

October 24, 2018

Roger Severino, Director of the Office for Civil Rights
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201
VIA FedEx

Dear Mr. Severino:

We, the undersigned, represent and advocate for the interests of children in foster care in South Carolina and around the country. We write in opposition to South Carolina Governor McMaster's requested waiver from the Department of Health and Human Services to allow federally-funded foster care providers within the State to deny applications of prospective Jewish and other foster and adoptive parents on the basis of religious belief. We urge you to reject the waiver as illegal on constitutional and statutory grounds, and because it would hurt thousands of needy children in our communities.

We respect and value the role that faith-based providers play in providing both placement and services for children in foster care across the country. Our concern is with state-sanctioned discrimination of any kind.

First, the waiver would expressly allow discrimination against potential foster or adoptive parents and foster children based on a provider's religious belief in violation of the First Amendment. Second, the waiver would expressly allow federally-funded discrimination against any individual whose beliefs differ from those of the providers, including, but not limited to, Jewish and LGBTQ foster or adoptive parents and foster children.* Third, as was rejected decades ago, a system of discriminatory religiously segregated providers can also support a system of unlawful racially segregated providers and outcomes for children and families served by them. *See, e.g., Wilder v. Bernstein*, 645 F. Supp. 1292 (S.D.N.Y.1986), *aff'd*, 848 F.2d 1338 (2d Cir. 1988).

The legality of any such waiver aside, Governor McMaster's request poses a risk of serious harm to South Carolina's system-involved children who face a shortage of foster homes and the overuse of inappropriate group facilities to house children. By asking the federal government for a waiver that would permit it to discriminate, South Carolina would prevent otherwise qualified, caring individuals and families from becoming foster and adoptive parents because they fail to meet a religious litmus test.

Licensed discrimination would only further harm the increasing number of children who so desperately need safe and loving homes.

* As you know, the U.S. Department of Health and Human Services sets forth explicit anti-discrimination provisions as a condition of receiving federal funding. Title 45 C.F.R. § 75.300(c).

We call on you to reject this waiver.

Sincerely,



Children's Rights (Christina Remlin, Lead Counsel, 404-586-6637)

Center for Children & Youth Justice
Children & Youth Law Clinic, University of Miami School of Law
Children's Advocacy Institute
Children's Defense Fund-New York
Children's Law Center, Inc.
Children's Law Center of California
Children's Law Center of Minnesota
Civitas ChildLaw Center
Crisanne Hazen, Assistant Director, Child Advocacy Program, Harvard Law School
Family Equality Council
First Star, Inc.
Jay Sicklick, Deputy Director, Center for Children's Advocacy, Connecticut
Juvenile Law Center
Lambda Legal
Lawyers for Children
National Association of Counsel for Children
National Center for Youth Law
Professor Michael J. Dale, Nova Southeastern University College of Law
South Carolina Appleseed Legal Justice Center
Youth Law Center

Copy via FedEx to Hon. Alex M. Azar II, Secretary, U.S. Department of Health and Human Services