MS. SCHINDEL:

1           A.     The answer is -- is yes, and Heartfelt  
2     Calling actually reaches out for DSS to consult on  
3     those applicants that would like to come to DSS,  
4     as opposed to a CPA.

5           Q.     Do local DSS offices know they can  
6     handle non-kin applicants?

7           A.     Yes, on a case -- on a -- in a -- on a  
8     very situational basis. So if you do have  
9     families that we -- like we just spoke of,  
10    they're -- they're consulted, but they're not --  
11    they don't -- they don't take applications at the  
12    regional offices for non-kin families. So the  
13    pathway through that would be Heartfelt Calling to  
14    our -- our state office, and then it feeds down  
15    into the region.

16          Q.     So, as we just discussed, Heartfelt  
17    Calling's website did not necessarily let  
18    individuals know which agencies accept people of a  
19    particular faith or of a sexual orientation, but  
20    if somebody called Heartfelt Calling, does  
21    Heartfelt Calling provide that information?

22          A.     I don't know if they provide that  
23    information to families or not. They -- it's my  
24    understanding that Heartfelt Calling directs them  
25    direct to the website or to the -- to the -- the

1 CPAs, either their web page or their information  
2 that they have provided to put on the website.

3 Q. And as we discussed, that information  
4 does not necessarily relay whether an agency will  
5 or will not work with a Catholic family or will or  
6 will not work with somebody of a same-sex marriage  
7 or whatever --

8 A. They --

9 (Crosstalk.)

10 Q. -- right?

11 A. Yes, that's correct.

12 Q. And those -- those families would  
13 instead have to call around and ask the CPA  
14 directly if they would work with them, if it's not  
15 clear from the website; is that right?

16 MR. COLEMAN: Object to the form of the  
17 question.

18 But you can answer.

19 THE WITNESS: Yes.

20 BY MS. SCHINDEL:

21 Q. I think you had mentioned that  
22 Crosswell accepts families regardless of religion  
23 or sexual orientation; is that right?

24 A. Yes. I'm not aware that they don't.

25 Q. Okay. You had mentioned that DSS

1 Q. Have -- have any families been turned  
2 away by Miracle Hill or other CPAs because of  
3 their religion?

4 A. I don't know.

5 Q. Does DSS know whether families have  
6 been turned away by Miracle -- by Miracle Hill or  
7 other agencies because of their religion?

8 A. I'm -- I'm unaware that we track that  
9 information. I -- I -- we don't have a mechanism  
10 to track that. Again, the only way -- the only  
11 way we would know would be if they -- if they  
12 actually worked with the family or if -- if they  
13 chose a -- a particular CPA at application, went  
14 over to the CPA, and -- and during that process  
15 they were -- the CPA said they couldn't work with  
16 the family and then that family -- then that  
17 family would -- would come back through Heartfelt  
18 Calling, and Heartfelt Calling would then, again,  
19 get the family to -- to review the list -- the --  
20 the other list of CPAs to see if they can identify  
21 someone else to work with them.

22 Q. Okay. So I will represent to you that  
23 we have learned from Miracle Hill that  
24 approximately 25 to 30 families were turned away  
25 based on religious requirements. Was DS- -- DSS

1 aware of that?

2 A. No.

3 Q. Does that information concern DSS?

4 A. Yes. I mean, I would -- I think I  
5 would want to know where -- where do those  
6 families go.

7 Q. So in answering that question, it  
8 sounds like DSS did not know where those families  
9 went?

10 A. I -- I don't know. DSS may know. We  
11 may know where those families went, but I'm not --  
12 I don't know -- again, I wasn't -- I'm not aware  
13 that -- that DSS was -- was made aware of Miracle  
14 Hill turning down those families.

15 Q. Has DSS communicated -- communicated  
16 to CPAs that they need to take any steps when they  
17 turn away an applicant based on religion?

18 A. No.

19 Q. Has DSS communicated to CPAs that they  
20 need to take any steps when they turn away an  
21 applicant based on sexual orientation?

22 A. No.

23 Q. Has DSS communicated to CPAs that they  
24 must refer these applicants who were turned away  
25 to other agencies?

1 A. No.

2 Q. Has DSS communicated to CPAs that  
3 that -- that they must refer these families that  
4 they turn away to DSS?

5 A. No.

6 Q. So does DSS do anything to make sure  
7 that families who are turned away based on the  
8 waiver -- or, excuse me, were turned away based on  
9 these religious criteria still have the  
10 opportunity to become foster parents?

11 MR. COLEMAN: Object to the form of the  
12 question.

13 But you can answer.

14 THE WITNESS: So the only way that we  
15 would be -- we would have knowledge of that would  
16 be if -- again, we're very reliant upon our --  
17 upon Heartfelt Calling and their follow-up. So  
18 Heartfelt Calling would -- follow -- follows up  
19 with the individual CPAs in which families choose,  
20 and I don't know what their timeframes are, but --  
21 but they have periodic follow-ups to make sure  
22 that -- that the families are being processed.

23 BY MS. SCHINDEL:

24 Q. So, and it sounds like your answer is,  
25 no, DSS does not do anything to make sure that

1           So you may have a CPA that just --  
2           just can support families in the Lowcountry and  
3           doesn't serve, you know, any other -- other --  
4           other area. So they would follow up with those  
5           families, and, again, provide them with the  
6           information for those individual -- other  
7           individual CPAs.

8           Q.     Okay. Just -- I just want to make  
9           sure I have the process right. So, as we've  
10          discussed, as you testified, Heartfelt Calling  
11          directs individuals, whether they go on the  
12          website or if they call up Heartfelt Calling,  
13          Heartfelt Calling directs them to the website,  
14          which then lists certain information about the  
15          CPAs. You testified that that information does  
16          not necessarily reveal the criteria by which the  
17          CPAs will use to screen applicants.

18                   And then if an applicant gets  
19          screened, am I understanding that Heartfelt  
20          Calling then follows up with the applicant and  
21          directs them back to the same list that they had  
22          already gone to? Is that right?

23           A.     Yes. And -- and it's -- you know, we  
24          don't want -- we instructed Heartfelt Calling  
25          specifically, you -- they're not in the business,

1 nor are we, to tell a family who they can and  
2 cannot work with, DSS does not. And so if  
3 they're -- if for some reason they're turned --  
4 turned away from a child-placing agency, there --  
5 there are other options for that -- for those  
6 families.

7 And so you would -- Heartfelt Calling  
8 has been instructed to -- to refer them back to  
9 the list of child-placing agencies and their  
10 criteria.

11 Q. So is Heartfelt Calling required to  
12 follow up with all applicants to make sure that  
13 they have found a CPA that will work with them?

14 A. Yes.

15 Q. And so it will follow up with -- with  
16 every single family that is -- that is turned away  
17 from a CPA?

18 A. Yes.

19 Q. And it will send them back to the  
20 list?

21 A. Yes. That's if they come to  
22 Heartfelt -- sorry. That's if they will -- that's  
23 if the applicant comes to Heartfelt Calling.

24 Q. Right. So if an applicant goes to  
25 Heartfelt Calling in the first instance, Heartfelt

1 Calling sends them the list. The applicant might  
2 be screened away. Heartfelt Calling sends them  
3 back to the list, and Heartfelt Calling will just  
4 keep sending these applicants back to a list until  
5 they find a CPA that will work with them?

6 A. Yes.

7 Q. And so this could take five or six  
8 times of going back to a list and trying to find  
9 somebody that will deem you a suitable prospective  
10 foster parent based on your religion or sexual  
11 orientation; is that right?

12 MR. COLEMAN: Object to the form of the  
13 question.

14 You can answer.

15 THE WITNESS: I -- I mean, I don't know  
16 how many times it would take. Again, families get  
17 to choose that for themselves, not for -- they're  
18 choosing the CPA based off of the information  
19 provided to them. The web- -- the -- the  
20 individual CPA's websites go into, I think, a lot  
21 more detail. And so, again, it's the family's  
22 choice of who -- who they want to -- want to go  
23 and work with, not -- not Heartfelt Calling's.

24 BY MS. SCHINDEL:

25 Q. But the -- the process that I just

1 outlined is the process that DSS has set up; is  
2 that right?

3 A. Yes.

4 Q. Has this practice of allowing CPAs to  
5 turn away families based on their sexual  
6 orientation caused a loss of available families  
7 for children in South Carolina?

8 A. Can you repeat that question?

9 Q. Has the practice of allowing CPAs to  
10 turn away prospective foster parents based on  
11 their sexual orientation caused a loss of  
12 available families for children in South Carolina?

13 A. I would say, yes. If you turned -- I  
14 mean, just one is -- is one less available family,  
15 right?

16 Q. Right. If an applicant went directly  
17 to a CPA and got turned away based on religious  
18 criteria, then no one would follow up with that  
19 family to ensure that they find a CPA, right?

20 The process we were talking about  
21 earlier is just if you start with Heartfelt  
22 Calling; is that right?

23 A. Yes. I mean, you're asking if the  
24 family went directly to the CPA. Yes, that's  
25 correct.

1 not, but she came -- she was the -- she came  
2 shortly after our new director did. I can't  
3 remember if it was quite a year after him. So  
4 she -- she came a little later than he did,  
5 when -- when the administration changed. So  
6 she --

7 Q. Are you aware that the governor -- oh,  
8 I'm sorry.

9 A. No. Go ahead.

10 Q. Are you aware that the governor's  
11 office requested a waiver from HHS to allow CPAs  
12 to discriminate based on religion?

13 A. I did hear that.

14 Q. Were you or was anyone at DSS  
15 consulted about whether allowing CPAs to exclude  
16 families based on religion would be in the best  
17 interests of children in foster care in South  
18 Carolina?

19 A. I was not a part of any of those  
20 conversations.

21 Q. Are you aware -- excuse me. Are you  
22 aware of whether anyone at DSS was consulted on  
23 that question?

24 A. I'm not aware.

25 Q. When did you first hear about the

1 implement this type of policy?

2 A. Yes.

3 Q. As one of the top foster care policy  
4 makers here at DSS, would you permit CPAs to  
5 exclude families based on religious criteria, if  
6 the whole issue were up to you?

7 MR. COLEMAN: Object to the form of the  
8 question, and ask -- I'll ask for clarification.  
9 Is that -- are you asking her as 30(b)(6) or as an  
10 individual?

11 MS. SCHINDEL: Well, I think that's --  
12 that's pretty clearly in her individual capacity.

13 MR. COLEMAN: You can -- you can answer  
14 the question, as it -- sorry. Go ahead.

15 THE WITNESS: Can you repeat it? I'm  
16 sorry, go ahead. Can you repeat it?

17 BY MS. SCHINDEL:

18 Q. As one -- sure. Sure. So -- well,  
19 let me back up and ask you this part.

20 I understand that you have somebody  
21 that you report to, but is it fair to say that you  
22 are one of the top policy makers in the foster  
23 care space at DSS?

24 A. Yes.

25 Q. So in that role, and if it were up to

1 different placement at some point. That case  
2 manager still holds on to that child and is  
3 responsible for the case management of -- of that  
4 child, wherever -- wherever they go while they're  
5 in custody, our -- our custody.

6 Q. And there's not a comparable role  
7 played by somebody affiliated with the CPA that --  
8 that stays with the child wherever they go?

9 A. No.

10 Q. I think -- I'm sorry. Back to this  
11 exhibit that I still have up. Hopefully, you  
12 still have it near you.

13 The free -- the free monthly home  
14 cleaning services, is that something that DSS  
15 provides to the families that it's working with  
16 directly?

17 A. No. Great perk, though.

18 Q. Yeah. And then, I don't have the  
19 documents that Miles -- Mr. Coleman showed, but I  
20 think he showed you this -- the very last thing  
21 that was shown was Section J about religious  
22 education.

23 MS. SCHINDEL: Would you mind putting  
24 that back up, Miles? I just don't have it.

25 MR. COLEMAN: Yeah. Hang on here, real

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CERTIFICATE OF REPORTER

I, Roxanne M. Easterwood, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 17th day of December 2021 at Charleston, Charleston County, South Carolina.



---

Roxanne M. Easterwood, RPR  
My Commission expires  
February 1, 2025

## EXHIBIT 3

Excerpts from the transcript of  
the Rule 30(b)(6) deposition of the  
SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES  
through its designee  
DIANA TESTER  
taken on December 16, 2021

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UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION  
EDEN ROGERS AND BRANDY WELCH,  
Plaintiffs,

vs. C.A. No. 6:19-cv-01567-JD

UNITED STATES DEPARTMENT OF HEALTH AND  
HUMAN SERVICES; XAVIER BECCERA, IN HIS  
OFFICIAL CAPACITY AS SECRETARY OF THE  
UNITED STATES DEPARTMENT OF HEALTH AND  
HUMAN SERVICES; ADMINISTRATION FOR  
CHILDREN AND FAMILIES; JOOYEUN CHANG, IN  
HER OFFICIAL CAPACITY AS THE SENIOR  
OFFICIAL PREFORMING THE DUTIES OF THE  
ASSISTANT SECRETARY OF THE  
ADMINISTRATION FOR CHILDREN AND  
FAMILIES; JOOYEUN CHANG, IN HER 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; AND MICHAEL  
LEACH, IN HIS OFFICIAL CAPACITY AS STATE  
DIRECTOR OF THE SOUTH CAROLINA  
DEPARTMENT OF SOCIAL SERVICES,  
Defendants.

VTC 30(b)(6)  
DEPOSITION OF: SC DSS, Through its agent:  
DIANA TESTER  
DATE: December 16, 2021  
TIME: 9:32 a.m.  
LOCATION: Zoom-Columbia, SC  
TAKEN BY: Counsel for the Plaintiffs  
REPORTED BY: Roxanne Easterwood, RPR  
VIDEOGRAPHER: Roosevelt Hamilton

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APPEARANCES OF COUNSEL:

ATTORNEYS FOR PLAINTIFFS:

Cravath Swaine & Moore  
By: Mika Madgavkar  
Katherine Deringer Janson  
(Appearing by VTC)  
825 Eighth Avenue, Suite 4043B  
New York, NY 10019  
mmadgavkar@cravath.com  
kjanson@cravath.com  
(212) 474-1989

Lambda Legal  
By: Currey Cook  
Maia Zelkind  
(Appearing by VTC)  
120 Wall Street, Floor 19  
New York, NY 10005  
ccook@lambdalegal.org  
mzelkind@lamdalegal.org  
(212) 809-8585

American Civil Liberties Union (ACLU)  
By: Leslie Cooper  
(Appearing by VTC)  
125 Broad Street, 18th Floor  
New York, NY 10004  
lcooper@aclu.org

ATTORNEYS FOR UNITED STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES, ET AL. :  
United States Attorney's Office South  
Carolina

By: Barbara M. Bowens  
(Appearing by VTC)  
1441 Main Street, Suite 500  
Columbia, SC 29201  
barbara.bowens@usdoj.gov  
(803) 929-3000

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ATTORNEYS FOR HENRY MCMASTER, IN HIS  
OFFICIAL CAPACITY AS GOVERNOR OF THE  
STATE OF SOUTH CAROLINA; and MICHAEL  
LEACH, IN HIS OFFICIAL Capacity AS  
STATE DIRECTOR OF THE SOUTH CAROLINA  
DEPARTMENT OF SOCIAL SERVICES:

Nelson Mullins Riley & Scarborough  
BY: Miles Coleman  
(Appearing by VTC)  
2 W Washington Street, Suite 400  
Greenville, SC 29601  
miles.coleman@nelsonmullins.com  
(864) 373-2300

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P R O C E E D I N G S

\* \* \* \* \*

VIDEOGRAPHER: We are now on the record. The time on the monitor is 9:32 a.m. Eastern Standard Time. Today's date is December 16, 2021, this is the video-recorded testimony of Ms. Diana Tester in the matter of Eden Rogers and Brandy Welch versus the United States Department of Health and Human Services, et al. This deposition is being held remotely via Zoom.

Counsel, please introduce yourselves, after which the court reporter will swear in the witness.

MS. MADGAVKAR: Mika Madgavkar, from Cravath Swaine & Moore, for plaintiffs.

MS. JANSON: Kate Janson, from Cravath Swaine & Moore, for the plaintiffs.

MR. COOK: Currey Cook, from Lamda Legal, also for plaintiffs.

MS. COOPER: Leslie Cooper, from ACLU, also for plaintiffs.

MS. ZELKIND: Maia Zelkind, from Lamda Legal, for plaintiffs.

MS. BOWENS: Barbara Bowens, for

1 United States.

2 MR. COLEMAN: This is Miles Coleman,  
3 counsel for defendants Henry McMaster and  
4 Michael Leach.

5 DIANA TESTER  
6 being first duly sworn, testified as follows:

7 EXAMINATION

8 BY MS. MADGAVKAR:

9 Q. All right. Good morning, Ms. Tester.  
10 My name is Mika, and I'm going to be asking you  
11 some questions today. Could you please state your  
12 full name for the record?

13 A. Yes. My name is Diana M. Tester.

14 Q. And what is your current address?

15 A. 3828 Linbrook Drive, Columbia, South  
16 Carolina.

17 Q. Okay. So I'm going to ask you a  
18 series of questions today, but before that, I just  
19 wanted to go over a few ground rules for the  
20 deposition. You must answer questions audibly and  
21 verbally. Nodding your head, for example, won't  
22 be picked up by the court reporter.

23 For the benefit of the court reporter,  
24 please wait until I finish answering -- until I  
25 finish asking my question before you begin your

1 I'm not always in program pieces where perhaps  
2 discussions like that were happening. So that  
3 would not have been discussed with me.

4 Q. Did DSS conduct any kind of study or  
5 otherwise assess the impact that permitting  
6 faith-based CPAs to exclude prospective foster  
7 families would have on the number of available  
8 foster families in South Carolina?

9 A. Not that I'm aware of, ma'am.

10 Q. Are you aware if any DSS officials or  
11 staff considered or discussed the impact that  
12 permitting faith-based CPAs to exclude prospective  
13 foster families based on religious criteria would  
14 have on the number of available foster families in  
15 South Carolina?

16 A. I did not observe any discussions on  
17 this.

18 Q. Did DSS conduct any kind of study on  
19 or otherwise assess the impacts that permitting  
20 CPAs to discriminate based on same-sex  
21 relationship would have on the number of available  
22 foster families in South Carolina?

23 A. Not that I'm aware of.

24 Q. Did DSS conduct any kind of study on  
25 or otherwise assess the impact that permitting

1 CPAs to discriminate based on LGBTQ status would  
2 have on the number of available foster families in  
3 South Carolina?

4 A. Not that I'm aware of.

5 Q. And did DSS conduct any kind of study  
6 on or otherwise assess the impact that permitting  
7 CPAs to discriminate based on religion would have  
8 on the number of available foster families in  
9 South Carolina?

10 A. Not that I'm aware of.

11 Q. So DSS never conducted any study or  
12 otherwise examined the impact that permitting  
13 faith-based CPAs to discriminate against  
14 prospective foster parents based on things like  
15 relationship or LGBTQ status or religion would  
16 have on the number of available foster parents?

17 MR. COLEMAN: Object to the form of the  
18 question. Leading, and misstates the witness's  
19 testimony.

20 But you can answer if --

21 THE WITNESS: Not that I'm aware of,  
22 ma'am.

23 BY MS. MADGAVKAR:

24 Q. Since the waiver was granted, did any  
25 DSS officials or staff consider, discuss, or study

1 the impact of permitting CPAs to discriminate  
2 against prospective foster parents based on  
3 same-sex relationships on the number of foster  
4 families available in South Carolina?

5 A. Not that I'm aware of.

6 Q. And since the waiver was granted, did  
7 any DSS officials or staff consider, discuss, or  
8 study the impacts of permitting CPAs to  
9 discriminate against prospective foster parents  
10 based on LGBTQ status on the number of foster  
11 families available in South Carolina?

12 A. Not that I'm aware of.

13 Q. And since the waiver was granted, did  
14 any DSS officials or -- or staff consider,  
15 discuss, or study the impact of permitting CPAs to  
16 discriminate against prospective foster parents  
17 based on religion on the number of foster families  
18 available in South Carolina?

19 A. Not that I'm aware of.

20 Q. So when -- when CPAs in South Carolina  
21 have closed in the past, are you aware of whether  
22 that agency's foster families continued fostering?

23 A. So say that again.

24 Q. When CPAs in South Carolina have  
25 closed in the past, did that agency's foster

1 regions?

2 MR. COLEMAN: Same objection.

3 But you can answer.

4 THE WITNESS: Well, I don't know the  
5 specific CPAs. I don't keep track of all of that,  
6 but -- but, of course, we can run data by  
7 geo- -- geography. So we can tell CPAs are in the  
8 Upstate, how -- you know. I don't know how many.  
9 I didn't prepare for that, but yes.

10 BY MS. MADGAVKAR:

11 Q. So, for example, are you aware of  
12 whether Church of God Home for Children is -- is  
13 located in -- in the Upstate region?

14 A. I don't recall the specific CPAs. I  
15 remember glancing at the chart, and there were  
16 several CPAs located in the Upstate, but I  
17 don't -- I -- you know, I didn't look at the  
18 specific names.

19 Q. And -- and just to -- to make sure I  
20 understood, you said that you're not -- you're not  
21 sure whether DSS keeps track of which CPAs exclude  
22 prospective foster families based on -- on sexual  
23 orientation or -- or faith?

24 A. Again, no, I -- I don't. I'm sorry.

25 Q. Are you aware of whether DSS did

1 anything to find out whether there would be  
2 sufficient options for all communities to foster  
3 since the waiver was passed?

4 A. I -- no, I -- I -- I'm not. I'm not  
5 sure on that.

6 Q. Are you aware of how many  
7 non-therapeutic CPAs are in Region 1?

8 A. I do not -- I don't remember the  
9 number. So I -- I can't tell you how many.  
10 I -- I -- I just don't keep track of all of those  
11 numbers in my head.

12 Q. If DSS learned that most  
13 non-therapeutic CPAs in -- in the Upstate region  
14 excluded same-sex couples, would that be a concern  
15 for DC -- DSS?

16 MR. COLEMAN: Object to the question as  
17 policymaking, and that's outside the scope of this  
18 witness's designation.

19 But you can answer, if you're able.

20 THE WITNESS: Again, I'm not in  
21 program. I'm not in policy. So I -- I -- I -- I  
22 don't really know how to answer that question.

23 BY MS. MADGAVKAR:

24 Q. Does DSS know of any families who have  
25 been turned away by Miracle Hill or other agencies

1 Q. And just to make sure I have it right,  
2 your -- your testimony was that DSS has no  
3 knowledge about whether permitting South Carolina  
4 CPAs to restrict eligibility of prospective foster  
5 parents based on religion, same-sex relationship,  
6 or LGBTQ status had any effect on the number of  
7 available foster parents in South Carolina?

8 MR. COLEMAN: Object to the form of the  
9 question.

10 But you can answer, if you're able.

11 THE WITNESS: As far as I know, we did  
12 not do any studies like this. I did not do any  
13 studies like this. I do not know.

14 BY MS. MADGAVKAR:

15 Q. And -- and you're testifying on behalf  
16 of DSS, right?

17 A. Yes, I am. Again, I -- I am not aware  
18 of it.

19 Q. So you said you're not aware of it,  
20 and that means that DSS has not done any kind of  
21 study about that infor- -- information, right?

22 MR. COLEMAN: Object to the form of the  
23 question.

24 But you can answer.

25 THE WITNESS: I am not aware of DSS

1 of DSS, what -- what -- what Mika is trying to --  
2 trying to explain and -- and that you have on this  
3 question the authority to say is DSS did not  
4 conduct any study.

5 Is that I -- think that's  
6 what -- that's what you're wanting, and you're  
7 trying to carefully answer. But, yeah, I think  
8 you can -- I think you can answer that question.

9 Sorry. Sorry for interjecting. I was  
10 just trying to eliminate some of the  
11 back-and-forth there.

12 MS. MADGAVKAR: No. I appreciate that.  
13 So I'll just -- I'll ask the question again, just  
14 so we can have it cleanly.

15 BY MS. MADGAVKAR:

16 Q. So DSS did not study or examine or  
17 consider the extent to which permitting South  
18 Carolina CPAs to restrict eligibility of  
19 prospective foster parents on the basis of  
20 religion or same-sex relationship or LGBTQ status  
21 it would impact the number of available foster  
22 parents in South Carolina, right?

23 A. No, not that -- no.

24 Q. Okay. Thank you.

25 And -- and when did you first -- first

1 A. No, I'm not aware of any of that. No.

2 Q. And you don't know whether the  
3 director of that SC DSS -- at the time it was  
4 Susan Alford. Now it's Michael Leach -- whether  
5 they would have been aware of any such studies  
6 about other states' CPAs?

7 A. No, I would not be aware of it, and I  
8 don't know if they did anything like that.

9 Q. One of the questions you were asked  
10 earlier was whether SC DSS keeps track of whether  
11 people who one CPA refers away, whether those  
12 people go on and apply to other CPAs. Do you  
13 remember being asked that question?

