

July 23, 2018

The Honorable Sen. Richard Shelby
Chairman, Senate Committee on Appropriations
304 Russell Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Sen. Patrick Leahy
Vice Chairman, Senate Committee on
Appropriations
437 Russell Senate Office Building
United States Senate
Washington, DC 20510

Re: Secular Groups Oppose the Aderholt Amendment to the Labor, Health, and Human Services Appropriations Bill, which Requires Religious Discrimination in Foster Care and Adoption

Dear Chairman Shelby and Vice Chairman Leahy:

The undersigned organizations representing the secular community, including atheists, agnostics, humanists, and the religiously unaffiliated, as well as all Americans who value true religious freedom and equality, write to urge you to oppose the Aderholt Amendment to the House Labor, Health, and Human Services Appropriations bill. The amendment would require states to allow child welfare agencies to discriminate and refuse to provide services based on their religious beliefs or to face crushing financial penalties to their child welfare systems.

Representative Aderholt introduced this dangerous amendment in the Appropriations Committee markup of the Labor, Health, and Human Services Appropriations bill on July 10th, 2018, which was later combined into the broader Labor, Health, and Human Services Appropriations bill currently before the House. The Senate version of the bill does not include this amendment, and we urge the Committee to oppose its inclusion in any final appropriations packages.

The Aderholt Amendment would put vulnerable children in child welfare system across our nation at risk by forcing states to make a terrible choice: harm children by losing federal child welfare funding or harm children by allowing discrimination against them and would-be foster and adoptive parents. This damaging amendment would have a universally negative impact on foster youth and families who are atheist, agnostic, or otherwise non-religious, as well as LGBTQ people, single parents, and members of minority religions.

Supporters justify this harmful amendment by asserting that it will encourage a diversity of child welfare providers. However, it is not a lack of service providers, but rather an insufficient number of foster and adoptive families that keep so many children in foster care instead of in a loving home. There is no evidence whatsoever – either actual or anecdotal – that allowing taxpayer-funded child welfare providers to discriminate against otherwise qualified foster and adoptive families will somehow increase the number of providers entering the market. Instead, discrimination will limit the amount of homes available to foster children and will significantly impact the efficiency of the existing system. We strongly urge you to unequivocally reject this publicly funded discrimination.

Religious-based discrimination in child welfare services potentially affects over a quarter of Americans, with the greatest negative impact on foster youth.

As of September 2016, there were a 437,465 children in US foster care systems awaiting adoption.¹ Unfortunately, rather than expanding the options available to foster youth, this exclusionary amendment limits the number of homes available to foster children, thereby reducing the number of permanent placements of foster children. An insufficient number of foster homes has a negative impact both on child welfare systems and foster youth, as these systems rely upon a significant number of adult applicants in order to properly function. Without enough foster homes, placement agencies are forced to place children outside of their communities and disrupt their lives, which can result in negative psychological effects.²

While religious exceptions required by the Aderholt Amendment allow for broad discrimination based on religion, the prospective foster parents most often affected are atheists and religiously unaffiliated people, LGBTQ people, single people, and members of minority religions. Currently, about 24% of adults are religiously unaffiliated, and atheists and agnostics make up about 7% of the total population.³ Therefore, even without considering the other categories of people affected, allowing foster placement agencies to discriminate on the basis of their religion will potentially exclude about a quarter of adults from providing a home for foster children, inevitably reducing the number of youth placed in loving, permanent homes.

The amendment will also potentially affect an estimated 2 million LGBTQ adults who are interested in adopting children in the United States,⁴ as well as another 6% of Americans who follow various non-Christian faiths.⁵

For example, in South Carolina, Beth Lesser, a foster care parent of 10 years, was denied the opportunity to work with Miracle Hill, a local Christian placement agency, because she was Jewish.⁶ A portion of the interview process required Lesser to share her “faith journey.” The agency also automatically rejects same-sex couples into fostering programs. Atheist parents, those without a “faith journey,” and LGBTQ parents will face the same discrimination as Jewish applicants, like Beth Lesser, at discriminatory Christian agencies.

¹ Child Welfare Information Gateway. (2017). *Foster Care Statistics 2016*. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau.

² Mary Katherine Wilderman (2018), *South Carolina Foster Care Group Defends Policy That Allows Only for Christian Foster Families*. The Post and Courier: Greenville, SC.