14 A. Yes.

15 Q. And I believe you said that DSS does  
16 not keep track of -- of that?

17 A. We don't really track that, no.

18 Q. Is there any way you could even track  
19 that?

20 A. If the foster family provider name  
21 remains the same, theoretically, we could look to  
22 see if that same family showed up across another  
23 CPA in the area. We could do that.

24 That would take a little bit of work.  
25 I mean, we would have to really track that family

1 to see if they're falling under other CPAs.

2 Q. And the -- as a -- a starting point,  
3 the only way you would even know if a prospective  
4 foster family had been referred away would be if  
5 that prospective foster family notified DSS, filed  
6 a complaint of some sort?

7 A. Yeah. We would not know they'd been  
8 referred away. Really, what we would only be able  
9 to tell is, at some point they were served by one  
10 CPA, not referred away, but were served by one  
11 CPA, and then at another point they were served by  
12 another CPA or they worked with another CPA. But  
13 if they were referred away, I would have no way of  
14 knowing that.

15 Q. So if -- if it was a -- a family who  
16 had never before served as foster parents,  
17 first-time prospective foster parents --

18 A. No.

19 Q. -- for example, who approached Miracle  
20 Hill, and Miracle Hill referred them to all of the  
21 other CPAs or to DSS, DSS would not be aware of  
22 that referral --

23 A. Oh.

24 Q. -- unless somehow it got brought to  
25 your attention by the -- the applicant, the -- the

1 prospective foster parents?

2 A. That's correct. That's correct. We  
3 would not. I would not be.

4 Q. One of the other questions you were  
5 asked earlier today was whether SC DSS captures or  
6 tracks the foster children's faith or their sexual  
7 orientation. Do you remember being asked that?

8 A. Uh-huh. I do.

9 Q. I think you said, no, SC DSS does  
10 not --

11 (Crosstalk.)

12 A. To my knowledge.

13 Q. -- or track that?

14 A. That's correct.

15 Q. You mentioned as part of that  
16 discussion, dictations. I believe that's the word  
17 you used, dictations.

18 A. Uh-huh.

19 Q. Is that -- the idea is almost like a  
20 case file for each specific, unique child in the  
21 foster care system?

22 A. Yes. Yes. It's an electronic case  
23 file, or it could also be part of the paper file.  
24 It could be either/or.

25 Q. Okay.

1           A.     But it is like the case record of the  
2 child.

3           Q.     Do you know, in that dictation or the  
4 case record, if a foster child's family of origin  
5 or the child herself or himself specifically  
6 requests that they be allowed to -- to attend a  
7 particular faith group's gatherings or to engage  
8 in a particular type of religious observance,  
9 would that be reflected in the case record, the  
10 case file?

11          A.     It could be. Obviously, the case  
12 manager is doing the absolute best that they can  
13 to match the child with the most appropriate  
14 placement, and so it could be captured in that as  
15 part of that record of the child -- children's  
16 desires.

17          Q.     But apart from that situation where  
18 the family of origin or the child specifically and  
19 affirmatively makes a request either -- either to  
20 engage in a particular religious exercise or not  
21 to engage in a religious exercise, apart from that  
22 kind of specific request, DSS doesn't track the  
23 foster children's faith as a general matter?

24          A.     As a general matter, no, I don't  
25 believe so.

1 Q. Same sequence of questions regarding  
2 foster children's sexual orientation or gender  
3 identity, that's not, as a general matter,  
4 something that DSS captures or tracks; is that  
5 right?

6 A. As a general matter, no, DSS does not  
7 capture or track that.

8 Q. If a foster child or her or his family  
9 of origin made a specific request related to the  
10 child's sexual orientation or gender identity and  
11 placement, that would likely, I assume, go in the  
12 case file, and DSS -- to the extent that you know,  
13 DSS would -- would -- would honor those requests;  
14 is that right?

15 A. To -- so I would expect that DSS would  
16 try its hardest to honor those requests, because,  
17 again, it is DSS's desire to place the child in  
18 the best possible placement for that child -- for  
19 that child to flourish, yes.

20 Q. And -- and -- and I should say, too,  
21 just, I mean, for the sake of a clean record, you  
22 are knowledgeable and designated to speak about  
23 the -- the recordkeeping, the data piece of it,  
24 whether or not a particular case worker, how they  
25 manage their files, that's outside the scope of

1 referred away, you wouldn't -- you wouldn't know  
2 that; is that right?

3 A. Yes, unless the CPA says something to  
4 DSS, I don't know how we would know.

5 Q. And so if DSS requires CPAs to inform  
6 DSS if that CPA turned away a family based on  
7 religious criteria, DSS would be aware and -- and  
8 could follow up with those -- those prospective  
9 foster parents, right?

10 A. If DSS requires that, they -- then  
11 yes.

12 Q. But to your knowledge, DSS doesn't  
13 require CPAs to -- of inform DSS if it turns away  
14 families, right?

15 A. I don't know the answer to that  
16 question. I -- to be honest with you. I don't  
17 know if -- if the licensing area asks or requires  
18 that.

19 Q. And in terms of data, DSS has -- has  
20 no knowledge of the number of families that have  
21 been turned away by CPAs based on re- -- religious  
22 criteria; is that right?

23 A. That's correct, and none of that -- to  
24 my knowledge, that data would not be captured  
25 inside of CAPSS, and -- and we would not be able

1 to -- to analyze that data.

2 MS. MADGAVKAR: Okay. Well, thank you  
3 very much for spending your Thursday with me. I  
4 appreciate you answering all of my questions. And  
5 we're done for the day.

6 VIDEOGRAPHER: Time on the monitor  
7 is 2:45 p.m. This is the close of this  
8 deposition.

9 MR. COLEMAN: This is Miles. I'll just  
10 take whatever is the least expensive, which I  
11 presume is probably the eTran.

12 MS. BOWENS: Same for United States.

13 MS. MADGAVKAR: For plaintiffs, we  
14 would like a rough draft.

15 (The deposition was concluded  
16 at 2:45 p.m.)

17 (The witness, after having been advised  
18 of the right to read and sign this transcript,  
19 does not waive that right.)

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CERTIFICATE OF REPORTER

I, Roxanne M. Easterwood, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 16th day of December 2021 at Charleston, Charleston County, South Carolina.



---

Roxanne M. Easterwood, RPR  
My Commission expires  
February 1, 2025

## EXHIBIT 4

Excerpts from the transcript of  
the Rule 30(b)(6) deposition of the  
SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES  
through its designee  
JACQUELINE LOWE  
taken on June 3, 2021

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

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LOCATION OF  
THE DEPONENT: Law Offices of  
Davidson Wren & DeMasters  
1611 Devonshire Drive, 2nd Floor  
Columbia, SC  
TAKEN BY: Counsel for the Plaintiffs  
(Kate Janson)

APPEARANCES OF COUNSEL:

ATTORNEYS FOR THE PLAINTIFFS

EDEN ROGERS and BRANDY WELCH:  
CRAVATH SWAINES & MOORE, LLP  
BY: KATE JANSON  
(APPEARING VIA VIRTUAL ZOOM)  
REBECCA SCHINDEL  
(APPEARING VIA VIRTUAL ZOOM)  
CRIS RAY  
(APPEARING VIA VIRTUAL ZOOM)

Worldwide Plaza  
825 Eighth Avenue  
New York, NY 10019  
(212) 474-1989  
kjanson@cravath.com  
rschindel@cravath.com  
cray@cravath.com

AMERICAN CIVIL LIBERTIES UNION  
BY: LESLIE COOPER  
(APPEARING VIA VIRTUAL ZOOM)  
125 Broad Street  
New York, NY 10004  
(212) 549-2500  
lcooper@aclu.org

LAMBDA LEGAL DEFENSE AND EDUCATION  
FUND, INC.  
BY: CURREY COOK  
(APPEARING VIA VIRTUAL ZOOM)  
MAIA ZELKIND  
(APPEARING VIA VIRTUAL ZOOM)  
120 Wall Street, 19th Floor  
New York, NY 10005  
(212) 809-8585  
ccook@lambdalegal.org  
mzelkind@lambdalegal.org

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ATTORNEYS FOR THE DEFENDANT  
MICHAEL LEACH, IN HIS OFFICIAL CAPACITY  
AS STATE DIRECTOR OF SOUTH CAROLINA  
DEPARTMENT OF SOCIAL SERVICES:

DAVIDSON WREN & DEMASTERS, PA  
BY: JONATHAN RIDDLE  
(APPEARING VIA VIRTUAL ZOOM)  
1611 Devonshire Drive, Suite 200  
Columbia, SC 29204  
(803) 806-8222  
jriddle@dml-law.com

ATTORNEYS FOR THE DEFENDANTS  
HEALTH AND HUMAN SERVICES,  
ADMINISTRATION FOR CHILDREN AND  
FAMILIES, THE SECRETARY OF HHS, LYNN  
JOHNSON, THE ASSISTANT SECRETARY OF  
ADMINISTRATION OF CHILDREN AND  
FAMILIES, AND STEVEN WAGNER, ASSISTANT  
SECRETARY OF ADMINISTRATION CHILDREN  
AND FAMILIES:

UNITED STATES ATTORNEY'S OFFICE  
DISTRICT OF SOUTH CAROLINA  
BY: CHRISTIE NEWMAN,  
ASSISTANT UNITED STATES ATTORNEY  
(APPEARING VIA VIRTUAL ZOOM)  
55 Beattie Place, Suite 700  
Greenville, SC 29601  
(864) 282-2100  
newman@usdoj.gov

ATTORNEYS FOR THE DEFENDANT  
HENRY MCMASTER, IN HIS OFFICIAL  
CAPACITY AS GOVERNOR OF THE STATE OF  
SOUTH CAROLINA:  
NELSON MULLINS RILEY & SCARBOROUGH, LLP  
BY: MILES COLEMAN  
(APPEARING VIA VIRTUAL ZOOM)  
HUNTER WINDHAM  
(APPEARING VIA VIRTUAL ZOOM)  
1320 Main Street, 17th Floor  
Greenville, SC 29201  
(864) 799-2000  
miles.coleman@nelsonmullins.com  
hunter.windham@nelsonmullins.com

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**ALSO PRESENT:**

**George Libbares, Concierge Technician  
(Appearing Via Virtual Zoom)**

**Wale A. Akintunde, Video Technician  
(Appearing Via Virtual Zoom)**

**(INDEX AT REAR OF TRANSCRIPT)**

1 VIDEO TECHNICIAN: Good morning. We  
2 are going on the record at 9:27 AM on June 3rd,  
3 2021. This is the start of Video Number 1 of the  
4 recorded deposition of Jacqueline Lowe taken by  
5 counsel for the Plaintiff in the matter of Rogers,  
6 et al. v the U.S. Department of Health and Human  
7 Services, et al., filed in the United States  
8 District for the District of South Carolina,  
9 Greenville Division, Case Number 6:19-cv-01567-JD.

10 This deposition is being held via  
11 Veritext Zoom remote conferencing. My name is  
12 Wally Akintunde from the firm Veritext New York and  
13 I am the videographer. The court reporter is Terri  
14 Brusseau from the firm Veritext New York.

15 I'm not authorized to administer an  
16 oath, I'm not related to any party in this action,  
17 nor am I financially interested in the outcome.

18 Counsel and all present in the room and  
19 everyone attending remotely will now state their  
20 appearances and affiliations for the record.

21 MS. JANSON: Kate Janson from Cravath  
22 Swaine & Moore for the Plaintiffs.

23 MR. COLEMAN: Miles Coleman from Nelson  
24 Mullins Riley & Scarborough for Henry McMaster in  
25 his official capacity as Governor of South

1 Carolina.

2 MR. RIDDLE: Jonathan Riddle, Davidson  
3 Wren & DeMasters, representing Michael Leach in his  
4 official capacity as director of South Carolina  
5 Department of Social Services.

6 MS. NEWMAN: This is Christie Newman.  
7 I'm the Assistant U.S. Attorney for the federal  
8 defendants in this case.

9 MR. COOK: Currey Cook from Lambda  
10 Legal representing the Plaintiffs in this case.

11 MR. COOPER: Leslie Cooper from the  
12 ACLU representing Plaintiffs.

13 MS. ZELKIND: Maia Zelkind.

14 MR. RAY: Sorry. Cris Ray from Cravath  
15 Swaine & Moore representing the Plaintiffs.

16 MS. ZELKIND: Maia Zelkind from Lambda  
17 Legal for Plaintiff.

18 MS. SCHINDEL: Rebecca Schindel. I'm  
19 from Cravath Swaine & Moore for Plaintiffs.

20 VIDEO TECHNICIAN: Okay. I think  
21 that's everybody. If there are any objections to  
22 the proceeding, please state them at the time of  
23 your appearance beginning with the noticing  
24 attorney.

25 Will the court reporter please swear in

1 the witness.

2 JACQUELINE LOWE

3 being first duly sworn, testified as follows:

4 VIDEO TECHNICIAN: Thank you. You may  
5 proceed.

6 EXAMINATION

7 BY MS. JANSON:

8 Q. Good morning, Miss Lowe. My name is  
9 Kate Janson. I'm with the law firm called Cravath  
10 Swaine and Moore, and we represent the Plaintiffs  
11 in this action.

12 Would you please state your full name  
13 for the record.

14 A. Jacqueline Lowe.

15 Q. And what is your current home address?

16 A. 3 South Canterbury Court, Blythewood,  
17 South Carolina 29016.

18 Q. I'm going to ask you a bunch of  
19 questions today. But before that, I just wanted to  
20 run through a few ground rules for the deposition  
21 just to make sure that we're on the same page.

22 It will be important for you to answer  
23 all of my questions audibly and verbally. Nodding  
24 your head, for instance, can't be picked up by the  
25 court reporter and she's going to be transcribing

1           A.     Yeah, for South Carolina, it's South  
2     Carolina MENTOR, but it is part of The MENTOR  
3     Network.

4           Q.     Got it. Okay. Thank you. So from  
5     this list -- so -- let me back up a second.

6                     Is South Carolina divided into regions  
7     for purposes of DSS's work?

8           A.     Yes, they are.

9           Q.     Okay. And what region is the  
10    Greenville area a part of?

11          A.     Greenville is a part of the upstate  
12    region.

13          Q.     Is that also referred to as Region 1?

14          A.     Previously it was referred to as  
15    Region 1.

16          Q.     Okay. But now you call it the upstate  
17    region?

18          A.     That is correct.

19          Q.     Okay. If I -- I'll try to call it  
20    that, but if I say Region 1, you'll understand that  
21    that's what I'm talking about?

22          A.     I will, yes.

23          Q.     Great. And can we -- can you run down  
24    the list for me and let me know which of these CPAs  
25    on the list here were -- are Region 1 -- or, sorry,

1 Q. And for about how long have they been  
2 licensed as a CPA in South Carolina?

3 A. More than ten years.

4 Q. Okay. And then what about the entities  
5 that we talked about earlier, the SAFY entities, is  
6 that therapeutic or nontherapeutic or both?

7 A. They're providing both therapeutic and  
8 nontherapeutic services and more than ten years.

9 Q. Perfect. You're asking the questions  
10 for me now. This is great. Okay.

11 So can you describe for me generally  
12 what role child placing agencies, private child  
13 placing agencies, play in the foster care system in  
14 South Carolina?

15 A. Sure. I'll talk about it in sort of  
16 two roles. They're one as a child placing agency  
17 as an entity itself, and so the agency would make  
18 an application with the Department to become a  
19 licensed child placing agency for the state.

20 In that request they are asking to be  
21 considered for licensure to be able to provide  
22 foster care services, meaning that they can  
23 recruit, train, license families or make  
24 recommendations for licensure to the Department.  
25 That's the agency license. And that license for

1 the agency is renewable annually. So they have a  
2 license that's good for one year and then they go  
3 through the process again for the renewal.

4 The second part to that with the child  
5 placing agencies is that they are recruiting  
6 families or individuals who want to be licensed to  
7 provide foster care services for children who are  
8 in need of out-of-home placements or in need of  
9 temporary foster care services. So those  
10 individuals or families would make application to  
11 one of those CPAs.

12 And they go through an application  
13 process, submit the required documentations to be  
14 reviewed, evaluated, and then the applicant or the  
15 family, individual, submits to a home study process  
16 in that one of the workers from the child placing  
17 agency would meet with the family, conduct a  
18 walk-through of the home, assess the family,  
19 interview household -- applicable household  
20 members, arrange for inspections through partner  
21 agencies, like our state fire marshal as well as  
22 our state health and sanitation for those  
23 requirements.

24 The family would pass those  
25 requirements and then the CPA would complete the

1 written home study assessment, submit that to the  
2 Department or DSS and recommend the family for  
3 licensure. DSS receives the information, reviews  
4 it. And if they are in agreement or we are in  
5 agreement with that, would issue the license for  
6 that family for the CPA.

7 Q. Okay. Great. That's extremely  
8 helpful. I'm going to ask some more -- some more  
9 detailed questions about some of the steps of that  
10 process.

11 So you mentioned that the private CPAs  
12 will recruit families who are interested in being  
13 foster families. How did they go about that  
14 recruiting? What did they do to recruit potential  
15 foster families?

16 A. Individual CPAs may do print media,  
17 other communications, mail-outs, have workshops or  
18 presentations in the community. So there are a  
19 number of ways that they get information out to the  
20 public about the need for foster parents or to be a  
21 foster parent with a specific child placing agency.  
22 They have billboards, there are yard signs, word of  
23 mouth, speaking engagements, so there are a number  
24 of ways that a CPA may go about asking for  
25 individuals to become licensed with their agency.

1 bed space or household members own care needs may  
2 exceed what would be time available for care and  
3 all that is in foster care. So those would be some  
4 of the reasons that a family may not be  
5 recommended.

6 Q. Okay. And if -- if a CPA reaches that  
7 determination during the process of working with  
8 the family, does the CPA have to let DSS know,  
9 basically say, hey, we have this family, we've  
10 got -- you know, we went through the process but  
11 we've determined not to recommend them?

12 A. They do not, but they do have to inform  
13 the family of the reasons why they would not be  
14 recommended for licensure.

15 Q. Okay. And the -- sort of the role that  
16 the private CPAs play and the support that they  
17 provide prospective foster families throughout the  
18 application process, is that -- is that pretty  
19 uniform or pretty standard across CPAs or are there  
20 differences in the type of support that one CPA  
21 might offer versus another?

22 A. I'm not aware of any differences for  
23 the most part. I do know that they would work with  
24 the applicants providing the home visits,  
25 interviewing licensure. And then once the

1 don't have numbers for -- specific for upstate.

2 Q. Is it generally in that ballpark would  
3 you say?

4 A. As compared to statewide or just to --

5 Q. Yeah.

6 A. -- upstate?

7 Q. As compared to -- I'm just trying to  
8 understand for the upstate in particular how  
9 much -- you know, how many families are being  
10 recruited and working directly with DSS versus  
11 working with the private CPAs.

12 A. I can't answer that right now. I don't  
13 know.

14 Q. Okay. Do you have any reason to  
15 believe that it's markedly different from that  
16 50/50 split that we've talked about statewide?

17 A. I don't think it's markedly different.  
18 I will say, though, that for the past year or so  
19 we've only been doing the non-kin licensing, so  
20 we're not right now even seeing the, you know --  
21 we're only doing kin, I should say. The non-kin  
22 are being referred to our CPAs, so those numbers  
23 would look different now and so that's why the  
24 50/50 split won't really apply today because of  
25 that shift in our workload.

1 Q. Okay. So you said about a year or so  
2 ago there was a change such that DSS is only  
3 handling directly families that are interested in  
4 providing kinship care? Did I get that right?

5 A. That's correct.

6 Q. Okay. And when we talk about kinship  
7 care, what does that mean?

8 A. So the kinship care are those children  
9 who are entering care and instead of going to an  
10 unrelated individual or family, that the Department  
11 would identify a relative or a next of kin, some of  
12 the kin being someone who has a significant  
13 relationship with the child, who knows that child  
14 and is interested in being licensed to care for  
15 that child to prevent going into an unrelated  
16 foster family home.

17 Q. Okay. And so currently then and for  
18 about the past year, families that were seeking to  
19 become foster families outside of the kinship care  
20 piece of it, they no longer have the opportunity of  
21 working directly with DSS to go through the  
22 application and licensing process, is that right?

23 A. The focus is that DSS would do the kin.  
24 Now, if the family is unable to work with a CPA,  
25 they certainly would come to DSS. I mean, we are

1 we've talked a little bit about -- about Miracle  
2 Hill Ministries so far. And Miracle Hill is a CPA  
3 that provides nontherapeutic foster care in  
4 Region 1, right?

5 A. That's correct.

6 Q. Prior to the filing of this lawsuit,  
7 did DSS become aware that Miracle Hill was refusing  
8 to work with prospective foster families because of  
9 their religion?

10 A. During the license renewal period I  
11 believe for the 2018 renewal, the licensing worker  
12 in review of information that was submitted as well  
13 as a review of their website, it was discovered  
14 that there was information that could be considered  
15 discriminatory.

16 Q. Okay. When you say review of  
17 information that was -- that was submitted, that's  
18 information that was submitted by Miracle Hill in  
19 connection with its license renewing -- renewal  
20 application?

21 A. Yes.

22 Q. And do you know what specific  
23 information that was?

24 A. So documents like related to their  
25 policy. We do a policy review if there are any

1 updates or whether looking for certain things, for  
2 instance, related to disaster planning, how they  
3 interact with families, what are their  
4 requirements, staffing requirements.

5 And so the application is reviewed.  
6 Information for staff, medical, background check  
7 requirements, all of those documents are all  
8 reviewed, and I believe it was found within their  
9 policy as part of the license renewal that it was  
10 discovered.

11 Q. Okay. And prior -- prior to that 2018  
12 licensing renewal period, did DSS or had DSS ever  
13 received a complaint from a family, an applicant,  
14 who had been rejected by Miracle Hill because of  
15 their religion?

16 A. Not that I'm aware of.

17 Q. And prior to the filing of this  
18 lawsuit, did DSS become aware that Miracle Hill was  
19 refusing to accept prospective foster parents  
20 because of their sexual orientation?

21 A. No, just during the license renewal was  
22 the information we found.

23 Q. But did that -- did that information  
24 suggest to DSS that Miracle Hill was -- would  
25 refuse to work with a prospective foster family if

1 A. That would be my recommendation.

2 Q. Okay. Do you know -- do you know  
3 whether at any time Governor McMaster's office  
4 inquired of DSS or asked DSS whether the waiver  
5 that it was asking, requesting in Exhibit -- now  
6 I've lost track of my numbers. Exhibit 17, I  
7 believe.

8 Let me start that over. Did Governor  
9 McMaster's office ever ask DSS whether the waiver  
10 that it was requesting in Exhibit 17 from HHS  
11 would, if granted, have an impact on foster care  
12 services in South Carolina?

13 A. I don't know that.

14 Q. You don't know. Okay. Did -- did DSS  
15 ever study -- conduct any studies or otherwise  
16 consider what effects this -- the waiver that's  
17 being requested in Exhibit 17 would have on the  
18 South Carolina foster care system if granted?

19 A. There were no studies conducted.

20 Q. Was that ever anything that was  
21 discussed at DSS?

22 A. Not that I'm aware of.

23 Q. And there weren't any studies conducted  
24 by DSS regarding what effects this waiver if  
25 granted would have on children in foster care in

1 South Carolina in particular, right?

2 A. No studies were conducted.

3 Q. All right. If we can look back at -- I  
4 can't remember which exhibit this one is. I think  
5 it's Exhibit 6. Okay. Yep. Exhibit 16. This is  
6 the e-mail chain between Beth Williams and Richele  
7 Taylor from February 21st, 2018. And on the first  
8 page there in the second paragraph --

9 A. We're still getting it.

10 Q. I'm sorry.

11 A. No problem.

12 Q. I'm getting ahead of myself.

13 A. Okay. I have it. 16.

14 Q. And then if we look -- if we look on  
15 the second page of that, second paragraph there,  
16 Beth Williams is writing and she says: I willingly  
17 admit my ignorance on this issue and wanted to ask  
18 if the deviation that HHS may grant will cover all  
19 faith-based foster care providers in South Carolina  
20 or just Miracle Hill. We have many colleagues in  
21 other faith-based agencies in the state that are  
22 providing foster care. The desire of Miracle Hill  
23 is that all faith-based child placing agencies will  
24 be covered under this deviation until legislation  
25 can hopefully be changed.

1 Q. Okay. Do you know whether it was the  
2 position of -- whether it is the position of  
3 Michael Leach that Miracle Hill was the only CPA in  
4 South Carolina that needed the waiver that Governor  
5 McMaster requested in Exhibit 17?

6 A. Miracle Hill was the only agency that  
7 we were aware of that was requesting it.

8 Q. Do you know if DSS faced political  
9 pressure to help ensure that Miracle Hill could  
10 obtain an exemption or a waiver from the  
11 nondiscrimination policies and regulations that you  
12 flagged in your January 2018 letter?

13 MR. RIDDLE: Object to the form of the  
14 question. This is Jonathan. You can answer.

15 THE WITNESS: Okay. What was the  
16 question again?

17 BY MS. JANSON:

18 Q. Yeah. It was not a good question. It  
19 was not a good question. Let me try again.

20 Do you know whether there were any --  
21 well, I guess start with South Carolina citizens,  
22 for instance, that -- that breached that -- that  
23 contacted DSS and requested that some sort of  
24 exemption or waiver be provided to Miracle Hill to  
25 allow it to continue its foster care work while

1 that it only works with married couples because of  
2 its religious beliefs, is that right?

3 A. That would be correct.

4 Q. Okay. And would it also -- would the  
5 waiver also apply to Epworth? That was another CPA  
6 that we discussed before.

7 A. Correct.

8 Q. Okay. And then it goes on to say in  
9 the paragraph: The exception applies on the  
10 condition that Miracle Hill or any other subgrantee  
11 making use of the exception be required to refer  
12 potential foster parents that do not adhere to the  
13 subgrantee's religious beliefs to other subgrantees  
14 in the South Carolina foster care program or to  
15 refer them to the South Carolina foster care  
16 program staff themselves.

17 Do you see that there?

18 A. Um-hum. Yes.

19 Q. Does DSS -- does DSS monitor whether  
20 any of the CPAs that are making use of this waiver  
21 do, in fact, refer potential foster parents that  
22 they determine that they won't work with based on  
23 religion, do they refer those foster parents to  
24 other CPAs in South Carolina?

25 A. I don't know the answer to that.

1 Families will inquire directly with the child  
2 placing agency.

3 Q. Can you hear me?

4 A. I can --

5 Q. I can hear you, but it's telling me  
6 your band width is low.

7 A. Okay. So families may inquire directly  
8 with the child placing agency or they may go  
9 through our partner agency, the South Carolina  
10 Foster Parent Association that receives inquiries,  
11 so they are either self-directed or the agency will  
12 refer to one of the child placing agencies,  
13 Heartfelt Calling or -- which is under the state  
14 foster parent association.

15 Q. Okay. So -- but -- sorry. Are you  
16 saying that -- so if I'm -- if I'm a prospective  
17 foster parent and I go to Miracle Hill and I am not  
18 an Evangelical Protestant Christian, I'm a Muslim,  
19 and they say -- I'm just making this up as an  
20 example.

21 But they say, you know, no, thank you,  
22 you know, we're not interested in working with you,  
23 does -- does DSS monitor whether Miracle Hill would  
24 then refer me to another CPA? Does DSS have  
25 visibility into whether that referral actually

1 happens?

2 A. DSS does not.

3 Q. Okay. Is there -- is there anyone  
4 apart from within the CPA itself that would be  
5 monitoring whether that referral takes place?

6 A. Not that I'm aware of.

7 Q. Do you know -- does DSS know whether,  
8 in fact, any CPA is including Miracle Hill that are  
9 making use of the waiver actually do refer foster  
10 parents that they won't work with based on their  
11 religious objections to other CPAs?

12 A. It's not anything that is known to DSS.  
13 If we become aware, it would probably be from the  
14 applicant themselves that would then self-report.

15 Q. And have you had applicants that  
16 have -- that have self-reported along those lines?

17 A. We have not.

18 Q. Has any CPA that's making use of the  
19 waiver, including Miracle Hill, referred any  
20 potential foster parents that they determine they  
21 cannot work with to DSS?

22 A. I'm not aware of any.

23 Q. Okay. And if that had happened, would  
24 you -- would you know about it?

25 A. If it was reported to us, you know,

1 certainly; but, if not, either from the agency  
2 themselves making that known or the applicant, we  
3 wouldn't know.

4 MS. JANSON: All right. Well, we've  
5 been going again since lunch, about an hour and 15  
6 minutes. I think it's probably a good time for --  
7 for a quick maybe ten-minute break if folks are  
8 okay with that.

9 THE WITNESS: Yes.

10 MR. RIDDLE: Very good.

11 MS. JANSON: All right. So let's try  
12 to get -- well, let's make it three o'clock, will  
13 be 12 minutes.

14 VIDEO TECHNICIAN: We are now going off  
15 the record. The time is 2:48 PM.

16 (A recess transpired.)

17 VIDEO TECHNICIAN: We are now going  
18 back on the record. The time is 3:05 PM.

19 BY MS. JANSON:

20 Q. Okay. So, Miss Lowe, is there -- is  
21 there any limitation on the number of CPAs that can  
22 be licensed in South Carolina to provide foster  
23 care services?

24 A. There is not.

25 Q. But we -- I think we talked before

1 statements of the CPA?

2 A. Not always, because we weren't aware  
3 that all of the CPAs had such a statement. We  
4 would look at their forms, their policies,  
5 procedures, information on their website. And it  
6 was again in review of Miracle Hill's documents  
7 that we discovered that, so that wasn't something  
8 that we set out looking for.

9 Q. But in your experience, I mean, it is  
10 entirely possible that a document from a CPA could  
11 be okay based on a nondiscrimination policy, but at  
12 the same time the actual CPA may be not following  
13 their own -- their own --

14 A. Yes.

15 COURT REPORTER: I'm sorry. Jonathan,  
16 I'm sorry, can you repeat that question?

17 BY MR. RIDDLE:

18 Q. What I'm saying is, you know, once  
19 you've reviewed the documents, they are, for lack  
20 of a better word, kosher with the nondiscrimination  
21 policy that it is possible for the actual CPA  
22 themselves to almost sort of violate their own  
23 policy?

24 COURT REPORTER: Hold on. I didn't get  
25 an answer.

1 THE WITNESS: Oh. I said yes.

2 BY MR. RIDDLE:

3 Q. And so the only way that you or DSS or  
4 Director Leach or anyone with the Department of  
5 Social Services would be aware of any potential  
6 problem with discrimination would be from a  
7 complaint from a foster parent?

8 A. Yes.

9 COURT REPORTER: I'm sorry, Jonathan,  
10 with a complaint from who?

11 MR. RIDDLE: A foster parent.

12 COURT REPORTER: Okay. I'm having  
13 trouble -- a little bit of trouble hearing you, so  
14 just speak up for me.

15 MR. RIDDLE: I'm not across from the  
16 computer, so... I'm usually pretty loud, so...

17 BY MR. RIDDLE:

18 Q. And I believe your answer was yes?

19 A. Yes.

20 Q. And just to follow up on the issue of  
21 the number of DSS foster parent workers in each  
22 region, what were the criteria? You said there  
23 were about five to ten in the upstate. Is there a  
24 certain criteria that determines how many DSS-based  
25 employees are going to be in --

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**CERTIFICATE OF REPORTER**

I, Terri L. Brusseau, Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 14th day of June, 2021 at Charleston, Charleston County, South Carolina.



*Terri L. Brusseau*

**Terri L. Brusseau**

**My Commission expires  
April 5, 2026.**

## EXHIBIT 5

Excerpts from the transcript of  
the Rule 30(b)(6) deposition of the  
SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES  
through its designee  
LAUREN COLLINS STAUDT  
taken on June 4, 2021

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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)

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LOCATION OF  
THE DEPONENT: Law Offices of  
Davidson Wren & DeMasters  
1611 Devonshire Drive, 2nd Floor  
Columbia, SC  
TAKEN BY: Counsel for the Plaintiffs  
(Rebecca Schindel)

APPEARANCES OF COUNSEL:

ATTORNEYS FOR THE PLAINTIFFS

EDEN ROGERS and BRANDY WELCH:  
CRAVATH SWAINES & MOORE, LLP  
BY: KATE JANSON  
(APPEARING VIA VIRTUAL ZOOM)  
REBECCA SCHINDEL  
(APPEARING VIA VIRTUAL ZOOM)  
MALAVIKA (MIKA) MADGAVKAR  
(APPEARING VIA VIRTUAL ZOOM)

Worldwide Plaza  
825 Eighth Avenue  
New York, NY 10019  
(212) 474-1989  
kjanson@cravath.com  
rschindel@cravath.com  
mmadgavkar@cravath.com

LAMBDA LEGAL DEFENSE AND EDUCATION  
FUND, INC.

BY: CURREY COOK  
(APPEARING VIA VIRTUAL ZOOM)  
MAIA ZELKIND  
(APPEARING VIA VIRTUAL ZOOM)  
120 Wall Street, 19th Floor  
New York, NY 10005  
(212) 809-8585  
ccook@lambdalegal.org  
mzelkind@lambdalegal.org

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ATTORNEYS FOR THE DEFENDANT  
MICHAEL LEACH, IN HIS OFFICIAL CAPACITY  
AS STATE DIRECTOR OF SOUTH CAROLINA  
DEPARTMENT OF SOCIAL SERVICES:

DAVIDSON WREN & DEMASTERS, PA  
BY: JONATHAN RIDDLE  
(APPEARING VIA VIRTUAL ZOOM)  
1611 Devonshire Drive, Suite 200  
Columbia, SC 29204  
(803) 806-8222  
jriddle@dml-law.com

ATTORNEYS FOR THE DEFENDANTS  
HEALTH AND HUMAN SERVICES,  
ADMINISTRATION FOR CHILDREN AND  
FAMILIES, THE SECRETARY OF HHS, LYNN  
JOHNSON, THE ASSISTANT SECRETARY OF  
ADMINISTRATION OF CHILDREN AND  
FAMILIES, AND STEVEN WAGNER, ASSISTANT  
SECRETARY OF ADMINISTRATION CHILDREN  
AND FAMILIES:

UNITED STATES ATTORNEY'S OFFICE  
DISTRICT OF SOUTH CAROLINA  
BY: CHRISTIE NEWMAN,  
ASSISTANT UNITED STATES ATTORNEY  
(APPEARING VIA VIRTUAL ZOOM)  
55 Beattie Place, Suite 700  
Greenville, SC 29601  
(864) 282-2100  
newman@usdoj.gov

ATTORNEYS FOR THE DEFENDANT  
HENRY MCMASTER, IN HIS OFFICIAL  
CAPACITY AS GOVERNOR OF THE STATE OF  
SOUTH CAROLINA:  
NELSON MULLINS RILEY & SCARBOROUGH, LLP  
BY: MILES COLEMAN  
(APPEARING VIA VIRTUAL ZOOM)  
1320 Main Street, 17th Floor  
Greenville, SC 29201  
(803) 799-2000  
miles.coleman@nelsonmullins.com

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**ALSO PRESENT:**

**George Libbares, Concierge Technician  
(Appearing Via Virtual Zoom)**

**Darin Weaver, Video Technician  
(Appearing Via Virtual Zoom)**

**(INDEX AT REAR OF TRANSCRIPT)**

1 VIDEO TECHNICIAN: We are going on the  
2 record. The time is 9:05 AM. Today is Friday,  
3 June 5th (sic), 2021. Please note the microphones  
4 are sensitive and may pick up whispering, private  
5 conversations and cellular interference. Please  
6 turn off all cell phones and place them away from  
7 the microphone as they may interfere with  
8 deposition audio. Audio and video recording will  
9 continue to take place unless all parties agree to  
10 go off the record.

11 This is Media Unit 1 of the video  
12 recorded deposition of Lauren Staudt, taken by the  
13 counsel for the Plaintiff in the matter of Eden  
14 Rogers and Brandy Welch versus the United States  
15 Department of Health and Human Services, Alex Azar,  
16 in his official capacity as the Secretary of the  
17 United States Department of Health and Human  
18 Services, et al., filed in the United States  
19 District Court for the District of South Carolina,  
20 Greenville Division, Case Number 6:19-cv-01567-JD.

21 This deposition is taking place via  
22 Zoom. My name is Darin Weaver, from the firm  
23 Veritext Legal Solutions New York. I am the  
24 video -- videographer. The court reporter is Terri  
25 Brusseau, also from Veritext Legal Solutions New

1 York.

2 I am not authorized to administer an  
3 oath. I'm not related to any party in this action,  
4 nor am I financially interested in the outcome.  
5 Counsel and all present in the room and everyone  
6 attending remotely will now state their appearance  
7 and affiliation for the record.

8 If there are any objections to  
9 proceeding, please state them at the time of your  
10 appearance beginning with the noticing attorney.

11 MS. SCHINDEL: Rebecca Schindel,  
12 counsel for Plaintiff, affiliated with Cravath  
13 Swaine & Moore, LLC.

14 MR. COLEMAN: I'm Miles Coleman for --

15 MS. NEWMAN: Sorry.

16 MR. COLEMAN: That's all right. Miles  
17 Coleman representing Henry McMaster in his official  
18 capacity as Governor of South Carolina.

19 MS. NEWMAN: Christie Newman. I  
20 represent from the U.S. Attorney's office all the  
21 federal defendants in this case.

22 MR. RIDDLE: Jonathan Riddle from  
23 Davidson Wren & DeMasters representing Michael  
24 Leach in his official capacity as the director of  
25 South Carolina Department of Social Services.

1 MS. JANSON: Kate Janson from Cravath  
2 Swaine & Moore representing the Plaintiffs.

3 MR. COOK: This is Currey Cook of  
4 Lambda Legal representing the Plaintiffs. Good  
5 morning.

6 MS. ZELKIND: Maia Zelkind from Lambda  
7 Legal for Plaintiff.

8 VIDEO TECHNICIAN: Will the court  
9 reporter please swear in the witness.

10 LAUREN STAUDT  
11 being first duly sworn, testified as follows:

12 EXAMINATION

13 BY MS. SCHINDEL:

14 Q. Good morning, Miss Staudt. My name is  
15 Rebecca. I will be taking your deposition today.  
16 I'm going to start with preliminary questions and  
17 then -- and then move along into more -- more  
18 substantive matters.

19 A. Okay.

20 Q. What is your current address?

21 A. 1809 Ephrata Drive, West Columbia,  
22 South Carolina 29169.

23 Q. And have you ever had your deposition  
24 taken before?

25 A. Yes.

1 applicant and how, you know, they -- how well they  
2 do in -- in gathering up that information.

3 But once we have a complete packet,  
4 complete application, it's just -- it varies, but  
5 usually within 30 to 60 days we can turn that  
6 around.

7 Q. Does DSS also contract the CPAs beyond  
8 the -- the licensing?

9 A. Yes.

10 Q. Are you involved in that contracting  
11 process at all?

12 A. No.

13 Q. And just so we know, who -- who does  
14 handle that, that side of things?

15 A. We have a contract monitoring unit. I  
16 think there are some steps prior to it going there  
17 with our finance department, but I'm not involved  
18 in that.

19 Q. What role does a CPA play in South  
20 Carolina's foster care system?

21 COURT REPORTER: I'm sorry, Rebecca,  
22 can you repeat that?

23 BY MS. SCHINDEL:

24 Q. I asked what role do CPAs play in South  
25 Carolina's foster care system?

1           A.     They -- they recruit foster families or  
2 applicants for -- to become licensed as foster  
3 parents to serve our foster children.

4           Q.     What does it mean to be in the care of  
5 a private CPA?

6           A.     That they are -- that they are -- you  
7 know, the licensed home is kind of under their --  
8 under their supervision I'd say. They work with  
9 that family to make sure that they meet the  
10 requirements, that they maintain them.

11                  And then once the child is placed in  
12 the home, they're, you know, working for that child  
13 making sure that the child gets the care that he  
14 needs.

15           Q.     So could it also mean that a child  
16 lives in a facility run by the CPA?

17           A.     Could you repeat that?

18           Q.     Sure. Are you having a hard time  
19 hearing me? Is that any better?

20           A.     I just -- yeah, I just didn't  
21 understand that, your sentence. I can hear you.

22           Q.     Oh, okay. I asked could it also mean  
23 that a child lives in a facility run by the CPA?

24           A.     If they also have a group home license.

25           Q.     Are you familiar with a CPA named

1 on behalf of particular foster parents?

2 A. Well, we get -- we get a recommendation  
3 do they meet the requirements or not.

4 Q. Is it up or down?

5 A. Yes.

6 Q. So do CPAs ever discuss concerns of  
7 that applicant that they might have with DSS?

8 A. Yes.

9 Q. And how -- how are those concerns  
10 discussed?

11 A. They may call us to staff a particular  
12 situation, you know, prior to them sending a packet  
13 to us to -- for review or making the  
14 recommendations, they -- they might want to kind of  
15 run something by us and see if, you know, that's a  
16 concern as well.

17 Q. In your experience, do those concerns  
18 ever have to do with a prospective foster parent's  
19 religion?

20 A. I have not had that experience, no.

21 Q. And in your experience those concerns  
22 have to do with the prospective foster parent's  
23 sexual orientation?

24 A. No.

25 Q. How much weight -- in your experience,

1 how much weight does DSS give to the  
2 recommendations by a private CPA with respect to  
3 whether to license a foster parent?

4 A. We -- we're basing that based on what  
5 they're providing us. So if they recommend, then  
6 unless we in our review see something that does not  
7 meet the requirements, we -- we take the  
8 recommendation.

9 Q. Is it rare to not take a  
10 recommendation?

11 A. The end -- the end role -- you know,  
12 the end recommendation, you know, normally we can  
13 work something out and they could get additional  
14 information to help what we have. It would be rare  
15 to say no, but we do say no.

16 Q. Do private CPAs provide any support to  
17 foster families after they are licensed?

18 A. Yes.

19 Q. And what is that support?

20 A. Again, to -- to make their quarterly  
21 visits or more often if the child is at home they  
22 are providing training to them and support. They  
23 gather additional information as far as annual  
24 background checks, those kind of things.

25 Q. Is the training related to unique needs

1 of foster children?

2 A. Yes, or something related to the care.

3 Q. Do they provide counseling for foster  
4 parents?

5 A. I don't know.

6 Q. Do they assist the family in caring for  
7 the child?

8 A. As support.

9 Q. Do they make doctors' appointments?

10 I'm sorry, go on.

11 A. Not physically caring for them. You  
12 know, it's -- the child is in their home, but, yes,  
13 that's -- that's support, yes.

14 Q. Doing things like making doctors'  
15 appointments, assisting with transportation?

16 A. Yes.

17 Q. Would they provide babysitting services  
18 for a foster family's biological children if the  
19 foster parents need to take the child -- the foster  
20 child to a doctor's appointment?

21 A. I'm not aware of that.

22 Q. Does DSS to your knowledge provide any  
23 of this type of support to families that apply to  
24 be foster parents directly for DSS?

25 A. I'm not aware of that.

1 support in that way. And as well as, you know,  
2 care for a child that might be in their home  
3 assisting in providing services for that child.

4 Q. You had mentioned earlier that some  
5 CPAs serve a particular region in the state and  
6 some serve statewide, is that right?

7 A. Yes.

8 Q. For CPAs that serve statewide, do they  
9 have offices in each region that they serve?

10 A. They may or may not.

11 Q. Is there any benefit to prospective  
12 parents in working with the CPA to have an office  
13 near where they live?

14 A. Just that the staff would be closer to  
15 them.

16 Q. And that could be a benefit if they  
17 needed quicker assistance or some other sort of --  
18 form of -- if they need help?

19 A. Yeah.

20 Q. In your experience, are there  
21 differences in the quality of South Carolina CPAs?

22 A. That's -- that's hard to -- that's hard  
23 to, you know -- we don't rate -- we don't rate a  
24 CPA like that.

25 Q. Do you view all CPAs as

1 interchangeably?

2 A. Interchangeably? I don't -- no.

3 Q. Are there differences in their access  
4 to financial resources?

5 A. They all have different funding  
6 sources.

7 Q. Are some better funded than others?

8 A. I don't know.

9 Q. Are there differences in the number of  
10 staff members to go to recruiting and supporting  
11 prospective foster parents?

12 A. There are different -- there are  
13 different sizes of CPAs, so there are some larger  
14 CPAs than smaller ones, so they would have more  
15 staff, larger ones.

16 Q. Are there differences in their mission  
17 statements?

18 A. Yes.

19 Q. Are there differences in the  
20 communities that the CPA serves?

21 A. Just by pure location, yes.

22 Q. The only difference in the community  
23 that the CPA serves is their location?

24 A. What do you mean by community?

25 Q. Do some CPAs recruit from particular

1 communities as opposed to other CPAs that might  
2 recruit from different communities?

3 A. I'm not -- I'm not aware of any just  
4 parting a certain community.

5 Q. Are there differences in CPAs'  
6 recruiting efforts?

7 A. Yes.

8 Q. What are those differences?

9 A. Again, some choose to go to a coffee  
10 shop, some may go to churches. They all have their  
11 differences as far as where they go to recruit.

12 Q. Are some of those recruitment efforts  
13 more successful than others?

14 A. I don't know.

15 Q. Are there differences in their  
16 advertising efforts?

17 A. Yes.

18 Q. What are those differences?

19 A. Well, again, we -- we don't, you know,  
20 get into the nitty-gritty of that, but some might  
21 have a ad on a radio station, others might, you  
22 know, put out fliers at a county fair, so there's  
23 just differences.

24 Q. Because of those differences are some  
25 CPAs better known than others?

1           A.    I would -- I think there would be -- I  
2    mean, that's my assumption, but I'm only assuming.

3           Q.    But that assumption comes from your  
4    experience at DSS?

5           A.    Yes.

6           Q.    Are there differences in the level of  
7    support that CPAs offer to prospective foster  
8    parents during the application and licensing  
9    process?

10           MR. COLEMAN:  Object to the form of the  
11    question.

12    BY MS. SCHINDEL:

13           Q.    You can answer.

14           A.    I said yes.

15           Q.    What are those differences?

16           A.    Repeat the question so I can --

17           Q.    Sure.  Let me just read it back to you.

18    It was:  Are there differences in the level of  
19    support that CPAs offer prospective foster parents  
20    during the licensing and application process?

21           A.    Again, each CPA is different, so they  
22    have different number of staff.  They -- they  
23    may -- they -- they're all just a little bit  
24    different, so I would -- the level of support is  
25    going to depend on each CPA and their staff that

1 they have available.

2 Q. So some CPAs will provide greater  
3 support than others?

4 A. Yes.

5 Q. Are there differences in the level of  
6 support given to parents once they are licensed as  
7 foster parents?

8 A. Because all CPAs are different, yes,  
9 probably.

10 Q. CPAs work with varying numbers of  
11 foster parents, is that right? Some work with many  
12 parents, some work with only a few?

13 A. That's correct.

14 Q. And you mentioned earlier that you're  
15 familiar with Miracle Hill Ministries?

16 A. Yeah.

17 Q. Is that right?

18 A. Yes.

19 Q. Do you know where Miracle Hill falls in  
20 that spectrum? Do they work with many parents, do  
21 they work with a few relative to other CPAs?

22 A. Yes, they have quite a few.

23 Q. Would you say they work with -- that  
24 they're on the higher end of that spectrum?

25 A. Yes.

1 COURT REPORTER: I'll take care of  
2 that.

3 MR. COLEMAN: Thank you.

4 MS. JANSON: Okay. That should be  
5 loading now.

6 BY MS. SCHINDEL:

7 Q. So this is -- for the record, this is  
8 Exhibit 17. It is Bates stamped Miracle\_Hill\_  
9 Subp\_008026 to 028.

10 And this is a letter from DSS to  
11 Senators Shealy, Young, Climer and Turner dated  
12 February 28, 2018. Have you seen this document  
13 before?

14 A. Really, I don't have it -- doesn't look  
15 familiar to me.

16 Q. Okay. Well, we'll just spend a few  
17 minutes with it. Do you agree that this document  
18 is a letter from DSS to -- to the senators that I  
19 listed out before?

20 A. Yes.

21 Q. Do you agree that in the second  
22 paragraph, it says -- it says: Last year the  
23 Department and MHM -- would you agree that MHM is a  
24 reference to Miracle Hill --

25 A. Yes.

1 Q. -- began having conversations regarding  
2 MS -- MHM's practice of refusing services to foster  
3 and adoptive families who are not Protestant  
4 Catholic -- excuse me, Protestant Christian, e.g.,  
5 Catholic, Episcopalian, Jewish, etc., in light of  
6 federal regulations.

7 And then the paragraph below that says:  
8 In response to your request letter dated February  
9 21st, 2018, please find responsive documents  
10 attached and more fully described below.

11 And then there's an italics below that  
12 that says: That DSS provide us with documentary  
13 evidence to substantiate its position that Miracle  
14 Hill may be unlawfully discriminating on the basis  
15 of religion potentially in violation of various  
16 South Carolina Code of Regulations?

17 A. Yes.

18 Q. And federal regulations. And then you  
19 see below that that there are attachments listed  
20 out, Attachments 1 through 10?

21 A. Yes.

22 Q. And do you see that attachment one  
23 says: Excerpt from MHM 2017 licensing renewal  
24 submission containing MHM's description of its  
25 foster home program -- program describing

1 qualifications, including the requirements that a  
2 foster parent must, quote, one, be a born-again  
3 believer in the Lord Jesus Christ as expressed by a  
4 personal testimony and Christian conduct; two, be  
5 in agreement without reservation with the doctrinal  
6 statement of Miracle Hill Ministries; three, be an  
7 active participant in --

8 COURT REPORTER: Rebecca. Rebecca,  
9 you're -- Rebecca, you're going to have to slow  
10 down for me. Start with number two.

11 MS. SCHINDEL: Two, be in agreement  
12 without reservation with the doctrinal statement of  
13 Miracle Hill Ministries; three, be an active  
14 participant and in good standing with a Protestant  
15 church, close quote, et cetera.

16 Do you see that?

17 A. Yes.

18 Q. And do you -- it says that an excerpt  
19 from Miracle Hill's licensing renewal submission,  
20 right?

21 A. Yes.

22 Q. And those are materials that you would  
23 have received and reviewed?

24 A. I may not have -- I may not have  
25 reviewed it, but, yes, it would have gone with the

1 and they're eligible?

2 A. Yes.

3 Q. I believe you had testified earlier in  
4 response to questioning from Mr. Coleman that all  
5 CPAs and DSS provide the same minimum level of  
6 support to parents after they are licensed, is that  
7 right?

8 A. Yes.

9 MR. COLEMAN: Object to the form of  
10 that.

11 BY MS. SCHINDEL:

12 Q. Although they provide a minimum level  
13 of support, there are still differences in the  
14 types of support that's provided, isn't that right?

15 A. Yes.

16 Q. And some CPAs provide greater support  
17 than others?

18 MR. COLEMAN: Object to the form.

19 THE WITNESS: Yes.

20 MS. SCHINDEL: Okay. I'm not sure what  
21 the tab is, but could you put up the exhibit -- the  
22 new ACF exhibit, please.

23 (EXHIBIT 19, Letter dated 6/4/20 to  
24 William H. Davidson, II, Esq. and Kenneth P.  
25 Woodington, Esq. from Nekki Shutt, with

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CERTIFICATE OF REPORTER

I, Terri L. Brusseau, Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 14th day of June, 2021 at Charleston, Charleston County, South Carolina.



*Terri L. Brusseau*

**Terri L. Brusseau**  
**My Commission expires**  
**April 5, 2026.**

## EXHIBIT 6

Excerpts from the transcript of  
the Rule 30(b)(6) deposition of the  
MIRACLE HILL MINISTRIES  
through its designee  
SHARON BETTS  
taken on June 17, 2021

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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, )  
)  
v. )  
)  
UNITED STATES DEPARTMENT OF )  
HEALTH AND HUMAN SERVICES, )  
et al., )  
)  
Defendants. )  
\_\_\_\_\_ )

Videotaped Deposition of SHARON BETTS

(Taken by Plaintiffs)

(Taken virtually)

Tuesday, June 22, 2021

Reported in Stenotype by  
Christine A. Taylor, RPR  
Registered Professional Reporter

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REMOTE APPEARANCES

ON BEHALF OF PLAINTIFFS:

Rebecca Schindel, Esq.  
Mika Madgavkar, Esq.  
Cravath Swaine & Moore, LLP  
825 Eighth Avenue  
New York, New York 10019  
212.474.1459  
rschindel@cravath.com  
and  
Karen Loewy, Esq.  
Lambda Legal Defense  
1776 K Street, N.W., 8th Floor  
Washington, DC 20006  
202.804.6245

ON BEHALF OF FEDERAL DEFENDANTS:

Christie V. Newman, Esq.  
United States Attorney's Office  
1441 Main Street, Suite 500  
Columbia, South Carolina 29201  
803.929.3030  
christie.newman@usdoj.gov

ON BEHALF OF DEFENDANT HENRY MCMASTER:

Miles E. Coleman, Esq.  
Nelson Mullins Riley & Scarborough, LLP  
2 West Washington Street, Fourth Floor  
Greenville, South Carolina 29601  
864.373.2352  
miles.coleman@nelsonmullins.com

ON BEHALF OF MIRACLE HILL MINISTRIES AND WITNESS:

Steve A. Matthews, Esq.  
Haynsworth Sinkler Boyd  
1201 Main Street, 22nd Floor  
Columbia, SC 29201  
smatthews@hsblawfirm.com

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VIDEOGRAPHER:

Christopher Mills

DEPOSITION OF SHARON BETTS, a witness called  
on behalf of Plaintiffs, before Christine A. Taylor,  
Registered Professional Reporter and Notary Public, in  
and for the State of South Carolina, taken virtually,  
on Tuesday, June 22, 2021, commencing at 9:09 a.m.

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P R O C E E D I N G S

THE VIDEOGRAPHER: We're now on the record.  
Today's date is June 22, 2021. The time is  
approximately 9:09 a.m. This is the video deposition  
of Sharon Betts. This deposition is taken in the  
matter of Eden Rogers and Brandy Welch versus the U.S.  
Department of Health and Human Services, et al.

Will counsel please introduce themselves for  
the record?

MS. SCHINDEL: This is Rebecca Schindel for  
plaintiffs from Cravath Swaine & Moore, LLP.

MS. NEWMAN: This is Christie Newman. I  
represent the federal defendants in this case.

MS. LOEWY: This is Karen Loewy for plaintiffs  
from Lambda Legal.

MS. MADGAVKAR: This is Mika Madgavkar for  
plaintiffs from Cravath Swaine and Moore, LLP.

MS. ZELKIND: This is Maia Zelkind from Lambda  
Legal for plaintiffs.

MR. COLEMAN: This is Miles Coleman  
representing Henry McMaster in his official capacity as  
Governor of South Carolina. I also represent Michael  
Leach in his official capacity as the director of South  
Carolina Department of Social Services.

MR. MATTHEWS: This is Steve Matthews,

1 Haynsworth Sinkler Boyd, representing Miracle Hill  
2 Ministries, Inc., and the witness, Sharon Betts.

3 THE VIDEOGRAPHER: All right. If that's  
4 everybody, will the court reporter please swear in the  
5 witness.

6 SHARON BETTS,  
7 having first been duly sworn, was examined  
8 and testified as follows:

9 EXAMINATION

10 BY MS. SCHINDEL:

11 Q. Hello, Ms. Betts. My name is Rebecca  
12 Schindel. I'll be taking your deposition today.  
13 Could you please state your full name for the record?

14 A. Sharon Marie Betts.

15 Q. And what is your current address?

16 A. 460 McConnell Road, Marietta, South Carolina  
17 29661.

18 Q. Have you ever been deposed before?

19 A. No.

20 Q. Okay. So I'm going to give just a few ground  
21 rules and then I will ask you a series of questions,  
22 and then we'll take breaks as needed throughout the  
23 day. So you must answer all of my questions and all  
24 questions from any other attorney audibly and  
25 verbally. Nodding your head, for example, would not

1 MR. MATTHEWS: I'm going to object at this  
2 point to make sure that these questions are directed to  
3 Ms. Betts in her individual capacity. To the extent  
4 they're directed toward Miracle Hill's processes, that  
5 would be topic 1 on the Notice of Deposition which went  
6 to Mr. Reid Lehman. He was questioned about that the  
7 other day. That is not a topic on which Ms. Betts is  
8 designated as a Miracle Hill witness.

9 MS. SCHINDEL: Well, I'm not sure that this is  
10 topic 1.

11 BY MS. SCHINDEL:

12 Q. But, sure, why don't we start first in your  
13 individual capacity as your role as a licensed  
14 supervisor. Would concerns about a spiritual  
15 well-being lead you to ask additional questions during  
16 the home study?

17 A. That would have been looked at an inquiry  
18 stage and further discussed at the first home study  
19 visit in the home.

20 Q. So in the initial home study visit which  
21 comes after the inquiry; is that right?

22 A. Yes.

23 Q. You would have explored the home's spiritual  
24 health and well-being?

25 A. Yes.

1 Q. In what ways would you explore that?

2 A. By asking questions.

3 Q. And what questions would you ask?

4 A. I would ask them to share how they follow  
5 Christ on a day-to-day basis. I would ask them what  
6 Jesus means to them. I would ask them what the cross  
7 means to them. And I would ask them to tell me what  
8 they believe the gospel to be.

9 Q. And are there specific --

10 A. And I would ask -- and I would ask them about  
11 their church.

12 Q. And let's start with the first question. The  
13 question about how they share -- how they follow  
14 Christ on a day-to-day basis. Is there a set of  
15 answers that you're looking for with that question?

16 A. Not a specific answer.

17 Q. Why do you ask that question?

18 A. I want to know what they do on a day-to-day  
19 basis to follow Christ. Do they know him? Do they  
20 believe in him?

21 Q. What about the question about what they  
22 believe the gospel to be, is there a specific set of  
23 answers that you're looking for with that question?

24 A. I would look for them to say that the gospel  
25 is that Jesus died, he was buried, and he rose again to

1 safe sinful mankind.

2 Q. Then the final question you said you would  
3 ask about their church. What would you ask about  
4 their church?

5 A. Where they go to church, what their  
6 involvement in that church is, and perhaps if they have  
7 children of their own, I would ask how their children  
8 are involved in the church.

9 Q. And why are you asking those questions?

10 A. We would want the family to be attending  
11 church together and we would want to see what they're  
12 teaching their children.

13 Q. Why do you ask where they go to church?

14 A. Because -- is that a personal question or is  
15 that a Miracle Hill question?

16 Q. Well, right now I'm asking you as a -- in  
17 your role as a licensing supervisor.

18 MR. COLEMAN: This is Miles. Sorry to object.  
19 What do you mean by that, Rebecca, 30(b)(6) or  
20 individual?

21 MS. SCHINDEL: Well, this is your individual  
22 capacity, but it is being informed by your role as a  
23 licensing supervisor. So I'm asking you what you do as  
24 a licensing supervisor testifying in your individual  
25 capacity.

1 MR. COLEMAN: Thank you.

2 THE WITNESS: I would again want to make sure  
3 that they followed Miracle Hill's requirements in  
4 the -- in the church that they would attend.

5 BY MS. SCHINDEL:

6 Q. And what do you mean by that?

7 A. Miracle Hill has certain standards of the  
8 foster parents that we are partnering with.

9 Q. Right. I think you said "I want to make sure  
10 they followed Miracle Hill's requirements in the  
11 church that they attend."

12 So what does it mean to follow Miracle Hill's  
13 requirements in the church that the parents attend?

14 A. Miracle Hill requires foster parents who  
15 partner with us are following Jesus and that they  
16 attend a Christian church.

17 Q. So is the purpose of asking which church a  
18 family attends to ascertain whether it is a Christian  
19 church?

20 A. Say that question again.

21 Q. Is the purpose of asking the family which  
22 church they attend to ascertain whether that church is  
23 a Christian church?

24 A. Yes.

25 Q. And how do you determine whether the church

1 is a Christian church?

2 A. It would be a church that would believe the  
3 Bible, that would follow Christ, follow our doctrinal  
4 statement at Miracle Hill Ministries.

5 Q. So the church as a whole would need to agree  
6 with the doctrinal statement at Miracle Hill  
7 Ministries?

8 A. No.

9 Q. So could you explain what you meant by that  
10 the church would need to follow our statement at  
11 Miracle Hill Ministries?

12 A. It would need to be considered a Christian  
13 church.

14 Q. What -- what does it mean to be considered a  
15 Christian church?

16 A. It would be a church that would be preaching  
17 the gospel as I had explained. It would be a church  
18 that would be active in encouraging families to follow  
19 Christ.

20 Q. And is it your understanding that these --  
21 these questions that you're exploring during this  
22 initial home study, is your understanding that Miracle  
23 Hill expects you to be asking these types of questions  
24 as part of your employment?

25 I think you said yes, but actually the audio

1 didn't come through.

2 A. I'm sorry. Yes.

3 Q. You mentioned that Miracle Hill works with  
4 prospective foster parents to help them obtain  
5 licenses to serve as foster parents; is that right?

6 A. Say that question one more time.

7 Q. Did Miracle Hill work with prospective foster  
8 parents to help them obtain their licenses to serve as  
9 foster parents in the state?

10 A. Yes.

11 Q. How many foster parent applications -- and  
12 I'm now asking you this as a representative of Miracle  
13 Hill. How many foster parent applications did Miracle  
14 Hill receive thus far in 2021?

15 A. I do not know. You're asking inquiries, is  
16 that what you're asking?

17 Q. Yes, inquiries.

18 A. I do not have that number.

19 Q. Is that number maintained somewhere within  
20 Miracle Hill's records?

21 A. Yes.

22 Q. Where is that number maintained?

23 A. On -- by a computer.

24 Q. And how is that number maintained?

25 A. On a monthly spreadsheet with all inquiries

1 done so?

2 A. Yes.

3 Q. Okay. Does Miracle Hill support foster  
4 families during the application and licensing process?

5 A. Yes.

6 Q. How does Miracle Hill do that?

7 A. Miracle Hill provides all of the application  
8 paperwork. Miracle Hill has ongoing conversations and  
9 phone calls, e-mails, contact with that family.  
10 Miracle Hill submits a fire inspection request to the  
11 state fire marshal's office. Miracle Hill provides  
12 e-mail links to specific trainings that the foster  
13 parents must complete. And Miracle Hill conducts the  
14 two home study visits that I previously referenced.

15 Q. Is that the extent of the support that  
16 Miracle Hill provides to prospective foster families  
17 during the application and licensing process?

18 A. We could add things such as prayer support.  
19 We could add things if they needed a bed, dresser,  
20 things like that. They can request that to see if we  
21 have availability to help them provide that.

22 Q. Does Miracle Hill provide support to foster  
23 families after they are licensed?

24 A. Yes.

25 Q. What support do they provide?

1           A. They, again, offer prayer and encouragement.  
2 They also are required by state DSS to conduct regular  
3 ongoing visits to the foster home. Phone calls,  
4 e-mails, maintaining a family file, child file, per DSS  
5 request. They help to establish an individual service  
6 plan for the child. They give resources to community  
7 events activities, educational support, and contact  
8 with DSS case workers regarding the needs of the child.

9           Q. You said they give resources to community  
10 events activities, what does that mean?

11           A. From time to time there may be a donor who  
12 give us tickets to an event such as the Children's  
13 Museum in the upstate. We often are invited by various  
14 churches for other kinds of places like that would  
15 invite us to a -- an event that they were holding for  
16 foster families or just in general to support children.

17           Q. You said we're often invited by various  
18 churches or places like that. What other than  
19 churches are you referring to?

20           A. There might be some community type  
21 organizations, the Lion's Club, et cetera.

22           Q. And in your previous answer, you also  
23 mentioned support, that you provide educational  
24 support. What does that mean?

25           A. We have a person on our staff who does

1 research connections with the local -- specifically  
2 Greenville County School District, in helping to find  
3 resources for children that may have educational needs.  
4 It might be tutoring. It might be helping them as a  
5 foster family deals with Individual Educational Plan  
6 meeting.

7 Q. And is that sort of service required by DSS?

8 A. No.

9 Q. Do all child placing agencies provide that  
10 service?

11 A. I do not know.

12 Q. Are you aware of other child placing agencies  
13 that provide that service?

14 A. No.

15 Q. And the community events that we spoke about  
16 a few moments ago, tickets to museums or access to  
17 other community spaces, is that sort of service  
18 required by DSS?

19 A. No.

20 Q. Do all other CPAs provide that benefit?

21 A. I do not know. I do know some do.

22 Q. Which -- which do?

23 A. Personally, I'm aware of Thornwell and Connie  
24 Maxwell.

25 Q. And what are you aware of when you say --

1 what are you thinking of when you say that they  
2 provide these benefits?

3 A. Thornwell had foster families to the  
4 Greenville Drive baseball game. Connie Maxwell has  
5 donors who also give various items as well as tickets  
6 to events.

7 Q. Are you aware of any other CPAs that provide  
8 similar benefits?

9 A. Not personally.

10 Q. We mentioned earlier in our -- in this  
11 deposition that Miracle Hill has a position known as a  
12 placement coordinator; is that right?

13 A. I'm sorry?

14 Q. Miracle Hill has a position known as a  
15 placement coordinator?

16 A. Yes.

17 Q. What is a placement coordinator?

18 A. A placement coordinator works with the  
19 placement units of each of the regions -- regions of  
20 DSS. They are sent universal applications from DSS and  
21 they look through those applications. They look at our  
22 available families to see if we have a family that  
23 would be suitable and appropriate for the needs of  
24 those children. That coordinator then discusses all of  
25 those universal applications with a supervisor and then

1 referrals are given to DSS as to appropriate families  
2 that may be able to be meet the needs of that child.

3 Q. What support, if any, do placement  
4 coordinators provide to foster families?

5 A. A placement coordinator makes a placement  
6 visit whether at the time the child is placed there or  
7 within 24 hours after that. Again, to pray with that  
8 family, to answer questions, to get paperwork signed.

9 Q. Is that required by DSS?

10 A. No.

11 Q. Do other -- do all other CPAs provide the  
12 same service?

13 A. I do not know.

14 Q. Are you aware of other CPAs that -- is  
15 Miracle Hill aware of other CPAs that provides the  
16 same service?

17 A. We do not know.

18 Q. And we also spoke earlier about a position  
19 called a care coordinator; is that right?

20 A. Yes.

21 Q. And what does a care coordinator do?

22 A. A care coordinator has a caseload of licensed  
23 foster families of whom have children placed in their  
24 home. Their responsibility then would be -- is to meet  
25 with that family on a monthly basis, see that child, to

1 talk with that child to talk about progress. They  
2 initially set up a individual service plan, which is  
3 reviewed monthly and rewritten on a six-month basis.  
4 They also may maintain a few homes that do not have  
5 placements just depending on the availability of  
6 licensing specialists who handle those cases and their  
7 caseloads.

8 Q. The individual service plan, that -- is that  
9 required by DSS?

10 A. It is not.

11 Q. What is the individual service plan?

12 A. The individual service plan covers the  
13 strengths, needs, preferences of the child, and then  
14 setting goals for those.

15 Q. Do all other CPAs also develop individual  
16 service plans for the foster children with whom  
17 they're working?

18 A. We do not know.

19 Q. Do you have knowledge of whether any other  
20 CPAs do this?

21 A. We do not know.

22 Q. And you had mentioned also a monthly visit;  
23 is that right?

24 A. Yes.

25 Q. Is that required by DSS?

1 A. No.

2 Q. Do all other CPAs also provide monthly  
3 visits?

4 A. We do not know.

5 Q. Are you aware of any other CPA that provides  
6 a monthly visit?

7 A. No.

8 Q. And you mentioned that they may also -- the  
9 care coordinators may also maintain a few homes that  
10 do not have placements. What does that mean?

11 A. They would make -- that would be a licensed  
12 family that either had a placement at one point and the  
13 child has left, perhaps returned home or placed  
14 adoptively or a relative placement. But they would  
15 maintain that family's file as far as what is required  
16 by DSS, a quarterly visit, a monthly phone call,  
17 keeping their paperwork up to date, handling anything  
18 that would require attention in regard to that family.

19 Q. Is the quarterly visit required by DSS?

20 A. Yes.

21 Q. Is the monthly phone call required by DSS?

22 A. No.

23 Q. Do all other CPAs provide that monthly phone  
24 call?

25 A. Do not know.

1 specialists, these also -- these are the same monthly  
2 phone calls we discussed a moment ago; right?

3 A. Correct.

4 Q. Do licensing specialists provide support to  
5 foster families that's not required by DSS beyond the  
6 monthly phone calls?

7 A. Yes.

8 Q. What support is that?

9 A. That would be prayer support, encouragement.  
10 They work with them in setting up respites to help  
11 other licensed foster families who would need that,  
12 following up with those people after a respite has  
13 happened to see if things have gone well. If there are  
14 anything specific they need in regard to helping with  
15 keeping up with their paperwork and/or training hours,  
16 those kind of things of just encouraging them and  
17 giving them resources if they need additional  
18 information.

19 Q. You mentioned respite care. What is respite  
20 care?

21 A. Respite care is typically provided for foster  
22 families who may have to leave town suddenly or have a  
23 planned vacation that they could not take a foster  
24 child with, just a break away for a weekend away. We  
25 encourage families to take a break because traumatized

1 children do require a lot of attention, and so  
2 sometimes just getting themselves refreshed. So we  
3 have families who do respite care specifically meeting  
4 the needs of those children while a regular foster  
5 family would be away or needing a break.

6 Q. Does Miracle Hill license families solely for  
7 the purpose of providing respite care?

8 A. Yes.

9 MR. COLEMAN: Object to the form of the  
10 question. This is Miles.

11 BY MS. SCHINDEL:

12 Q. Does Miracle Hill work with foster families  
13 who are licensed solely for the purpose of providing  
14 respite care?

15 A. Yes.

16 Q. And is respite care required by DSS?

17 A. I'm not sure I understand your question.

18 Q. Is a -- is a -- is the ability to have  
19 respite through use by relying on another licensed  
20 foster care family, is that something that DSS  
21 requires child placing agencies to be able to provide  
22 to the families that it works with?

23 A. No.

24 Q. Do all other CPAs provide the families that  
25 they work with access to respite care?

1 A. Just foster children.

2 Q. Do -- roughly, what portion of Miracle Hill's  
3 families -- foster families, by which I mean families  
4 that are working with Miracle Hill to obtain a  
5 license, are serving solely as respite care providers?

6 A. I would approximate right now 30 families.

7 Q. Does Miracle Hill have a position known as a  
8 family support specialist?

9 A. Yes.

10 Q. And what is a family support specialist?

11 A. Family support specialist is the communicator  
12 with the foster families on behalf of the Miracle Hill  
13 staff. They communicate by e-mail typically regarding  
14 trainings that are available in the community as well  
15 as Miracle Hill. She also is in charge of the schedule  
16 and maintaining the monthly webinar that we offer our  
17 families, and so she's usually live on those webinars.  
18 She also is in charge of a closet, if you want to call  
19 it that, area where we have donations that people  
20 donate toys clothes, et cetera. And she plans events  
21 so that people can come there and pick up those items  
22 and also encourages the care coordinators and this  
23 other staff to take them to the foster homes when they  
24 visit.

25 She also sets up any kind of get-togethers,

1 A. No, I do not see that.

2 Q. The -- it's the page following the -- it's  
3 number 9 right after the social recreational  
4 opportunities.

5 A. I'm sorry, I'm still not seeing what you're  
6 looking at.

7 MR. MATTHEWS: Rebecca, you want me to help  
8 her look at that?

9 MS. SCHINDEL: Yeah, if you could just point  
10 her to -- if you see it.

11 THE WITNESS: Yes, I have it now.

12 BY MS. SCHINDEL:

13 Q. And it says a case manager is available to  
14 provide support in crisis intervention through Miracle  
15 Hill Ministries 24-hour emergency on-call system?

16 A. Yes.

17 Q. What is the 24-hour emergency on-call system?

18 A. Our staff rotate and have an emergency phone  
19 and answer those calls any -- 24 hours a day.

20 Q. And will Miracle Hill staff -- whoever is on  
21 call, will that staff person go to a foster parent's  
22 house, if necessary, to assist with an emergency?

23 A. Yes.

24 Q. And that would happen any time of the day?

25 A. Yes.

1 Q. And what sorts of crises has Miracle Hill had  
2 to work or situations has Miracle Hill had to deal  
3 with through this 24-hour service?

4 A. Typically, it's been a threat of a suicide in  
5 the foster -- I'm sorry, the staff member would  
6 typically ask a foster parent to either call 911 or  
7 transport a child to the emergency room, and then they  
8 would meet that foster parent at the hospital. That  
9 was just one example.

10 Q. Do you have other examples of what it's been  
11 used for?

12 A. Anything that we would list in here as a  
13 crisis. So there's pages that list type of critical  
14 incidences is the way we refer to it. So any of those  
15 would be referred to the 24-hour emergency on-call  
16 line.

17 Q. And is Miracle Hill required to have a  
18 24-hour on-call line by DSS?

19 A. Not that I'm aware of.

20 Q. Does Miracle Hill know of any other CPAs that  
21 offer similar 24-hour service?

22 A. No, we don't know.

23 Q. Does Miracle Hill receive reimbursements from  
24 DSS for the services and support that they provide to  
25 foster care families?

1 which Miracle Hill adheres?

2 A. Would you ask that in a different way or  
3 explain what you're talking about tenets.

4 Q. Does this set out the principles to which  
5 Miracle Hill adheres?

6 A. It is the scriptural doctrinal statement of  
7 our Miracle Hill Ministries.

8 Q. Let me ask this: Why -- is the answer to my  
9 question no or yes?

10 A. Yes.

11 Q. Does Miracle Hill require all potential  
12 foster parents that it works with to agree in and  
13 practice the principles set forth in this doctrinal  
14 statement?

15 A. Yes.

16 Q. And pursuant to this doctrinal statement,  
17 will Miracle Hill work with foster parents in a  
18 same-sex relationship?

19 A. According to next to the last statement, we  
20 believe "God ordained the family as a foundational  
21 institution of human society. It is composed of  
22 persons related to one another by marriage, blood, or  
23 adoption. We believe God's design for marriage is the  
24 legal joining of one man and one woman in a life-long  
25 covenant relationship."

1 A. We ask that they sign and agree to this  
2 doctrinal statement in faith and in practice.

3 Q. And so what would it mean to be practicing an  
4 LGBTQ lifestyle?

5 A. It would be two members of the same sex living  
6 together or having a relationship with one another.

7 Q. So if an applicant identified as LGBTQ and  
8 was not in the same-sex relationship, would that  
9 applicant to have to never be in a same-sex  
10 relationship in order to be working with Miracle Hill?

11 A. State that question one more time.

12 Q. You know what, let me try it this way. What  
13 if an LGBTQ applicant -- an individual identified as  
14 LGBTQ and was in a relationship with somebody of the  
15 same sex, but that relationship did not involve any  
16 sexual relations, would that person be able to work  
17 with Miracle Hill?

18 MR. COLEMAN: Object to the form of the  
19 question.

20 BY MS. SCHINDEL:

21 Q. I can't tell if you're --

22 A. If this person -- if this person inquired, we  
23 would -- again, they would have to -- in order to --  
24 part of our inquiry is that they would have to  
25 acknowledge that they agreed to this doctrinal

1 turned away because of their faith or lack thereof or  
2 because they're in a same-sex relationship?

3 And I ask this as a representative of Miracle  
4 Hill. I'm sorry, I'm going to stop sharing my screen.

5 A. I do not have a specific number.

6 Q. And does Miracle Hill keep this information  
7 anywhere?

8 A. Yes. There would probably be hard copies of  
9 those inquiries, but I do not know that it would be  
10 kept in any kind of a format or report of any kind.

11 Q. So topic 9, for which you were designated,  
12 was prospective foster families who are not accepted  
13 by Miracle Hill because of their religion or lack  
14 thereof or same-sex relationship or LGBTQ status. So  
15 did you undertake any effort to ascertain how many  
16 families have been turned away because of their faith  
17 or lack thereof or because they're in a same-sex  
18 relationship?

19 A. Yes. I did look at some of those hard copies  
20 of those inquiries.

21 Q. And so how many families have been turned  
22 away on these bases?

23 A. I don't have a specific number. I will use an  
24 approximate number, 25 to 30.

25 Q. And this is 25 to 30 since 2015 -- excuse

1 me -- since 2017, or is this a different time frame?

2 A. Yes, during that -- during that time frame.

3 Q. So how many of those individuals or families  
4 that were turned away were Catholic?

5 A. As I said, I don't have the specifics, so I  
6 would say majority.

7 Q. Majority. And do majority mean more than  
8 half or does it mean most?

9 A. More than half.

10 Q. And how many were non-Christian of the  
11 remaining -- so setting apart the Catholics, how many  
12 were non-Christian?

13 A. Again, I don't have the specific numbers.

14 Q. Do you have an approximation?

15 A. Five. Five to seven.

16 Q. And then how many prospective foster parents  
17 were turned away because they were LGBTQ?

18 MR. COLEMAN: This is Miles. Object to the  
19 form of the question. If you know, you can answer.

20 THE WITNESS: So anybody who is -- did not  
21 follow Jesus, did not agree to the doctrinal statement,  
22 did not attend a Christian church would be directed to  
23 another agency, another child placing agency.

24 BY MS. SCHINDEL:

25 Q. Right. But they wouldn't be able to work

1 A. I only saw four.

2 Q. Four.

3 A. That inquired.

4 Q. And has Miracle Hill ever worked with someone  
5 who is LGBTQ?

6 A. No.

7 Q. And is a person who is LGBTQ compliant --  
8 would such a person be able to comply with the  
9 doctrinal statement?

10 MR. MATTHEWS: Same objection with regard to  
11 topic 1.

12 BY MS. SCHINDEL:

13 Q. You still have to answer, Ms. Betts.

14 A. No.

15 Q. Okay. Of the families that were -- that were  
16 rejected by Miracle Hill prospective foster parents  
17 because of their religious beliefs or sexual  
18 orientation, did those families go on to approach  
19 other CPAs?

20 A. So tell me your understanding -- or what  
21 you're asking -- rejected those words that were in that  
22 middle of that question.

23 Q. So we were just asking about and we were  
24 talking about families that Miracle Hill has rejected  
25 or turned away because of their faith or lack thereof

1 or because they are in a same-sex relationship?

2 A. They were directed elsewhere.

3 Q. Right. Did Miracle Hill know whether any of  
4 those families or individuals went on to actually  
5 approach another CPA?

6 A. No. I don't know how we would know that.

7 Q. Does Miracle Hill follow up or track what  
8 happened to these parents in any way?

9 A. No, not usually.

10 Q. And when you say "not usually," what do you  
11 mean by that?

12 A. Once we -- once we let them know and give them  
13 a list or other child listing agencies to pursue  
14 licensure with, we do not follow up with those  
15 families.

16 Q. Has any other CPA contacted Miracle Hill  
17 about families that Miracle Hill had turned away or  
18 refused to work with?

19 A. Are you asking that from me personally or are  
20 you asking that on behalf of Miracle Hill?

21 Q. On behalf of Miracle Hill.

22 A. None that we're aware of.

23 (Exhibit 12 marked for identification.)

24 Q. Let's mark Tab 22 which is 12850. This is  
25 Exhibit 12.

1 questions that we previously looked at. And we have  
2 used those on every applicant whether they're Catholic  
3 or not.

4 Q. Well, if you take a look at those four  
5 questions, that e-mail was from September of 2019, and  
6 this e-mail requesting training on how to interview  
7 Catholic foster families is from December 2019. So do  
8 you have any recollection of requesting training  
9 separate and apart from developing those four  
10 questions?

11 A. No, I do not recall that.

12 Q. Do you -- do you have any recollection of  
13 staff in December 2019 indicating that they are --  
14 were uncomfortable or needed greater training on how  
15 to interview Catholic foster families?

16 A. I do not recall.

17 Q. Do you know whether anything -- any training  
18 separate and apart from developing those four  
19 questions, whether any training was developed to  
20 assist Miracle Hill in interviewing Catholic foster  
21 families?

22 A. There was not.

23 (Exhibit 23 marked for identification.)

24 Q. The next document is 4958 and this will be  
25 Tab 56. I'm still waiting on my end. So in the

1 meantime let me ask you after Miracle Hill changed it  
2 policies, do you know whether Miracle Hill has worked  
3 with any prospective foster parents that are Catholic?

4 A. Yes.

5 Q. How many?

6 A. We have one licensed family.

7 Q. And other than that one licensed family, has  
8 any -- has Miracle Hill approved any other  
9 applications from -- let me put it this way. Apart  
10 from that family that's already obtained a license,  
11 are there any other Catholic foster families with whom  
12 Miracle Hill has agreed to work but who have not yet  
13 obtained a license?

14 A. Not that I'm aware of.

15 Q. And have more than that one Catholic foster  
16 family inquired about working with Miracle Hill?

17 A. Yes.

18 Q. And were those foster -- other individuals or  
19 families that inquired, were they turned away or  
20 referred away for some reason?

21 A. No.

22 Q. What happened with those other foster  
23 families or individuals?

24 A. They either registered for orientation and  
25 never came to orientation or they may have come to

1 A. I do not recall.

2 Q. Do you have -- I'm going to stop sharing if  
3 that's okay. Do you have any reason to believe that  
4 there were inquiries you received from Catholic  
5 families that you did not forward to Ms. Parks?

6 A. Perhaps.

7 Q. Okay. So when there is a prospective foster  
8 parent with whom Miracle Hill will not work because of  
9 that individual's religious beliefs or sexual  
10 orientation, did Miracle Hill refer that prospective  
11 foster family or parent to another CPA?

12 A. Again, we would look at whether the person was  
13 attending a Christian church, whether they could sign  
14 the doctrinal statement and -- in faith and practice,  
15 and that they were a follower of Jesus. If one of  
16 those three were not there, not yes answers, then we  
17 would refer them to another CPA.

18 Q. And just to be clear, when you say whether  
19 they could sign the doctrinal statement in faith and  
20 in practice, that's based in part on Miracle Hill's  
21 assessment on whether they would be able to sign the  
22 doctrinal statement in faith and in practice, right,  
23 not just whether they assert that they are able to  
24 sign the doctrinal statement in faith and in practice;  
25 is that right?

1 A. Again, asking those four questions that are  
2 asked of all applicants.

3 Q. And based on Miracle Hill's assessment,  
4 following those four questions, if Miracle Hill  
5 determines that it's unwilling to work or unable to  
6 work with any given individual because of that  
7 individual's religious beliefs or sexual orientation,  
8 Miracle Hill would then refer those individuals along  
9 to other CPAs; is that right?

10 A. Because of their religious beliefs, yes, we  
11 would refer them to other CPAs.

12 Q. Well, just -- so it's not necessarily because  
13 of their religious beliefs, it's because their  
14 practices may not align with Miracle Hill's doctrinal  
15 statement; right?

16 A. Correct.

17 Q. So -- okay. And did Miracle Hill always send  
18 the individuals to the same -- refer the individuals  
19 to the same set of CPAs or did it vary depending on  
20 the family with whom you're engaging?

21 A. It probably varies on when I'm answering the  
22 e-mail. I often give them a large variety and  
23 sometimes, as you've noticed in some of the e-mails, I  
24 might give them one or two or I may refer them straight  
25 to Heartfelt Calling which has basically all of the

1 cohesiveness in a family just like going to sports  
2 team and dance lessons, is there nothing unique about  
3 going to church and what that represents to Miracle  
4 Hill?

5 A. Yes, it is important, and it is part of our  
6 requirements for partnering with us in becoming a  
7 foster parent. So, yes, it would be important.

8 Q. Why does it matter whether the children are  
9 taken to church?

10 MR. COLEMAN: This is Miles. Object to the  
11 form of the question.

12 BY MS. SCHINDEL:

13 Q. You can answer.

14 A. The question one more time.

15 Q. Why does it matter to Miracle Hill in its  
16 initial home study whether prospective foster family's  
17 biological children are attending church with the  
18 parents?

19 A. To show the foster family's, again,  
20 cooperation together, family life, and what their  
21 teaching and expectations for their children would be.

22 Q. And when you say teaching and expectations  
23 for children, do you mean religious teaching?

24 A. Yes, as part of that. Uh-huh.

25 Q. Does it matter to Miracle Hill as part of its

1 initial home study and parts of its assessment of a  
2 prospective foster family that a family is teaching --  
3 providing religious teaching to its biological  
4 children?

5 A. Again, it would be important to know what they  
6 were teaching their children.

7 Q. And why would it be important to know what  
8 they're teaching their children?

9 A. Again, in daily life and faith, doctrinal  
10 statement, what they believe, how they practice, and  
11 being a follower of Jesus.

12 Q. And why is that important in terms of what  
13 the family is teaching its children?

14 A. Because of the Christian agency we would want  
15 to live out our doctrine and continue to be a follower  
16 of Christ.

17 Q. And would the idea be that if foster children  
18 are placed with the family, they would be exposed to  
19 the same teachings?

20 A. Most likely.

21 Q. And is that important to Miracle Hill?

22 A. Yes.

23 Q. Does Miracle Hill view foster parents as  
24 being in a position of spiritual influence over the  
25 children in their home?

1 A. Yes.

2 Q. In what ways does Miracle Hill expect its  
3 foster parents to have a Christian influence over the  
4 children in their care?

5 A. Again, we would want them to live out their  
6 daily walk with Christ, that they would in their  
7 practice of their beliefs and adherence to the  
8 doctrinal statement that we would have, that they would  
9 demonstrate that.

10 Q. Let's take a look at what was marked as  
11 Exhibit 10. And this was the foster parent handbook.  
12 And when you find it, let's take a look at page 11784.

13 A. Could you give that number please for the --

14 Q. The exhibit was 21 and the page that I'm  
15 directing you to is 11784.

16 A. And which document?

17 MR. MATTHEWS: Was the Exhibit 21 or the tab?

18 MS. SCHINDEL: I'm so sorry. Exhibit 10.

19 MR. MATTHEWS: Exhibit 10, and it begins  
20 11751, it's the --

21 THE WITNESS: Thank you. I'm sorry, what page  
22 did you ask?

23 BY MS. SCHINDEL:

24 Q. 11784.

25 A. Yes.

1 accept a particular set of beliefs"; is that right?

2 A. That is correct.

3 Q. Does this reflect Miracle Hill's philosophy?

4 A. Yes.

5 Q. Does Miracle Hill require the consent of a  
6 child's biological family before encouraging foster  
7 parents to provide religious teachings to the child?

8 A. No.

9 Q. Does Miracle Hill encourage foster parents to  
10 provide religious teachings to a child unless the  
11 biological family objects?

12 A. One more time, that question, I'm sorry.

13 Q. Does Miracle Hill encourage foster parents to  
14 provide Christian teachings to children in its care  
15 unless the biological family objects?

16 A. Or the child themselves choose to not  
17 participate or to have some other, as you mentioned,  
18 non-Christian experience.

19 Q. So absent objection from the child or the  
20 biological family, Miracle Hill expects the foster  
21 parents to provide Christian teachings to the children  
22 in their care; is that right?

23 A. Yes.

24 Q. If a child is placed with foster parents  
25 like -- through Miracle Hill and the child does not

1 want to attend church, how does Miracle Hill advise  
2 the foster parents to handle that situation?

3 A. So they are encouraged to either, A, one of  
4 them stay at home; two, find a neighbor, co-worker,  
5 friend who might be able to care for the child during  
6 the time that the family -- the foster family attends  
7 church. Those are the options.

8 Q. What if the birth parents or the biological  
9 parents have expressed a preference that the child  
10 attends church, but the child has indicated that he or  
11 she does not wish to, what happens in that situation?

12 A. That would be discussed with the DSS worker.  
13 And based upon the worker's understanding or response  
14 to the foster family, obviously, we would ask that the  
15 caseworker speak with biological family to let them  
16 know or if the child was old enough for the child to  
17 have that conversation with the parent and the  
18 caseworker.

19 Q. What if a child is born to Jewish parents,  
20 but those parents have not provided any sort of  
21 instruction regarding religious instruction, would  
22 Miracle Hill expect that foster parents expose that  
23 child to Christian teaching?

24 A. Yes, unless the bio parents had requested  
25 otherwise.

1 A. I'm there. I'm sorry.

2 Q. Oh, no worries. So do you see -- do you see  
3 that this is a section entitled "Spiritual Growth" and  
4 it says that the purpose of the spiritual ministry of  
5 Miracle Hill is to glorify God to teach the gospel of  
6 Jesus Christ and to disciple those who believe,  
7 including staff and youth through use of the Word of  
8 God?

9 A. Yes.

10 Q. Is that an accurate description of the  
11 spiritual ministry of Miracle Hill?

12 A. Yes.

13 Q. And Miracle Hill expects that foster parents  
14 that it works with will try to achieve these goals; is  
15 that right?

16 A. Yes.

17 Q. And it says, "We expect that all  
18 children/youth served through Miracle Hill Youth  
19 Ministries will hear the gospel of Jesus Christ and we  
20 desire that many will trust Jesus Christ as their  
21 personal savior. Miracle Hill staff will strive to  
22 disciple him or her to become a mature Christian"; is  
23 that right?

24 A. Yes.

25 Q. What does it mean to expect that all children

1 served through the Miracle Hill's children ministries  
2 will hear the gospel of Jesus Christ?

3 A. As mentioned before in this deposition, the  
4 gospel of Jesus Christ meaning to share the fact of His  
5 death, burial, and resurrection and His power to save  
6 sinful mankind from their sin.

7 Q. And does Miracle Hill expect foster parents  
8 to share the gospel of Jesus Christ?

9 A. Yes.

10 Q. And it says -- there's a section on daily  
11 devotions. And it says, "Daily devotions must be  
12 conducted routinely in the facilities." But this is  
13 the foster care manual. So does this also apply to  
14 foster care homes?

15 A. That is not a requirement for foster care.

16 Q. Are foster care homes encouraged to conduct  
17 group devotion or daily devotion?

18 A. Sorry. We have some loud noise going past.  
19 I'm sorry, I could not hear all of that.

20 Q. The question was whether foster homes working  
21 with Miracle Hill are encouraged to practice daily  
22 devotion?

23 A. Encouraged, I don't -- I would say yes if it  
24 was asked, but it's not something that is routinely  
25 required or requested of foster families.

1 with other CPAs, what is your answer?

2 A. Are you talking about someone who is a  
3 prospective foster parent who has inquired and does not  
4 meet one of the requirements such as being a follower  
5 of Christ, being that they agree with our doctrinal  
6 statement in faith and practice and that they attend  
7 the Christian church.

8 Q. That's right?

9 A. Okay. So the question again? I'm sorry.

10 Q. So if a person was rejected by Miracle Hill  
11 because they did not meet Miracle Hill's religious  
12 requirements, would that person be able to work with  
13 another CPA?

14 A. They would be given names and referred to  
15 other -- other CPAs.

16 Q. But is it fair to say that you don't know  
17 whether that person would actually be accepted as a  
18 foster parent by other CPAs?

19 A. Each CPA would have their own requirements.

20 Q. And you don't know whether another CPA with  
21 services comparable to Miracle Hill would be available  
22 to that foster parent; is that right?

23 MR. COLEMAN: Object to the form of the  
24 question.

25 THE WITNESS: No, I don't have an answer.

1 BY MS. SCHINDEL:

2 Q. You can answer.

3 A. I don't have an answer for that.

4 Q. And when you say you don't have an answer for  
5 that, does that mean you --

6 A. No, I don't know. I'm sorry. No, I don't  
7 know.

8 Q. Okay. Thank you.

9 Mr. Coleman asked you some questions that I  
10 will paraphrase, if Miracle Hill were to stop  
11 providing CPA services and stop working as a CPA, the  
12 effects that this would have on the -- a number of  
13 foster homes in South Carolina, do you recall that?

14 A. Yes.

15 Q. And do you recall whether you testified that  
16 the number of foster homes, whether there would be a  
17 net loss of foster homes in South Carolina as a result  
18 of Miracle Hill ceasing to provide services?

19 A. Yes.

20 Q. What is the factual basis for that testimony?

21 A. The factual basis is conversation with foster  
22 parents who are licensed by us and why they are  
23 licensed and what motivates them to be licensed as a  
24 foster parent and specifically with Miracle Hill.

25 Q. And how many conversations are you thinking

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CERTIFICATE OF REPORTER

I, Christine A. Taylor, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on Page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof. Witness my hand, this 25th of June, 2021.

Christine A. Taylor,  
Registered Professional Reporter  
Notary Public  
State of South Carolina at Large  
Commission expires April 6, 2031

## EXHIBIT 7

Excerpts from the transcript of  
the Rule 30(b)(6) deposition of the  
MIRACLE HILL MINISTRIES  
through its designee  
REID DAVID LEHMAN  
taken on June 17, 2021

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UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

EDEN ROGERS  
and  
BRANDY WELCH,  
Plaintiffs,

vs. CASE NO. 6:19-CV-01567-JD

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; STEVEN WAGNER, 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;  
and MICHAEL LEACH, in his official capacity as  
State Director of the SOUTH CAROLINE DEPARTMENT OF  
SOCIAL SERVICES,  
Defendants.

VIDEOTAPED VTC

30 (b) (6)

DEPOSITION OF: MIRACLE HILL MINISTRIES, INC.  
BY: REID DAVID LEHMAN  
(Appearing by VTC)

DATE: June 17, 2021

TIME: 9:20 AM

LOCATION: Haynsworth, Sinkler, Boyd  
1 North Main Street, 2nd Floor  
Greenville, SC

TAKEN BY: Counsel for the Plaintiffs

REPORTED BY: Susan M. Valsecchi, RPR, CRR  
Certified Realtime Reporter  
(Appearing by VTC)

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APPEARANCES OF COUNSEL VIA VTC:  
ATTORNEYS FOR THE PLAINTIFFS  
EDEN ROGERS and BRANDY WELCH:

CRAVATH SWAINE & MOORE  
BY: REBECCA SCHINDEL  
PETER BARBUR  
SERENA CANDELARIA  
825 Eighth Avenue  
New York, NY 10019  
(212) 474-1247  
rschindel@cravath.com  
pbarbur@cravath.com  
scandelaria@cravath.com

- and -

LAMBDA LEGAL  
BY: CURREY COOK  
120 Wall Street, Floor 19  
New York, NY 10005-3919  
(212) 809-8585  
ccook@lambdalegal.org

ATTORNEYS FOR THE DEFENDANTS  
HENRY MCMASTER, in his official  
capacity as Governor of the STATE OF  
SOUTH CAROLINA and MICHAEL LEACH, in  
his official capacity as State Director  
of the SOUTH CAROLINE DEPARTMENT OF  
SOCIAL SERVICES:

NELSON MULLINS RILEY & SCARBOROUGH  
BY: MILES COLEMAN  
Greenville ONE  
2 W. Washington Street  
Suite 400  
Greenville, SC 29601  
(864) 373-2352  
miles.coleman@nelsonmullins.com

ATTORNEYS FOR THE WITNESS REID DAVID LEHMAN  
AND MIRACLE HILL MINISTRIES, INC.:

HAYNSWORTH SINKLER BOYD PA  
BY: STEVEN MATTHEWS  
1201 Main Street, 22nd Floor  
Columbia, SC 29201  
(803) 779-3080  
smatthews@hsblawfirm.com

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ATTORNEYS FOR THE DEFENDANTS

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:

UNITED STATES ATTORNEY'S OFFICE  
SOUTH CAROLINA

BY: CHRISTIE NEWMAN  
1441 Main Street, Suite 500  
Columbia, SC 29201  
(803) 929-3030  
christie.newman@usdoj.gov

ALSO PRESENT:

Darren Carreras, Videographer  
Rick Christian, Concierge  
Maia Zelkind, Paralegal

(INDEX AT REAR OF TRANSCRIPT)

1 THE VIDEOGRAPHER: Good morning,  
2 Counselors. My name is Darren Carreras. I'm a  
3 Certified Legal Videographer in association with  
4 Veritext.

5 Due to the severity of COVID-19 and  
6 following the practice of social distancing, I will  
7 not be in the same room with the witness. Instead,  
8 I will record this videotaped deposition remotely.

9 The reporter, Susan Valsecchi, also  
10 will not be in the same room and will swear the  
11 witness remotely.

12 Do all parties stipulate to the  
13 validity of this video-recorded remote swearing,  
14 that it will be admissible in the courtroom as if  
15 it had been taken following Rule 30, the Federal  
16 Rules of Civil Procedures, and state's rules where  
17 this case is pending?

18 MS. SCHINDEL: Rebecca Schindel for  
19 Plaintiff; yes, we do.

20 MR. COLEMAN: This is Miles Coleman for  
21 Defendants McMaster and Leach. We have no  
22 objection.

23 MS. NEWMAN: Christie Newman for the  
24 federal Defendants, no objection.

25 THE VIDEOGRAPHER: Good morning, we're

1 going on the record at 9:21 a.m. on June 17th,  
2 2021.

3 This is Media Unit 1 of the  
4 video-recorded deposition of Reid Lehman taken by  
5 counsel for Plaintiff in the matter of Rogers, et  
6 al., versus U.S. Department of Health and Human  
7 Services, et al., filed in the United States  
8 District Court for the District of South Carolina,  
9 Greenville division, Case Number 6:19-CV-01567-JD  
10 DSC.

11 This deposition is being held remotely  
12 via Zoom. My name is Darren Carreras from the firm  
13 Veritext. I'm the videographer. The court  
14 reporter is Susan Valsecchi from the firm Veritext.  
15 I'm not authorized to administer an oath. I'm not  
16 related to any party in this action, nor am I  
17 financially interested in the outcome.

18 Counsel and all present in the room,  
19 everyone attending remotely, will now state their  
20 appearances and affiliations for the record. If  
21 there are any objections to proceeding, please  
22 state them at the time of your appearance,  
23 beginning with the noticing attorney.

24 MS. SCHINDEL: Rebecca Schindel for  
25 Plaintiff, affiliated with Cravath, Swaine & Moore,

1           LLP.

2                           MR. BARBUR: Peter Barbur, also for  
3           Plaintiffs.

4                           MR. COOK: Currey Cook, Lamda Legal,  
5           also for Plaintiffs.

6                           MS. CANDELARIA: Serena Candelaria,  
7           Cravath, Swaine & Moore, also for the Plaintiffs.

8                           MR. COLEMAN: Miles Coleman, Nelson  
9           Mullins, Riley & Scarborough. I represent  
10          Defendant Henry McMaster in his official capacity  
11          as Governor of South Carolina and Defendant Michael  
12          Leach in his official capacity as the director of  
13          the South Carolina Department of Social Services.

14                          MS. ZELKIND: Maia Zelkind, Lamda  
15          Legal, for Plaintiff.

16                          MS. NEWMAN: This is Christie Newman.  
17          I represent the federal defendants in this case. I  
18          can go through them if you need me to, Court  
19          Reporter.

20                          THE COURT REPORTER: No, thank you.

21                          MS. NEWMAN: Thank you.

22                          MR. MATTHEWS: This is Steve Matthews  
23          with Haynsworth, Sinkler, Boyd in South Carolina  
24          representing Miracle Hill Ministries, Inc., and the  
25          witness, Reid Lehman, a nonparty in this action,

1       testifying today.

2                   THE VIDEOGRAPHER: Mr. Matthews, could  
3 you move to your left just a bit. Thank you.

4                   Will the court reporter please swear in  
5 the witness.

6                   THE COURT REPORTER: Yes.

7                   Mr. Lehman, would you please raise your  
8 right hand to be sworn. Do you solemnly swear to  
9 tell the truth, the whole truth, and nothing but  
10 the truth, so help you God?

11                   THE WITNESS: I do.

12                   THE COURT REPORTER: Thank you.

13                   REID DAVID LEHMAN

14 being first duly sworn, testified as follows:

15                   EXAMINATION

16 BY MS. SCHINDEL:

17                   Q. All right. Are we ready to begin?

18                   THE COURT REPORTER: Yes.

19                   THE WITNESS: Yes.

20 BY MS. SCHINDEL:

21                   Q. Okay. Mr. Lehman, could you please  
22 state your full name for the record again.

23                   A. Reid David Lehman.

24                   Q. And I am Rebecca Schindel; I will be  
25 taking your deposition today on behalf of

1 MIRACLE\_HILL\_SUBP\_012783 to 84, and it is being  
2 introduced as Exhibit 3.

3 BY MS. SCHINDEL:

4 Q. Have you seen this document before?

5 A. Yes.

6 Q. Is this a list of frequently asked  
7 questions that Miracle Hill publishes about its  
8 spiritual identity?

9 A. Yes.

10 Q. And if you take a look at the final  
11 question on the first page, it says: How will you  
12 determine if someone meets your criteria to serve  
13 as a foster parent, mentor or employee.

14 And the answer is: Our mission  
15 statement and doctrinal statement of faith will  
16 guide our interview process as we invite followers  
17 of Jesus Christ to partner with us in ministry, to  
18 share the Good News of Christ and minister to the  
19 needy in His name.

20 Did I read that all accurately?

21 A. I didn't hear your question.

22 Q. Did I read that accurately, this final  
23 and question and answer on the first page?

24 A. Yes. I think so, yes.

25 Q. So this means that Miracle Hill will

1 only partner with potential foster parents who are  
2 followers of Jesus Christ, right?

3 A. That's correct.

4 Q. And it will not partner with members of  
5 a different faith?

6 A. That's correct.

7 Q. Or no faith at all?

8 A. That's correct.

9 Q. It won't partner with potential foster  
10 parents who are Jewish or Muslim or Hindu?

11 A. Correct.

12 Q. Miracle Hill's formal policy is that it  
13 would only work with potential foster parents who  
14 are Protestant; is that right?

15 A. That's right.

16 Q. And Miracle Hill changed that policy to  
17 include other types of Christians; is that right?

18 A. Yes.

19 Q. When did Miracle Hill change that  
20 policy?

21 A. In March of 2019.

22 Q. Are you familiar with the lawsuit  
23 captioned Maddonna versus U.S. Department of HHS --  
24 excuse me -- the U.S. Department of Health and  
25 Human Services?

1 have been turned away because of their faith or  
2 lack thereof or because they're in a same-sex  
3 relationship?

4 A. I don't have knowledge of that. More  
5 than 15.

6 Q. Do you know whether any of those  
7 families went on to approach other CPAs?

8 A. I do not know.

9 Q. So I think we've been going for about  
10 an hour. I would be fine taking a five-minute  
11 break if you'd like, or I'm happy to continue.

12 A. A five-minute break would be welcome,  
13 thank you.

14 MS. SCHINDEL: All right.

15 MR. MATTHEWS: Rebecca --

16 THE VIDEOGRAPHER: The time is 10:17  
17 a.m. We are going off the record.

18 (A brief recess was held.)

19 THE VIDEOGRAPHER: The time is 10:25  
20 a.m. We are back on the record.

21 BY MS. SCHINDEL:

22 Q. Mr. Lehman, I want to make sure I  
23 understand Miracle Hill's position with respect to  
24 its doctrinal statement.

25 If an applicant identified with a sex

1           A.     I'm sorry, would you repeat the  
2 question?

3           Q.     Sure.

4                     What did Miracle Hill do -- rather than  
5 submit a written plan of compliance, what did  
6 Miracle Hill do in response to receiving this  
7 request from DSS that it change its policies and  
8 practices?

9           A.     We approached the Governor's office and  
10 asked for help with the situation, and we began  
11 talking to state legislators, asking for their  
12 help.

13          Q.     Who approached the Governor's office?

14          A.     I don't know if our attorney approached  
15 them or not, but Beth Williams, who is our vice  
16 president of children's ministries, talked to  
17 Richele Taylor in the governor's office.

18          Q.     Did anybody else participate in those  
19 conversations?

20          A.     No.

21          Q.     And just for the record, we actually  
22 ended up talking about this exhibit before I  
23 introduced it, but the document that we were  
24 looking at was Exhibit 15, and it was Bates-stamped  
25 10545-B-012 to 014. And you recognize this as the

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CERTIFICATE OF REPORTER

I, Susan M. Valsecchi, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 22nd day of June, 2021 at Columbia, Richland County, South Carolina.



*Susan M. Valsecchi*

Susan M. Valsecchi, RPR, CRR

My Commission expires

December 4, 2024

## EXHIBIT 8

DSS Summary of Foster Home Licenses  
by Provider from 2017 through 2021  
(MADDONNA-SCDSS-0006)

2017, Total	
New Foster Home Licenses	
Count of ProviderName	
	803

New Foster Home Licenses assisted by CPA	
PrimaryProviderName	Count of ProviderName
Alston Wilkes Society	3
Carolina Therapeutic Services	2
Connie Maxwell Children's Ministries	14
Epworth Children's Home	2
Epworth Children's Home - Regular CPA	7
Family Preservation - Therapeutic CPA	2
Growing Home Southeast - Therapeutic CPA	11
John K. Crosswell Home for Children	2
Justice Works Behavioral Care	6
Lifeline Children's Services	10
Lutheran Family Services of the Carolina	2
Lutheran Services - Therapeutic CPA	18
Mandala Adoption Services	1
Miracle Hill Ministries, Inc.	97
New Foundations - Therapeutic CPA	1
Reid House Of Christian Servc	1
SC Mentor - Therapeutic CPA	47
SC YAP - Therapeutic CPA	82
Specialized Alternative Youth	10
The Bair Foundation Therapeutic CPA	37
Thornwell	7
<b>Grand Total</b>	<b>362</b>

2018, Total	
New Foster Home Licenses	
Count of ProviderName	
	792

New Foster Home Licenses assisted by CPA	
PrimaryProviderName	Count of ProviderName
Child Abuse Prevention Association	9
Church of God Home for Children-CPA	2
Connie Maxwell Children's Ministries	3
Epworth Children's Home - Regular CPA	14
Family Preservation - Therapeutic CPA	4
Growing Home Southeast - Therapeutic CPA	13
Justice Works Behavioral Care	1
Lifeline Children's Services	6
Lutheran Family Services of the Carolina	3
Lutheran Services - Therapeutic CPA	15
Miracle Hill Ministries, Inc.	68
New Foundations - Therapeutic CPA	4
SC Mentor - Therapeutic CPA	31
SC YAP - Therapeutic CPA	83
Specialized Alternative Youth	14
The Bair Foundation Therapeutic CPA	55
Thornwell	9
<b>Grand Total</b>	<b>334</b>

2019, Total	
New Foster Home Licenses	
Count of ProviderName	
	797

New Foster Home Licenses assisted by CPA	
PrimaryProviderName	Count of ProviderName
Adoption Advocacy, Inc	1
Broadstep Behavioral Health, Inc.	4
Child Abuse Prevention Association	11
Church of God Home for Children-CPA	2
Connie Maxwell Children's Ministries	9
Epworth Children's Home - Regular CPA	31
Family Preservation - Therapeutic CPA	6
Growing Home Southeast - Therapeutic CPA	13
John K. Crosswell Home for Children	3
Lifeline Children's Services	12
Lutheran Family Services of the Carolina	3
Lutheran Services - Therapeutic CPA	21
Miracle Hill Ministries, Inc.	54
New Foundations - Therapeutic CPA	4
Nightlight Christian Adoptions	2
SC Mentor - Therapeutic CPA	29
SC YAP - Therapeutic CPA	67
Specialized Alternative Youth	17
The Bair Foundation Therapeutic CPA	35
Thornwell	13
<b>Grand Total</b>	<b>337</b>

2020, Total	
New Foster Home Licenses	
Count of ProviderName	
	762

New Foster Home Licenses assisted by CPA	
PrimaryProviderName	Count of ProviderName
Adoption Advocacy, Inc	1
Child Abuse Prevention Association	10
Children Unlimited At Family Service Cen	1
Church of God Home for Children-CPA	2
Connie Maxwell Children's Ministries	15
Epworth Children's Home	4
Epworth Children's Home - Regular CPA	46
Epworth Children's Home -Therapeutic CPA	3
Family Preservation - Regular CPA	4
Family Preservation - Therapeutic CPA	7
Growing Home Southeast - Regular CPA	6
Growing Home Southeast - Therapeutic CPA	9
John K. Crosswell Home for Children	3
Lifeline Children's Services	10
Lutheran Services - Regular CPA	8
Lutheran Services - Therapeutic CPA	10
Miracle Hill Ministries, Inc.	65
National YAP - Regular CPA	2
New Foundation Children & Family Serv.	1
New Foundations - Therapeutic CPA	2
Nightlight Christian Adoptions	2
SC Mentor - Regular CPA	2
SC Mentor - Therapeutic CPA	26
SC YAP - Regular CPA	6
SC YAP - Therapeutic CPA	43
Specialized Alternative Youth	22
The Bair Foundation - Regular CPA	3
The Bair Foundation Therapeutic CPA	34
Thornwell	20
<b>Grand Total</b>	<b>367</b>

2021, Total	
New Foster Home Licenses	
Count of ProviderName	
	672

New Foster Home Licenses assisted by CPA	
PrimProviderName	Count of ProviderName
Child Abuse Prevention Association	11
Church of God Home for Children-CPA	4
Connie Maxwell Children's Ministries	18
Epworth Children's Home	4
Epworth Children's Home - Regular CPA	8
Epworth Children's Home -Therapeutic CPA	56
Family Preservation - Regular CPA	2
Family Preservation - Therapeutic CPA	5
Growing Home Southeast - Regular CPA	16
Growing Home Southeast - Therapeutic CPA	21
Hope Embraced Adoption Agency	1
John K. Crosswell Home for Children	2
LIFELINE CHILDREN'S SERVICES	6
Lutheran Services - Regular CPA	18
Lutheran Services - Therapeutic CPA	8
Miracle Hill Ministries, Inc.	54
National YAP - Regular CPA	25
National YAP - Therapeutic CPA	14
New Foundations - Regular CPA	1
New Foundations - Therapeutic CPA	3
Nightlight Christian Adoptions	9
Oasis of Hope	18
SC Mentor - Regular CPA	12
SC Mentor - Therapeutic CPA	27
SC YAP - Regular CPA	2
SC YAP - Therapeutic CPA	63
Specialized Alternative Youth	15
The Bair Foundation - Regular CPA	5
The Bair Foundation Therapeutic CPA	24
Thornwell	32
<b>Grand Total</b>	<b>484</b>

## EXHIBIT 9

DSS Summary of Placements by Provider  
from 2017 through 2021  
(MADDONNA-SCDSS-0004)

**All Unduplicated Placements with a Private Provider**

<u>Primary Provider</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
Alston Wilkes Society	21				
Broadstep Behavioral Health, Inc.			3	3	
Child Abuse Prevention Association		19	33	18	38
Church of God Home for Children-CPA		5	13	11	14
Connie Maxwell Children's Ministries	20	9	32	26	43
Epworth Children's Home - Regular CPA	12	26	57	105	88
Epworth Children's Home -Therapeutic CPA			1	10	116
Family Preservation - Regular CPA				3	4
Family Preservation - Therapeutic CPA	30	44	26	23	21
Growing Home Southeast - Regular CPA				3	38
Growing Home Southeast - Therapeutic CPA	99	111	120	81	85
John K. Crosswell Home for Children		3	8	5	9
Justice Works Behavioral Care	21	2			
Lifeline Children's Services	34	35	31	34	51
Lutheran Services - Regular CPA				5	36
Lutheran Services - Therapeutic CPA	69	95	84	52	58
Miracle Hill Ministries, Inc.	240	261	310	235	235
Miriam's Promise			2	2	2
National YAP - Regular CPA					4
National YAP - Therapeutic CPA					10
New Foundations - Regular CPA					6
New Foundations - Therapeutic CPA	1	14	12	10	28
Nightlight Christian Adoptions	1	1	1	2	57
Oasis of Hope					32
SC Mentor - Regular CPA				1	19
SC Mentor - Therapeutic CPA	211	321	260	225	211
SC YAP - Regular CPA				2	2
SC YAP - Therapeutic CPA	739	816	746	539	596
Specialized Alternative Youth	157	146	178	132	162
The Bair Foundation - Regular CPA				2	10
The Bair Foundation Therapeutic CPA	179	183	173	139	138
Thornwell	7	29	34	34	82
<b>Total in CPAs only</b>	<b>1841</b>	<b>2120</b>	<b>2124</b>	<b>1702</b>	<b>2195</b>
<b>All Children served in FC for a CY</b>	<b>7926</b>	<b>8435</b>	<b>8625</b>	<b>7148</b>	<b>6582</b>

**Unduplicated Therapeutic Placements with a Private Provider**

<u>Primary Provider</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
Alston Wilkes Society	21				
Broadstep Behavioral Health, Inc.			3	3	
Epworth Children's Home -Therapeutic CPA			1	10	116
Family Preservation - Therapeutic CPA	30	44	26	23	21
Growing Home Southeast - Therapeutic CPA	90	93	94	72	81
Justice Works Behavioral Care	21	2			
Lutheran Services - Therapeutic CPA	67	83	78	50	54
Miracle Hill Ministries, Inc.	3				
National YAP - Therapeutic CPA					10
New Foundations - Therapeutic CPA	1	13	12	10	27
SC Mentor - Regular CPA					1
SC Mentor - Therapeutic CPA	202	310	254	215	209
SC YAP - Therapeutic CPA	709	795	705	509	573
Specialized Alternative Youth	146	138	167	130	160
The Bair Foundation - Regular CPA				1	
The Bair Foundation Therapeutic CPA	165	167	152	110	123

## EXHIBIT 10

South Carolina Executive Order No. 2018-12

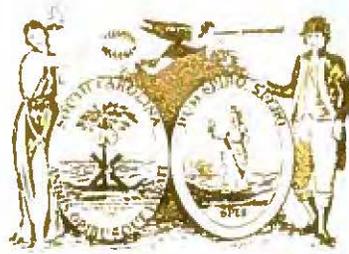
(ECF No. 79-2)

State of South Carolina  
Executive Department

FILED

MAR 13 2018

Mark Hammond  
SECRETARY OF STATE



Office of the Governor

EXECUTIVE ORDER NO. 2018-12

**WHEREAS**, government at any level should not and shall not penalize religious activity by denying any person or organization an equal share of the rights, benefits, and privileges enjoyed by other individuals or organizations solely on account of one's religious identity and sincerely held beliefs; and

**WHEREAS**, faith-based organizations may retain their religious character and participate in government programs, provided that public funds are not used to directly subsidize or support religious worship activities; and

**WHEREAS**, the foregoing rights are guaranteed by, *inter alia*, the First Amendment to the United States Constitution and article I, section 2 of the South Carolina Constitution, both of which provide that there shall be no laws prohibiting the free exercise of religion, abridging the freedom of speech, or inhibiting the corresponding right to associate with others; and

**WHEREAS**, the rights of faith-based organizations to exercise religious beliefs while participating in government are also protected by the South Carolina Religious Freedom Act of 1999 ("RFA"), codified in sections 1-32-10 through -60 of the South Carolina Code of Laws, which provides, in relevant part, that "[t]he State may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability," unless the burden furthers a compelling state interest and is applied in the least restrictive means of furthering that interest; and

**WHEREAS**, pursuant to article IV, section 15 of the South Carolina Constitution, the Governor "shall take care that the laws be faithfully executed," which includes ensuring the free exercise of religion as guaranteed by the South Carolina Constitution and upholding religious liberty under the RFA; and

Executive Order 2018-12

Page 2

March 13, 2018

**WHEREAS**, the licensing and participation of faith-based organizations in South Carolina's foster-care system is a long-standing and constitutionally permissible practice; and

**WHEREAS**, the South Carolina Department of Social Services ("DSS"), which is part of the Governor's Cabinet, oversees the State's foster-care program and, as such, licenses Child Placing Agencies ("CPAs"); and

**WHEREAS**, pursuant to section 114-550 of the South Carolina Code of Regulations, CPAs are defined, in pertinent part, as "any person or entity who holds legal or physical custody of a child for the purpose of placement for foster care or adoption or a private placement and . . . retain[s] their own system of foster homes"; and

**WHEREAS**, sections 114-4910 through -4980 of the South Carolina Code of Regulations govern the licensing and administration of CPAs; and

**WHEREAS**, CPAs may be secular or non-secular and are separate private, non-governmental entities that recruit, retain, and support current and prospective foster-care families in South Carolina, thereby fulfilling a crucial need for the State and providing a critical service to the children of South Carolina; and

**WHEREAS**, DSS licenses many CPAs and provides a variety of CPA options from which foster parents may choose; and

**WHEREAS**, the State has no compelling interest in limiting faith-based organizations' participation as CPAs; and

**WHEREAS**, faith-based CPAs associate foster parents and homes who share the same faith and should not be asked to compromise sincerely held religious beliefs in recruiting, training, and retaining foster parents; and

**WHEREAS**, separate and apart from the association of foster parents by CPAs, under federal and state law, CPAs must assist *any children in foster care* without regard to their religious beliefs; and

**WHEREAS**, to the extent DSS receives funding from the United States Department of Health and Human Services ("DHHS") or otherwise participates in the Federal Foster Care Program, the undersigned has requested that DHHS not exclude faith-based CPAs and grant DSS a formal deviation from DHHS policy in recognition of the foregoing rights and considerations and in accordance with the Religious Freedom Restoration Act of 1993 ("RFRA"), codified as amended at 42 U.S.C. § 2000bb through 42 U.S.C. § 2000bb-4; and

**WHEREAS**, religious observers and organizations should not be required to sacrifice the tenets of their faith to serve the children of South Carolina, particularly where, as here, doing so would not serve or further any identifiable or compelling state interest.

Executive Order 2018-12  
Page 3  
March 13, 2018

**NOW, THEREFORE**, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, to the fullest extent permitted by state and federal law, I direct that DSS shall not deny licensure to faith-based CPAs solely on account of their religious identity or sincerely held religious beliefs. Further, I hereby direct DSS to review and revise its policies and manuals in accordance with this Order and ensure that DSS does not directly or indirectly penalize religious identity or activity in applying sections 114-550 or 114-4910 through -4980 of the South Carolina Code of Regulations with regard to Licensure for Foster Care.

In furtherance of the foregoing rights, principles, and considerations, all Cabinet agencies, including all boards and commissions that are part of, comprised within, or under the jurisdiction of a Cabinet agency, are hereby directed to review their policies, procedures, and regulations to ensure that the same do not directly or indirectly penalize religious activity by denying any person or organization an equal share of the rights, benefits, and privileges enjoyed by other individuals or organizations solely on account of religious identity or beliefs. It is further advised that executive agencies not in the undersigned's Cabinet or otherwise subject to the undersigned's direct authority shall likewise act in accordance with this Order and the foregoing directives.

This Order is effective immediately.



GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 13th DAY OF MARCH, 2018.

  
HENRY MCMASTER  
Governor

ATTEST:  
  
MARK HAMMOND  
Secretary of State

## EXHIBIT 11

Defendant Leach's Answers to Second Interrogatories

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

Aimee Maddonna,

*Plaintiff,*

v.

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

*Defendants.*

Case No. 6:19-cv-03551-JD

**DEFENDANT LEACH’S  
OBJECTIONS AND RESPONSES  
TO PLAINTIFF’S SECOND SET OF  
INTERROGATORIES AND REQUESTS  
FOR PRODUCTION**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Defendant Michael Leach, in his official capacity as State Director of the South Carolina Department of Social Services, submits the following responses and objections to Plaintiff’s Second Set of Interrogatories and Requests for Production that were served on him on February 12, 2022. This Defendant will be referenced herein simply as “SCDSS.”

**OBJECTIONS APPLICABLE TO ALL  
INTERROGATORIES AND REQUESTS FOR PRODUCTION**

For the sake of brevity, to the extent applicable, SCDSS incorporates by reference herein any Objections asserted in its prior Objections and Responses to discovery requests received from Plaintiff in this proceeding.

**SECOND SET OF INTERROGATORIES**

**Interrogatory No. 1:** Supplement your previous response to Plaintiff’s First Set of Interrogatories, No. 1, by providing an updated list of all licensed Child Placing Agencies (“CPAs”) that currently service the Upstate Region, Greenville County area. By email agreement dated February 11, 2022, Defendant m[a]y provide this information through a supplemental document production (with Bates numbers).

**RESPONSE:** Please see the documents served concurrently herewith.

**Interrogatory No. 2:** With respect to those CPAs identified in your previous answer who do *both* therapeutic and regular types of placements, please provide a placement breakdown by type similar to the ones reflected in Exhibits 2 and 4 to the deposition of Dawn Barton (taken in *Rogers v. HHS* on December 17, 2021), for the South Carolina Upstate Region only. By email agreement dated February 11, 2022, Defendant m[a]y provide this information through a supplemental document production (with Bates numbers).

**RESPONSE:** As explained in discussions between the parties' counsel, SCDSS objects to this request to the extent it is unduly burdensome in terms of the time and labor required to retrieve and calculate the data in the exact manner requested by this Interrogatory. Nevertheless, in a cooperative effort to respond and to move the litigation forward, SCDSS has provided documents served concurrently herewith identifying which CPAs serving the Upstate Region are licensed for both therapeutic and non-therapeutic foster care services and identifying the number of statewide placements and therapeutic placements for each CPA during the past five years.

**Interrogatory No. 3: (a)** With respect to each CPA listed on the updated list requested above, please indicate *one* of the following:

- YES, the CPA will work with all potential foster parent applicants without regard to additional criteria based on the CPA's own religious beliefs;
- NO, the CPA will not work with some potential foster parent applicants because of additional criteria based on the CPA's own religious beliefs; or
- UNKNOWN, SCDSS does [sic] have information sufficient to answer one way or the other because it does [sic] have that information from the CPA or generally does not collect or maintain that information from CPAs.

(b) As to those CPAs for which SCDSS is able to answer YES or NO, describe the information SCDSS relies upon to make that determination, as well as the policy or process through which it is collected, maintained, updated, or monitored.

(c) Do CPAs who do not operate group homes still have a contract with SCDSS in conjunction with their CPA license? (For example, if Miracle Hill Ministries has closed its group homes, but retains its CPA license, must it still sign a contract with SCDSS pertaining to the license?)

**RESPONSE:** to SCDSS's knowledge, all of the CPAs serving the Upstate Region, with the exception of Miracle Hill Ministries, work with qualified prospective foster parents without regard to additional criteria based on the CPA's own religious beliefs. SCDSS's knowledge is based on the fact that SCDSS has at all relevant times, and at present, had policies and practices in place that, taken together, state that except in cases when an exception or exemption is warranted in the best interest of a child or to alleviate a substantial burden on a CPA's sincerely held religious beliefs, CPAs shall work with qualified prospective foster parents without regard to their religious beliefs or lack thereof; the fact that no CPAs other than Miracle Hill Ministries have sought to make use of or to claim that exception or exemption; the fact that extensive discovery in this case and a related case has not uncovered any evidence of CPAs other than Miracle Hill who will refer to other CPAs inquiries or applications they receive from qualified foster parents who do not share the CPA's faith; and the fact that SCDSS provides avenues for prospective foster parents to submit complaints to SCDSS, including complaints regarding CPAs, and SCDSS has received no complaints regarding any other CPA that, on the basis of the CPA's religious beliefs, is unwilling to work with qualified prospective foster parents who inquire or apply to that CPA.

Licensed CPAs who do not operate group homes may, but are not required to, have a contract with SCDSS in conjunction with or related to the provision of foster care services. Some licensed CPAs who do not operate group homes have such a contract; other licensed CPAs who do not operate group homes do not have such contracts.

**Interrogatory No. 4:** Describe in detail the measures or safeguards that SCDSS put in place when the foster care program began operating in accordance with Governor McMaster’s Executive Order 2018-12 (March 13, 2018) so as to ensure that potential foster parents who sought to participate in the State’s foster care program would not be turned away by a CPA who screened potential foster parents under additional criteria based on the CPA’s religious beliefs? If no such actions were taken by SCDSS in conjunction with the Executive Order, please state, “none.”

**RESPONSE:** DSS objects to Interrogatory No. 3 to the extent it is ambiguous. The Interrogatory inquires whether and how SCDSS took steps “in accordance with . . . Executive Order 2018-12 . . . to ensure that potential foster parents . . . would *not* be turned away by a CPA who screened potential foster parents . . . based on the CPA’s religious beliefs” (emphasis added). Taking such steps, however, would be contrary to, not “in accordance with,” Executive Order 2018-12, which created an exception or exemption, one effect of which was to accommodate CPAs that decline, on the basis of their sincerely held religious beliefs and identity, to work with prospective foster parents who do not share the CPA’s religious beliefs.

To the extent that Interrogatory No. 3 seeks to ascertain what steps SCDSS has taken—both before and after the issuance of Executive Order 2018-3—to encourage a broad and diverse group of CPAs and foster parents, and to promote the availability of multiple convenient avenues for any qualified prospective foster parent to seek licensure and serve as a foster parent, SCDSS has undertaken efforts including, but not limited to, the following. First, SCDSS—the sole entity

with authority to license foster parents and to place foster children into homes—has promulgated regulations and adopted policies and procedures to license qualified foster parents and perform placements without regard to religious beliefs or lack thereof except in very limited circumstances such when the decision involves a determination of the best interest of the child or is otherwise compelled by law. Second, SCDSS has promulgated regulations and adopted policies and procedures regarding CPAs, who can decline to assist or partner with a foster parent on the basis of religion only in limited circumstances, such as when such decision is in the best interest of the child or is necessary to alleviate a substantial burden on the sincerely held religious beliefs of the CPA. Third, SCDSS itself has at all times been available in every county of the State to work with prospective foster parents who for any reason cannot or do not wish to work with or through a CPA. Fourth, SCDSS undertakes both general and specific efforts to raise awareness and seek the recruitment of a pool of potential and licensed foster parents that reflects the diversity of the State’s population and the diversity of the children in foster care.

To the extent that Interrogatory No. 3 seeks to ascertain what steps SCDSS has taken to ensure that prospective foster parents who approach a CPA that declines to work with them on the basis of its sincerely held religious beliefs or identity, are aware of other avenues or providers available to them, SCDSS undertakes efforts including, but not limited to, the following. First, SCDSS maintains its own website and engages in its own awareness and recruiting efforts to provide information regarding the ways available to any qualified foster parent to seek licensure and/or support, opportunities, or assistance pertaining to foster care service, regardless of the person’s religious beliefs or lack thereof. Second, SCDSS contracts with a third party to maintain the Heartfelt Calling website, which provides information regarding the avenues available for any qualified prospective foster parent to seek licensure or to seek assistance from or partnership with a CPA regardless of the person’s religious belief or lack thereof. Third, as noted in response to

Interrogatory No. 3, SCDSS is aware of no CPA other than Miracle Hill Ministries that, on the basis of its religious beliefs, decline to work with prospective foster parents who inquire of or apply to the CPA. In the instances known to SCDSS in which Miracle Hill Ministries has declined to work with a prospective foster parent or volunteer on the basis of Miracle Hill Ministries' sincerely held religious beliefs—including the facts giving rise to this litigation—Miracle Hill Ministries has done so in a respectful manner and has referred the person to other providers or avenues who could assist him or her. It is SCDSS's expectation and understanding that Miracle Hill Ministries will continue to respond in that manner when it declines to work with a prospective foster parent on the basis of its sincerely held religious beliefs, and thus ensures that the prospective foster parent is aware of other ways in which he or she can seek licensure from SCDSS and/or the assistance and support of a CPA.

## **SECOND REQUESTS FOR PRODUCTION OF DOCUMENTS**

**Request No. 1:** Provide a copy of the current (or most recent) contract or grant agreement, including incorporated conditions or related guidance documents, from the State for the operation of Heartfelt Calling, a program of the South Carolina Foster Parent Association, a nonprofit entity.

**RESPONSE:** Please see the documents served concurrently herewith.

**Request No. 2:** If your answer to Interrogatory No. 3(c), above, is yes, provide a copy of the current (or most recent) CPA contract for Miracle Hill Ministries.

**RESPONSE:** Please see the documents served concurrently herewith.

**Request No. 3:** For any actions described in your answer in Interrogatory No. 4, above, provide all documents concerning implementation or guidance concerning such measures or safeguards.

**RESPONSE**: Please see the documents served concurrently herewith. To the extent the answer to Interrogatory No. 4 mentions or relies on documents not enclosed herewith, they are either publicly available documents and websites or are documents or materials already produced in this litigation.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ Miles E. Coleman

Miles E. Coleman  
Federal Bar No. 11594  
E-Mail: [miles.coleman@nelsonmullins.com](mailto:miles.coleman@nelsonmullins.com)  
2 W. Washington St. / Fourth Floor  
Greenville, SC 29201  
(864) 373-2352

Jay T. Thompson  
Federal Bar No. 09846  
E-Mail: [jay.thompson@nelsonmullins.com](mailto:jay.thompson@nelsonmullins.com)  
1320 Main Street / 17th Floor  
Columbia, SC 29201  
(803) 799-2000

OFFICE OF THE ATTORNEY GENERAL

Robert D. Cook, South Carolina Solicitor General  
Federal Bar No. 285  
E-Mail: [bcook@scag.gov](mailto:bcook@scag.gov)  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3970

DAVIDSON, WREN & DEMASTERS, P.A.

Kenneth P. Woodington, #4741  
E-Mail: [kwoodington@dml-law.com](mailto:kwoodington@dml-law.com)  
William H. Davidson, II #425  
E-Mail: [wdavidson@dml-law.com](mailto:w davidson@dml-law.com)  
1611 Devonshire Drive, 2nd Floor  
Post Office Box 8568  
Columbia, SC 29202-8568  
(803) 806-8222

*Attorneys for Director Michael Leach*

February 18, 2022  
Greenville, South Carolina

**CERTIFICATE OF SERVICE**

I hereby certify that on February 18, 2022, Defendant Michael Leach's Objections and Responses to Plaintiff's Second Set of Interrogatories and Requests for Production was served on all parties via email.

/s/ Miles E. Coleman.  
Miles E. Coleman

EXHIBIT 12

Letter from Governor McMaster to Steven Wagner

(ECF No. 79-1)



HENRY McMASTER  
GOVERNOR

February 27, 2018

The Honorable Steven Wagner  
Acting Assistant Secretary  
Administration for Children and Families  
U.S. Department of Health and Human Services  
330 C Street, SW  
Washington, D.C. 20201

Dear Acting Assistant Secretary Wagner:

South Carolina has more than 4,000 children in foster care, and we are thankful for all the wonderful Child Placing Agencies (“CPAs”) that assist in recruiting foster families to serve these children. Today I write specifically on behalf of South Carolina’s faith-based organizations that are called to serve and fill the crucial role of CPAs.

Title IV-E of the Social Security Act authorizes the Department of Health and Human Services (“Department”) to provide states with funding to assist in caring for children placed in foster family homes. In South Carolina, the Department directs these funds to our Department of Social Services (“DSS”). In turn, DSS contracts with both secular and faith-based CPAs to fulfill grant services. Our faith-based CPAs are essential as our State needs more CPAs to recruit more families. Faith-based organizations have contracted with various government entities for years to serve vulnerable populations, such as contracting with faith-based hospitals provide Medicaid and Medicare funding.

All CPAs follow the requirements of Title IV-E, which mandates that CPAs may not deny a person the right to become an adoptive or foster parent on the basis of “race, color, or national origin.” 42 U.S.C. § 671(a)(18). Effective January 11, 2017, the Department attempted to expand the law, adding two new subsections to an existing federal regulation. *See* 45 C.F.R. § 75.300(c), (d). However, Title IV-E already contains a statutory non-discrimination requirement. The Department cannot lawfully expand such statutory provisions through regulations, as a regulation must *implement* the statutory scheme, not *alter* or *amend* it.

The Honorable Steven Wagner

Page 2

February 27, 2018

Moreover, the new regulatory subsections effectively require CPAs to abandon their religious beliefs or forgo the available public licensure and funding, which violates the constitutional rights of faith-based organizations. A regulation used to limit the free exercise of faith-based providers violates the Religious Freedom Restoration Act (“RFRA”). The purpose of RFRA is to ensure that the government cannot substantially burden the free exercise of religion, such as by pressuring an entity to abandon its religious convictions in order to comply with governmental regulations.

The Supreme Court has made clear that that faith-based entities may contract with the government without having to abandon their sincerely religious beliefs. In *Trinity Lutheran Church of Columbia, Inc. v. Comer*, the Supreme Court held that the state policy of denying a “qualified religious entity a public benefit solely because of its religious character . . . goes too far” and violates the Establishment Clause. Upholding the new regulations would have the same effect, forcing a religious organization to choose between the tenets of its faith or applying for a CPA license to serve the children of South Carolina.

South Carolina needs to continue growing our CPAs, not to prevent them from serving our State’s children. In fact, one faith-based CPA, Miracle Hill, is our State’s largest provider of foster families for Level I foster children, recruiting 15% of the State’s foster families. Therefore, on behalf of South Carolina and faith-based organizations like Miracle Hill, I ask that the Department provide a deviation or waiver from its current policy to recoup grant funds from DSS if the Department determines the new regulations are violated by any DSS CPA contracts due to religiously held beliefs. Faith-based CPAs should be allowed to hold their sincerely held religious beliefs and be licensed to recruit foster parents for our foster children.

I look forward to hearing from you on this very important issue.

Yours very truly,



Henry McMaster

EXHIBIT 13

Letter from Steven Wagner to Governor McMaster  
(ECF No. 79-3)



ADMINISTRATION FOR  
**CHILDREN & FAMILIES**

Office of the Assistant Secretary | 330 C Street, S.W., Suite 4034  
Washington, DC 20201 | www.acf.hhs.gov

January 23, 2019

Governor Henry McMaster  
State House  
1100 Gervais Street  
Columbia, SC 29201

Re: Request for Deviation or Exception from HHS Regulations 45 CFR § 75.300(c)

Dear Governor McMaster:

This correspondence responds to your letter of February 27, 2018, to the Acting Assistant Secretary for Children and Families, written “on behalf of South Carolina and faith-based organizations” operating under South Carolina’s Title IV-E Foster Care Program (“the SC Foster Care Program”). As clarified through follow-up telephone calls, your letter requested that the SC Foster Care Program be granted an exception from U.S. Department of Health and Human Services’ (“HHS” or the “Department”) regulations at 45 CFR § 75.300(c), prohibiting subgrantees from selecting among prospective foster parents on the basis of religion, to the extent that such prohibition conflicts with a subgrantee’s religious exercise. We understand that one such faith-based subgrantee, Miracle Hill Ministries (“Miracle Hill”), exclusively recruits foster parents of a particular religion and accounts for up to 15% of your total foster care placements. We also understand that you believe that there are other participating faith-based organizations with similar religious exercise concerns and that other entities in the SC Foster Care Program do not have the same conflicts with § 75.300(c) and would work with prospective foster parents of different faiths or no faith.

Section 75.300(c) says:

(c) It is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services based on non-merit factors such as age, disability, sex, race, color, national origin, religion, gender identity, or sexual orientation. Recipients must comply with this public policy requirement in the administration of programs supported by HHS awards.

These requirements are broader than the nondiscrimination requirements specified in the Foster Care Program Statute, 42 U.S.C. § 671(a)(18), which says:

(a) Requisite features of State plan. In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which—(18) not later than January 1, 1997, provides that neither the State nor any other entity in the State that receives funds from the Federal Government and is involved in adoption or

foster care placements may—(A) deny to any person the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the person, or of the child, involved; or (B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.

The statutory requirements of § 671(a)(18) are incorporated into the grant for the SC Foster Care Program through 45 CFR § 75.300(a), which requires “that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements.” Other federal civil rights statutes may likewise apply to the SC Foster Care Program directly, as a recipient of federal financial assistance, or through 45 CFR § 75.300(a). Your letter did not request an exception from § 75.300(a).

In support of your exception request, you state that South Carolina has more than 4,000 children in foster care, that South Carolina needs more child placing agencies, and that faith-based organizations “are essential” to recruiting more families for child placement. You specifically cite Miracle Hill, a faith-based organization that recruits 15% of the foster care families in the SC Foster Care Program, and you state that, without the participation of such faith-based organizations, South Carolina would have difficulty continuing to place all children in need of foster care. You make the case that, if the SC Foster Care Program is not provided an exception from § 75.300(c) in this regard, certain faith-based organizations operating under your grant would have to abandon their religious beliefs or forego licensure and funding. You contend this would cause hardship to faith-based organizations and to the SC Foster Care Program. Your letter seeking the exception argued that certain requirements in § 75.300(c) and (d) exceed any nondiscrimination requirements or authority imposed by statute, and that § 75.300(c) and (d) limit the free exercise of religion of faith-based organizations in violation of the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, *et seq.* (“RFRA”). In follow-up telephone conversations with your chief legal counsel, the request for an exception was narrowed to the religious nondiscrimination provision in § 75.300(c).

On December 18, 2018, Miracle Hill wrote to HHS stating that, in prohibiting Miracle Hill’s use of religious criteria in selecting prospective foster parents under the SC Foster Care Program, HHS’s regulations substantially burden Miracle Hill’s free exercise of religion (including under RFRA), and are also *ultra vires* because they exceed the scope of the relevant statutes. Miracle Hill notes that the South Carolina Department of Social Services, pursuant to the requirements imposed on it through its grants from HHS, declined to renew Miracle Hill’s license to provide foster services and “instead granted [Miracle Hill] a provisional license that would be revoked if [Miracle Hill] continued [its] ministry consistent with [its] religious beliefs.” It is HHS’s understanding that this provisional license will be revoked in January 2019 unless Miracle Hill agrees to partner with foster parents in accordance with § 75.300(c), which Miracle Hill cannot do, because Miracle Hill “believe[s] those who hold certain positions of spiritual influence and leadership—including foster parents—should share [Miracle Hill’s] religious mission and beliefs.”

The HHS Office for Civil Rights (“OCR”) is the HHS component with delegated authority to ensure compliance with RFRA by the Department, its programs, and the recipients of HHS

federal financial assistance. OCR has reviewed Miracle Hill's letter as part of an ongoing investigation and has determined that subjecting Miracle Hill to the religious nondiscrimination requirement in § 75.300(c) (by requiring South Carolina to require Miracle Hill to comply with § 75.300(c) as a condition of receiving funding) would be inconsistent with RFRA.

OCR specifically found that Miracle Hill's sincere religious exercise would be substantially burdened by application of the religious nondiscrimination requirement of § 75.300(c), and that subjecting Miracle Hill to that requirement, by denying South Carolina's exception request, is not the least restrictive means of advancing a compelling government interest on the part of HHS. Relevant to this determination is the fact that the religious nondiscrimination provision in § 75.300(c) exceeds the scope of the nondiscrimination provisions found in the federal statutes applicable to the SC Foster Care Program, and provides no exceptions for religious organizations as are found in other statutes prohibiting religious discrimination. *See, e.g.*, 42 U.S.C. § 2000e-1(a) (Title VII); 42 U.S.C. § 3607(a) (Fair Housing Act). In addition, the interest of allowing potential foster parents into the SC Foster Care Program appears capable of being served by other providers in the program, since at least nine other foster care providers in Miracle Hill's area appear available to assist potential foster parents in the event Miracle Hill is unable to partner with certain potential foster parents because of Miracle Hill's religious beliefs. Of additional relevance is the fact that the OMB Uniform Administrative Requirements, located at 2 CFR § 200.300, do not contain provisions analogous to the broad religious nondiscrimination provision in 45 CFR § 75.300(c). As the Supreme Court recognized in *Holt v. Hobbs*, 135 S. Ct. 853, 866 (2015), consideration of analogous programs operated by other governmental entities is relevant in determining whether the government has a compelling interest "of the highest order" in requiring such a burden on religious exercise. Finally, 45 CFR Part 75 provides a mechanism for granting an exception from requirements of that part, including § 75.300(c): namely, as applicable here, case-by-case exceptions available under 45 CFR § 75.102(b). The Supreme Court has emphasized that, where exceptions are available, the government has a difficult burden to meet before refusing an exception under RFRA. *See, e.g., Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 434 (2006). Accordingly, OCR concluded that Miracle Hill (and any other similarly situated religious organization in the SC Foster Care Program) is entitled under RFRA to an exception from the religious nondiscrimination requirements of 45 CFR § 75.300.

Section 75.102(b) of 45 CFR states that "[e]xceptions on a case-by-case basis for individual non-Federal entities may be authorized by the HHS awarding agency or cognizant agency for indirect costs, except where otherwise required by law or where OMB or other approval is expressly required by this part." This provision permits the HHS awarding agency (or the "cognizant agency for indirect costs") to grant exceptions on a case-by-case basis.

After reviewing all of the information you have provided, we have determined that requiring your subgrantee Miracle Hill to comply with the religious non-discrimination provision of 45 CFR § 75.300(c) would cause a burden to religious beliefs that is unacceptable under RFRA. While this determination is sufficient to require the granting of your request for an exception from such provision of the regulation, we also note that the application of the regulatory requirement would also cause a significant programmatic burden for the SC Foster Care Program by impeding the placement of children into foster care.

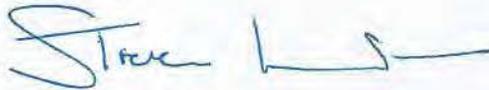
Governor Henry McMaster  
Page 4

For these reasons, under 45 CFR § 75.102(b), HHS is hereby conditionally granting the requested exception from the religious non-discrimination requirement of 45 CFR § 75.300(c). The exception applies with respect to Miracle Hill or any other subgrantee in the SC Foster Care Program that uses similar religious criteria in selecting among prospective foster care parents. The exception applies on the condition that Miracle Hill, or any other subgrantee making use of this exception, be required to refer potential foster parents that do not adhere to the subgrantee's religious beliefs to other subgrantees in the SC Foster Care Program, or to refer them to the SC Foster Care Program staff themselves, if the SC Foster Care Program staff is equipped to refer those persons to other willing subgrantees. This condition is added on the understanding that Miracle Hill, and any other subgrantee making use of this exception, does not object on religious grounds to making such referrals and, therefore, the condition does not implicate additional RFRA concerns.

Please note that this exception does not relieve the SC Foster Care Program of its obligation to comply with any other requirements of 45 CFR Part 75.300(c), of other paragraphs of 45 CFR Part 75.300, of 42 U.S.C. § 671(a)(18), or of any provisions of civil rights statutes, including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and section 504 of the Rehabilitation Act of 1973 that may apply.<sup>1</sup>

If you require any additional information, please contact me at 202.205.7747.

Sincerely,

A handwritten signature in blue ink, appearing to read "Steven Wagner", with a horizontal line extending to the right.

Steven Wagner  
Principal Deputy Assistant Secretary  
Administration for Children and Families

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<sup>1</sup> 42 U.S.C. § 2000d *et seq.*, 20 U.S.C. § 1681 *et seq.*, 42 U.S.C. § 6101 *et seq.*, and 29 U.S.C. § 794, respectively.

EXHIBIT 14

DSS Letter dated January 26, 2018,  
from Lowe to Miracle Hill  
(10545-B-012 through -014)



January 26, 2018

**VIA EMAIL, REGULAR MAIL & CERTIFIED MAIL**

Beth Williams  
Miracle Hill Ministries  
490 South Pleasantburg Drive  
Greenville, SC 29607

Dear Ms. Williams:

Thank you for speaking with me on Thursday, January 18, 2018, about the status of Miracle Hill's license as a Child Placing Agency (CPA). As we discussed, the Department has received information that Miracle Hill discriminates against potential foster and adoptive parents/families on the basis of the religion of those parents/families. As a licensed Child Placing Agency, Miracle Hill provides services including home studies and assessments that the Department relies upon in making foster care licensing decisions.

Miracle Hill is a long-standing and valued partner of the Department, sharing the Department's goals of providing services to children and families in the foster care system. Because of the close relationship between the Department and Miracle Hill, the Department proposes that we work together to resolve this issue. In the meantime, the Department has determined that under these circumstances it is appropriate to issue a temporary CPA license pursuant to S.C. Code of Regulations § 114-4930(F).

Upon Miracle Hill's application to renew its CPA license for 2018, the Department discovered that Miracle Hill's website refers to its recruitment of specifically Christian foster parents/families and that Miracle Hill's application requests information regarding a foster parent/family's religious beliefs and practice. Miracle Hill's Foster Care Manual also instructs its workers to inquire as to a family's particular religious belief and practice (see page 6, item 3 under "Licensing Specialist"; page 10, item 7; and page 26, item k). The Department accordingly followed up with questions regarding Miracle Hill's current practice to determine whether Miracle Hill uses the information in response to these inquiries in order to assess a home for an appropriate foster care placement or if the information is used to determine whether Miracle Hill will or will not serve a foster parent or family on the basis of the family's religion. In telephone conversations with the Department, Miracle Hill has given the Department reason to believe Miracle Hill intends to refuse to provide its services as a licensed Child Placing Agency to families who are not specifically Christians from a Protestant denomination.

SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES  
P.O. BOX 1520, COLUMBIA, SC 29202-1520

[www.dss.sc.gov](http://www.dss.sc.gov)



Such discrimination on the basis of religion contravenes the following regulations and policies:

1. S.C. Code of Regulations § 114-4980(A)(2)(a) states, "The child placing agency shall utilize the regulations established by the Department to conduct the foster home investigations." The requirements for foster home investigations are set forth fully in S.C. Code of Regulations § 114-550. The CPA licensing regulations do not allow a CPA to create additional requirements for the families it serves.
2. Religious organizations are both entitled and encouraged to participate in Health and Human Services (HHS) programs such as foster care programs, and the Department encourages and values the participation of religious organizations. However, 45 C.F.R. §87.3(d) prohibits religious discrimination by an organization in its provision of these services. "An organization that participates in any programs funded by financial assistance from an HHS awarding agency shall not, in providing services or in outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice." 45 C.F.R. § 87.3(d).
3. 45 C.F.R. § 75.300(c) prohibits discrimination on grounds of religion. "It is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services based on non-merit factors such as ... religion.... Recipients must comply with this public policy requirement in the administration of programs supported by HHS awards." 45 C.F.R. § 75.300(c).
4. DSS policy § 710 prohibits discrimination on grounds of religion. "The agency is committed to the exercise of non-discriminatory practice, and shall provide equal opportunities to all families and children, without regard to their ... religion ...." DSS Human Services Policy and Procedure Manual § 710.

Additionally, Miracle Hill's practice appears to violate Miracle Hill's own policy, which was submitted to the Department as part of Miracle Hill's license renewal process. Miracle Hill's Foster Care Manual section MHM.CPA.900 labeled "Introduction" states, "In accordance with Federal and State laws and South Carolina Department of Social Services (SCDSS) policy, this agency and contracted providers for foster care and adoption services are prohibited from discriminating on the basis of race, color, national origin, sex, age, religion, political beliefs or disability." Therefore, the Department's request is that Miracle Hill comply with its own policy submitted for licensure.

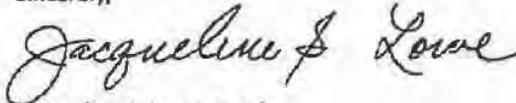
The Department requests that Miracle Hill address these concerns and issue a written plan of compliance within thirty days of receipt of this letter. The Department offers technical



assistance in developing this plan when requested. You may contact me at (803) 898-7511 or Vanessa Anderson at (803) 898-1869 to request assistance. Upon approval of the plan by the Department, Miracle Hill will have an additional thirty days to implement the plan. The temporary license granted herein shall be valid for no longer than six months. Failure to address these concerns will result in the expiration of Miracle Hill's license as a Child Placing Agency.

If you wish to further discuss this determination, please do not hesitate to contact me.

Sincerely,



Jacqueline S. Lowe, M.Ed.  
Licensing Director  
Child Placing Agency and Group Home Licensing

EXHIBIT 15

HHS Withdrawal of Approval of Exception  
dated November 18, 2021  
(ECF No. 91-1)



ADMINISTRATION FOR  
**CHILDREN & FAMILIES**

330 C Street, S.W., Washington, DC 20201 | [www.acf.hhs.gov](http://www.acf.hhs.gov)

November 18, 2021

Governor Henry McMaster  
 State House  
 1100 Gervais Street  
 Columbia, SC 29201

Re: Withdrawal of Approval of Exception from  
 Religious Non-Discrimination Requirement of 45 CFR 75.300(c)

Dear Governor McMaster:

On January 23, 2019, the Administration for Children and Families (ACF) sent you a letter approving South Carolina's request for an exception from the religious non-discrimination requirement of 45 CFR 75.300(c) (2016). The 2016 Rule included a requirement that no person will be subjected to discrimination in HHS federal awards. On November 19, 2019, HHS published a notification that it would exercise discretion to not enforce the 2016 Rule, including the non-discrimination provisions in § 75.300(c) and (d), due to concerns regarding whether the 2016 Rule complied with the Regulatory Flexibility Act. *See* Notification of Nonenforcement of Health and Human Services Grants Regulation, 84 Fed. Reg. 63,809 (Nov. 19, 2019) ("The provisions will not be enforced pending a repromulgation that complies with the Act."). Thus, the non-discrimination provisions in the 2016 Rule that the waiver issued to South Carolina sought to address are not currently being enforced. Accordingly, the religious exception South Carolina sought from the 2016 Rule is no longer warranted and, thus, is hereby rescinded.

Moreover, the January 23, 2019 exception was overbroad and did not properly apply the substantial burden requirement under the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb, *et seq.* HHS appreciates the historic participation of faith-based organizations in the foster care and adoption assistance programs. Nothing in this letter limits the ability of faith-based organizations to participate in HHS-funded social service programs on the same basis as other organizations.<sup>1</sup> However, the State did not provide evidence supporting a blanket exception from section 75.300(c)'s religious non-discrimination requirement for the benefit of all faith-based subrecipients in South Carolina. And the government maintains a strong interest in tailoring the relief provided to mitigate the potential harm of limiting the diversity of available foster homes for children in the foster care population,<sup>2</sup> many of whom identify as lesbian, gay,

<sup>1</sup> *See* 45 CFR Part 87.

<sup>2</sup> The reference to the foster care population in this letter refers to the foster care population funded under Title IV-B and IV-E of the Social Security Act, and not to the unaccompanied refugee minor or unaccompanied children's

bisexual, transgender, and queer or questioning (LGBTQ+). Accordingly, for this reason as well, ACF withdraws the January 23, 2019 exception.

### Background

Title IV-E of the Social Security Act (Act), codified at 42 U.S.C. § 670 *et seq.*, and implemented under the Code of Federal Regulations (CFR) at 45 CFR parts 1355, 1356, and 1357, provides funding for state foster care program costs contingent on an approved state plan meeting the requirements of title IV-E and regulations. Eligible title IV-E costs include recruitment and training of foster care providers. The broad title IV-E program goals and mission are to strengthen families so that children can depend on their parents to provide them with a safe and loving home. If that is not possible, the program goals are to find a new permanent home for the child. Foster care is considered a temporary living arrangement to ensure the child's safety and well-being until the child can be safely reunified with their parents, or, when that is not possible, while finding a permanent placement for the child through adoption, legal guardianship, or placement with a relative. Nationally, there are approximately 420,000 children in foster care, each of whom must be placed in the care of a licensed and trained foster family, making the recruitment of licensed and trained foster family homes a persistent need.<sup>3</sup>

On February 27, 2018, South Carolina submitted a request for a deviation from the requirements of 45 CFR 75.300(c) and (d).<sup>4</sup> In the request, South Carolina stated that faith-based child placement agencies (CPA) are essential to recruiting foster families for child placement. The State further claimed the nondiscrimination requirements of the rule placed a substantial burden on faith-based organizations, i.e., forgoing licensure and funding under title IV-E, due to their sincerely held beliefs that require them to exclude certain applicants, such as those that practice other religions, as potential foster home placements.

On January 23, 2019, ACF approved the State's request. ACF granted South Carolina an exception from the religious non-discrimination provisions of 45 CFR 75.300(c), which as applied to the title IV-E program and relevant here, prohibited grant recipients and subrecipients in the title IV-E program from excluding prospective foster parents on the basis of their religion. The letter cited as authority 45 CFR 75.102(b), which allows HHS to approve exceptions or deviations from grants administration requirements of 45 CFR part 75.

On November 19, 2019, HHS published a notice of nonenforcement of the regulation at 45 CFR 75.300(c) and (d), on the basis that the final rule promulgating the regulation did not comply with the Regulatory Flexibility Act.

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programs, which implicate unique programmatic expertise in working with refugee and immigrant populations, whom are served by a highly select group of care providers.

<sup>3</sup> U.S. Department of Health and Human Services. Administration for Children and Families, Children's Bureau. "Trends in Foster Care and Adoption: FY 2009-2018." <https://www.acf.hhs.gov/cb/resource/trends-in-foster-care-and-adoption>.

<sup>4</sup> The State initially requested an exception from the requirements of both paragraphs (c) and (d) of 45 CFR 75.300. According to ACF's approval letter, the State later amended its request in a phone call to include only exception from paragraph (c) of section 75.300.

On January 12, 2021, HHS published a final rule (2021 Rule) amending 45 CFR 75.300(c) and (d) by removing the requirement prohibiting discrimination based on a variety of factors, including explicit, blanket prohibitions on discrimination on the basis of sexual orientation and gender identity, as well as the specific language that HHS grant recipients implement the *United States v. Windsor* and *Obergefell v. Hodges* decisions in the administration of HHS awards by treating as valid the marriages of same-sex couples. The 2021 Rule requires grant recipients to adhere to non-discrimination requirements in applicable federal statutes and to follow Supreme Court decisions in the administration of HHS grants programs. The 2021 Rule is currently stayed.

### Review of the Exception under 45 CFR 75.102

In 2018, South Carolina requested an exception from the requirements of 45 CFR 75.300(c) for the State's foster care program funded under title IV-E, and with respect to faith-based organizations participating in the State's program with a religious objection to the non-discrimination requirements of section 45 CFR 75.300(c).

Section 75.300(c) (2018) states:

(c) It is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services based on non-merit factors such as age, disability, sex, race, color, national origin, religion, gender identity, or sexual orientation. Recipients must comply with this public policy requirement in the administration of programs supported by HHS awards.

In its request, South Carolina identified one grant subrecipient, Miracle Hill Ministries (Miracle Hill). Miracle Hill describes itself as “an evangelical, gospel-infused mercy ministry, [and] Jesus Christ is at the center of all that we do.”<sup>5</sup> According to the State's exception request letter, Miracle Hill is the State's largest foster care family provider, recruiting 15% of the State's foster parents.<sup>6</sup> Because it believes that “foster parents are in a position of spiritual influence over the children in their homes,” Miracle Hill requires “foster parents who partner with us be followers of Jesus Christ, be active in and accountable to a Christian church, and agree in belief and practice with our doctrinal statement.”<sup>7</sup>

<sup>5</sup> <https://miraclehill.org/who-we-are/>.

<sup>6</sup> South Carolina Letter requesting exception from administrative grant requirements, dated February 27, 2018 at p. 2.

<sup>7</sup> See Doctrinal Statement, available at: <https://miraclehill.org/foster-care-inquiry-form/>. According to the Complaint in *Maddonna v. Dep't of Health & Human Servs.*, in July 2019, Miracle Hill altered its religious requirement, “lifting its formal prohibition against Catholics and Orthodox Christians” while still requiring all prospective foster parents and mentors to “be followers of Jesus Christ” who are “active in and accountable to a Christian church” and agree with Miracle Hill's doctrinal statement. Case No. 6:19-cv-03551-TMC (D.S.C. Dec. 20, 2019), ECF No. 1 at ¶ 59.

Miracle Hill has indicated in public statements that it will not accept married, same-sex couples as foster parents.<sup>8</sup> Despite its unwillingness to work with all eligible foster parent applicants, Miracle Hill states that it will “absolutely never turn away a foster child,” and will refer people who may not meet Miracle Hill’s beliefs and requirements to other organizations.<sup>9</sup> According to the Complaint filed in *Maddonna v. Dep’t of Health and Human Servs.*, No. 6:19-cv-03551 (D.S.C., Dec. 20, 2019), Miracle Hill is the largest nontherapeutic foster program in South Carolina, and is one of only three nongovernmental CPAs working in Greenville County.<sup>10</sup> It is unclear how many other CPAs in the State work with foster home applicants of other faiths, of no faith, and in the LGBTQ+ community.

ACF approved the State’s request for an exception under 45 CFR 75.102(b), which provides:

(b) Exceptions on a case-by-case basis for individual non-Federal entities may be authorized by the HHS awarding agency or cognizant agency for indirect costs, except where otherwise required by law or where OMB or other approval is expressly required by this part.

Part 75 establishes uniform administrative requirements, cost principles, and audit requirements for HHS awards. Section 75.102(b) is best read to, and has been historically used to, address requests for exceptions that pertain to financial and administrative management of federal grants, such as deviations from normal allowable costs, requirements applicable to for-profit subrecipients, costs requiring prior approval, or computation of depreciation. In describing other paragraphs of the exception authority, the Office of Management and Budget has focused on program design and data-driven frameworks that enhance performance, for example, explaining:

Federal awarding agencies are encouraged to consider innovative program designs that apply a risk-based, data-driven framework to alleviate select compliance requirements and hold recipients accountable for good performance. Agencies are encouraged to employ innovative solutions to reduce burden, such as fixed amount awards, braided funding, and blended funding. As agencies consider these approaches, they should reach out to OMB to work together and discuss proposed innovative program designs . . . The culmination of this correspondence with OMB may result in a waiver or exception to the requirements in the Uniform Guidance. (See §200.102(c).)<sup>11</sup>

<sup>8</sup> See Mary Katherine Wildeman, South Carolina Foster Care Group Defends Policy that Allows Only for Christian Foster Families, *Post & Courier* (Mar. 17, 2018), [https://www.postandcourier.com/health/south-carolina-foster-care-group-defends-policythat-allows-only/article\\_ce9c717a-2922-11e8-a5d9-8b4e1d05f01c.html](https://www.postandcourier.com/health/south-carolina-foster-care-group-defends-policythat-allows-only/article_ce9c717a-2922-11e8-a5d9-8b4e1d05f01c.html); Josh Barlow, Path to Miracle Hill: Understanding the Legal Battle Between Civil Rights and Religious Liberty, *CGTN America* (Feb. 9, 2019), <https://america.cgtn.com/2019/02/08/path-to-miracle-hill-understanding-the-legal-battle-between-civil-rights-and-religious-liberty>.

<sup>9</sup> <https://miraclehill.org/how-we-help/childrens-ministries/foster-care/>

<sup>10</sup> Case No. 6:19-cv-03551 (D.S.C., Dec. 20, 2019), ECF No. 1 at 11.

<sup>11</sup> [https://www.cfo.gov/assets/files/2CFR-FrequentlyAskedQuestions\\_2021050321.pdf](https://www.cfo.gov/assets/files/2CFR-FrequentlyAskedQuestions_2021050321.pdf)

Using long-standing exception authority in government-wide rules to provide broad exceptions to civil rights or anti-discrimination laws was a novel use of the authority. On further review, ACF believes such use was improper.

### Application of the Religious Freedom Restoration Act

ACF takes seriously its obligation to comply with RFRA, 42 U.S.C. § 2000bb, *et seq.* Where RFRA requires modifying program requirements, ACF will do so. After further consultation within the Department, however, ACF has now concluded that the justification offered in the exemption letter to South Carolina misapplied the applicable RFRA standards. The government maintains important civil rights interests in a proper application of RFRA, and for the reasons set forth below, hereby rescinds the exemption.

RFRA requires the federal government to justify actions that substantially burden religious exercise by identifying a compelling interest and showing that its actions are the least restrictive means of achieving that interest. The exception provided with respect to the religious organizations participating in South Carolina's IV-E program was overbroad and failed to apply the substantial burden requirement under RFRA.

First, it granted a broader exception than required, providing relief to more parties than was justified. RFRA requires evaluating the burden an individual or organization faces in determining whether to grant a religious exception, and to create class-wide regulatory exceptions that apply throughout a state, as the exception to South Carolina provides (even when not requested by the other CPAs), runs contrary to that analysis.

Second, the Department maintains a strong interest in accounting for the harms such a broad exemption could have on third parties. *See Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005) (In addressing religious accommodation requests, "courts must take adequate account of the burdens a requested accommodation may impose on nonbeneficiaries."). In this case, the exception was granted in response to the burden on one specific religious organization, yet applied to "any other subgrantee of the SC Foster Care Program that uses similar religious criteria in selecting among prospective foster care parents." Moreover, the State did not provide any evidence that other organizations using similar selection criteria considered complying with antidiscrimination protections a substantial burden on their beliefs. Nor did the State proffer evidence regarding the effect the waiver would have on third parties under a class-wide exemption. *See Estate of Thornton v. Caldor*, 472 U.S. 703, 710-11 (1985) (striking down a Connecticut statute "which provides Sabbath observers with an absolute and unqualified right not to work on their Sabbath" because it failed to consider "special circumstances" or "whether the employer has made reasonable accommodation proposals," which "contravenes a fundamental principle of the Religion Clauses" by going "beyond having an incidental or remote effect of advancing religion"). Because the State did not provide information regarding the other unidentified religious organizations that were granted an exemption, the burden on those other organization's religious exercise was not established.

Any exception should be tailored to reduce the burden on a religious organization while accounting for harms to other parties. In the case of Miracle Hill and other faith-based organizations participating in the State’s foster care program, the exception could have been limited to the particular application of the religious nondiscrimination provision to which Miracle Hill objected. *Cf. Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 439 (2006) (“[C]ourts should strike sensible balances, pursuant to a compelling interest test that requires the Government to address *the particular practice at issue*.”). Instead, the exception letter granted Miracle Hill an exemption to the religious nondiscrimination provision in whole. In our view, accommodations could have been explored that could have the potential for addressing both the specific religious burden identified by Miracle Hill, while also minimizing the harms passed onto third parties.

Third, the IV-E program is unique, as numerous studies have confirmed that LGBTQ+ children are over-represented in the domestic foster care population, and the important role the states necessarily play in providing a broad array of foster care services to serve the domestic population under the title IV-E program.<sup>12</sup> We believe that the prior exception might affect such children, as well as impact the State’s ability to achieve the goals of the program by providing children with stable temporary or permanent homes, especially given that the exception applied State-wide.

As for potential foster parents, the government has a strong interest in a diverse population of foster parents where possible, especially given the over-representation of LGBTQ+ children in the domestic foster care population.<sup>13</sup> Such children could suffer psychological harm from placement in homes that do not accept them or require participation in the religious practices with beliefs contrary to the child’s beliefs. Moreover, research has shown that same-sex couples are much more likely to raise a foster child.<sup>14</sup>

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<sup>12</sup> See e.g., Bianca Wilson et al., *Sexual and Gender Minority Youth in Foster Care: Assessing Disproportionality and Disparities in Los Angeles* 6 (2014), <https://bit.ly/3auWk3g> (19.1 percent of youth surveyed in the Los Angeles County system identified as LGBTQ, suggesting that “there are between 1.5 and 2 times as many LGBTQ youth living in foster care as LGBTQ youth estimated to be living outside foster care.”); University of Maryland School of Social Work Institute for Innovation and Implementation et al., *The Cuyahoga Youth Count Report* (2021), <https://theinstitute.umaryland.edu/media/ssw/institute/Cuyahoga-Youth-Count.6.8.1.pdf>, (just over one third (32%) of youth in Cuyahoga County, Ohio’s foster care system identified as LGBTQ (compared to 9.2% nationwide average of youth age 13-17 identifying as LGBTQ+); Christina Wilson Remlin et al., *Safe Havens: Closing the Gap Between Recommended Practice and Reality for Transgender and Gender-Expansive Youth in Out-of-Home Care* (April 2017), <https://bit.ly/2xAXIVa> (LGBTQ youth make up about 5 to 7 percent of the general youth population, but research estimates that 25 percent of youth in child welfare systems are LGBTQ.); Laura Baams et al., *LGBTQ Youth in Unstable Housing and Foster Care*, 143 *Pediatrics* 3 (March 2019), <https://bit.ly/3kW8Ihl> (Survey of youth across California found that 30.4 percent of youth living in foster care identify as LGBTQ, as compared to 11.2 percent nationally); Cooper, K., Kastanis, A., Nezhad, S., & Wilson, B. (2014, August). *Sexual and gender minority youth in foster care: Assessing disproportionality and disparities in Los Angeles*, p. 37 (LGBTQ youth are 1.5 to 2 times more likely than their peers to be living in foster care), p. 7 (LGBTQ youth are 2.5 times as likely to be placed in congregate care settings like group homes). Retrieved from <http://williamsinstitute.law.ucla.edu/research/safe-schools-and-youth/lafys-aug-2014/>

<sup>13</sup> See studies listed in footnotes 11, *supra*.

<sup>14</sup> Shoshana K. Goldberg & Kerith J. Conron, *How Many Same-Sex Couples in the U.S. are Raising Children*, THE WILLIAMS INSTIT. 1 (July 2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Same-Sex-Parents->

Finally, the approval suggested that applying the non-discrimination provisions of section 75.300(c) would reduce the available pool of foster or adoptive parents in the State. However, the State proffered no evidence that other religious CPAs would similarly object to working with LGBTQ+ foster parent applicants, nor did it show how eliminating discriminatory eligibility criteria would not also result in a potential increase in the pool of available foster parents, as additional populations feel welcomed by the State and by individual child placing agencies.

For these reasons, as well as the 2019 Notice of Nonenforcement of the 2016 Rule, ACF hereby withdraws the January 23, 2019 exception letter granted to South Carolina, with respect to Miracle Hill and any other subgrantee in the South Carolina foster care program using religious criteria to select among prospective foster care parents.

If you require any additional information, please contact me at 202-401-7229.

Sincerely,



Joo Yeun Chang  
Principal Deputy Assistant Secretary  
Administration for Children and Families

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[Jul-2018.pdf](#) (Same-sex couples with children were also approximately seven times more likely than different-sex couples with children to be raising a foster child (2.9 percent versus 0.4 percent)).

EXHIBIT 16

DSS Summary of CPA Administrative Fees  
from July 1, 2016 through January 31, 2022  
(10545-G-0001 through -0002)

South Carolina Department of Social Services  
Child Placing Agency Administrative Fees

Provider Name	July 1, 2016 - June 30, 2017	July 1, 2017 - June 30, 2018	July 1, 2018 - June 30, 2019	July 1, 2019 - June 30, 2020	July 1, 2020 - June 30, 2021	July 1, 2021 - January 31, 2022	Grand Total
<b>CHILD ABUSE PREVENTION ASSOCIA</b>			\$ 15,230.00	\$ 32,740.00	\$ 52,480.00	\$ 72,595.00	\$ 173,045.00
State General Funds			\$ 15,230.00	\$ 32,060.00	\$ 35,357.50	\$ 47,677.50	\$ 130,325.00
Federal Funds				\$ 680.00	\$ 17,122.50	\$ 24,917.50	\$ 42,720.00
<b>CHURCH OF GOD HOME FOR CHILDREN</b>			\$ 4,220.00	\$ 11,130.00	\$ 29,395.00	\$ 52,220.00	\$ 96,965.00
State General Funds			\$ 4,220.00	\$ 11,130.00	\$ 24,680.00	\$ 47,357.50	\$ 87,387.50
Federal Funds					\$ 4,715.00	\$ 4,862.50	\$ 9,577.50
<b>CONNIE MAXWELL</b>			\$ 14,540.00	\$ 22,540.00	\$ 77,625.00	\$ 124,805.00	\$ 239,510.00
State General Funds			\$ 14,540.00	\$ 22,540.00	\$ 58,315.00	\$ 95,242.50	\$ 190,637.50
Federal Funds					\$ 19,310.00	\$ 29,562.50	\$ 48,872.50
<b>EPWORTH CHILDREN S HOME</b>			\$ 28,720.00	\$ 110,570.00	\$ 298,490.00	\$ 398,815.00	\$ 836,595.00
State General Funds			\$ 28,720.00	\$ 110,420.00	\$ 218,015.00	\$ 280,067.50	\$ 637,222.50
Federal Funds				\$ 150.00	\$ 80,475.00	\$ 118,747.50	\$ 199,372.50
<b>FAMILY PRESERVATION</b>					\$ 10,455.00	\$ 21,510.00	\$ 31,965.00
State General Funds					\$ 7,005.00	\$ 15,467.50	\$ 22,472.50
Federal Funds					\$ 3,450.00	\$ 6,042.50	\$ 9,492.50
<b>GROWING HOME SOUTHEAST</b>					\$ 71,475.00	\$ 165,885.00	\$ 237,360.00
State General Funds					\$ 51,877.50	\$ 121,067.50	\$ 172,945.00
Federal Funds					\$ 19,597.50	\$ 44,817.50	\$ 64,415.00
<b>JOHN K. CROSSWELL HOME FOR CHILDREN</b>			\$ 4,290.00	\$ 12,830.00	\$ 18,275.00	\$ 28,120.00	\$ 63,515.00
State General Funds			\$ 4,290.00	\$ 12,830.00	\$ 14,720.00	\$ 19,085.00	\$ 50,925.00
Federal Funds					\$ 3,555.00	\$ 9,035.00	\$ 12,590.00
<b>LUTHERAN FAMILY SERVICES</b>					\$ 47,135.00	\$ 124,490.00	\$ 171,625.00
State General Funds					\$ 26,987.50	\$ 83,190.00	\$ 110,177.50
Federal Funds					\$ 20,147.50	\$ 41,300.00	\$ 61,447.50
<b>MIRACLE HILL MINISTRIES INC</b>	\$ 620,800.00	\$ 592,080.00	\$ 644,515.00	\$ 525,280.00	\$ 755,900.00	\$ 188,305.00	\$ 3,326,880.00
State General Funds	\$ 620,800.00	\$ 592,080.00	\$ 644,515.00	\$ 525,280.00	\$ 518,962.50	\$ 127,912.50	\$ 3,029,550.00
Federal Funds					\$ 236,937.50	\$ 60,392.50	\$ 297,330.00
<b>NATIONAL YAP</b>						\$ 19,660.00	\$ 19,660.00
State General Funds						\$ 18,132.50	\$ 18,132.50
Federal Funds						\$ 1,527.50	\$ 1,527.50
<b>NEW FOUNDATIONS</b>					\$ 6,835.00	\$ 31,205.00	\$ 38,040.00
State General Funds					\$ 6,835.00	\$ 29,225.00	\$ 36,060.00
Federal Funds						\$ 1,980.00	\$ 1,980.00

Provider Name	July 1, 2016 - June 30, 2017	July 1, 2017 - June 30, 2018	July 1, 2018 - June 30, 2019	July 1, 2019 - June 30, 2020	July 1, 2020 - June 30, 2021	July 1, 2021 - January 31, 2022	Grand Total
<b>NIGHTLIGHT CHRISTIAN ADOPTIONS</b>					\$ 29,785.00	\$ 101,820.00	\$ 131,605.00
State General Funds					\$ 24,875.00	\$ 69,405.00	\$ 94,280.00
Federal Funds					\$ 4,910.00	\$ 32,415.00	\$ 37,325.00
<b>OASIS OF HOPE</b>						\$ 31,385.00	\$ 31,385.00
State General Funds						\$ 19,755.00	\$ 19,755.00
Federal Funds						\$ 11,630.00	\$ 11,630.00
<b>SC YOUTH ADVOCATE PROGRAM INC</b>					\$ 150,565.00	\$ 430,630.00	\$ 581,195.00
State General Funds					\$ 114,167.50	\$ 317,207.50	\$ 431,375.00
Federal Funds					\$ 36,397.50	\$ 113,422.50	\$ 149,820.00
<b>SOUTH CAROLINA MENTOR</b>					\$ 87,435.00	\$ 208,465.00	\$ 295,900.00
State General Funds					\$ 62,947.50	\$ 173,415.00	\$ 236,362.50
Federal Funds					\$ 24,487.50	\$ 35,050.00	\$ 59,537.50
<b>SPECIALIZED ALTERNATIVE YOUTH</b>					\$ 21,465.00	\$ 61,395.00	\$ 82,860.00
State General Funds					\$ 15,715.00	\$ 47,185.00	\$ 62,900.00
Federal Funds					\$ 5,750.00	\$ 14,210.00	\$ 19,960.00
<b>THE BAIR FOUNDATION</b>					\$ 78,610.00	\$ 140,990.00	\$ 219,600.00
State General Funds					\$ 53,107.50	\$ 102,767.50	\$ 155,875.00
Federal Funds					\$ 25,502.50	\$ 38,222.50	\$ 63,725.00
<b>THORNWELL HOME FOR CHILDREN</b>			\$ 23,510.00	\$ 52,550.00	\$ 119,545.00	\$ 132,445.00	\$ 328,050.00
State General Funds			\$ 23,510.00	\$ 52,550.00	\$ 88,817.50	\$ 107,582.50	\$ 272,460.00
Federal Funds					\$ 30,727.50	\$ 24,862.50	\$ 55,590.00
<b>Grand Total</b>	<b>\$ 620,800.00</b>	<b>\$ 592,080.00</b>	<b>\$ 735,025.00</b>	<b>\$ 767,640.00</b>	<b>\$ 1,855,470.00</b>	<b>\$ 2,334,740.00</b>	<b>\$ 6,905,755.00</b>