³ Cox D & Jones RP. (2017). *America's Changing Religious Identity: Findings from the 2016 American Values Atlas*. Public Religion Research Institution: Washington, DC.

⁴ National Adoption Center (2015) *Serving the LGBT Community*, Philadelphia, PA: National Adoption Center. <http://www.adopt.org/content/serving-lgbt-community> (last visited May 30, 2018).

⁵ Smith G, et al. (2015). *America's Changing Religious Landscape*. Pew Research Center.

⁶ Angelina Davis (2018). *Scrutiny of Miracle Hill's Faith-Based Approach Reaches New Level*. Greenville News: Greenville, SC. <https://www.greenvilleonline.com/story/news/2018/03/01/miracle-hill-foster-care/362560002/> (last visited May 25, 2018).

Taxpayers should not be forced to financially support this type of federally sanctioned discrimination, particularly when such discrimination will undermine the integrity of state child welfare systems and harm the very youth these systems were created to serve.

Allowing faith-based discrimination in foster care will subject already at-risk youth to further negative psychological and physical impacts.

The Aderholt Amendment goes much further than most states with religious exceptions in this area. Not only would it allow discrimination against would-be parents, the amendment would allow child welfare providers to deny social services to youth themselves, according to their religious beliefs. For example, the broad language could be used by foster parents to deny medical services, counseling, or contraception to young people; by shelters who do not wish to serve pregnant, LGBTQ, atheist, or religious minority youth; or by agencies to refuse to reunify families if the parents are the “wrong” religion. This broadly crafted exemption may even require states to allow providers to subject foster youth to dangerous and discredited practices such as conversion therapy, which falsely claim to change a person’s sexual orientation or gender identity or expression.

Unfortunately, the discrimination sanctioned by the Aderholt Amendment is likely to affect a significant number of youth. Studies show that approximately 13% of youth ages 13-18 identify as atheists, with more than a third being non-religious.⁷ Additionally, there is a disproportionately high number of LGBTQ youth in foster care, with many having been abandoned by their families due to their sexual orientation, gender identity, or gender expression.⁸ 18.5% of foster children report experiencing LGBTQ-related discrimination, and 12.9% of LGBTQ youth report being treated poorly by the foster care system, compared to 5.8% of non-LGBTQ youth.⁹ For groups that are already targeted by religious organizations and legislators, preventing placement will have a significant impact on foster children’s personal identity and self-worth.

Taxpayers should not be required to fund child welfare agencies that refuse to provide essential services, that discriminate against youth they disfavor, or that facilitate religious coercion and physical and mental abuse.

Allowing foster and adoption placement agencies to discriminate based on their religious beliefs with federal funds violates the Establishment Clause.

The Establishment Clause of the First Amendment requires the consideration of any impact an accommodation or religious exemption would have on third parties. Specifically, the Constitution bars the government from crafting “affirmative” accommodations within its programs if the accommodations

⁷ The Barna Group (2018). *Gen Z: The Culture, Beliefs and Motivations Shaping the Next Generation*. The Barna Group and Impact 360 Institute: Ventura, CA.

⁸ National Adoption Center (2015), *Serving the LGBT Community*. <http://www.adopt.org/content/serving-lgbt-community> (last visited May 25, 2018).

⁹ The Williams Institute (2014), *Sexual and Gender Minority Youth in Foster Care*. The Williams Institute, Los Angeles LGBT Center, Hierarchy Consulting, and Permanency Innovations Initiative: Los Angeles, CA.

would harm any program beneficiaries.¹⁰ The Constitution commands that “an accommodation must be measured so that it does not override other significant interests;”¹¹ “impose unjustified burdens on other[s];”¹² or have a “detrimental effect on any third party.”¹³

However, the Aderholt Amendment unjustifiably burdens both the applicant parents and the foster youth, third party beneficiaries of these programs. These religious exemptions would enable entities receiving taxpayer funding to refuse to provide critical child welfare services based on their religious beliefs, which would undoubtedly harm third parties in violation of the Establishment Clause.¹⁴

Religious adoption agencies will not be forced to close if denied the opportunity to discriminate; however, under the Aderholt Amendment, states which refuse to allow discrimination will pay a price.

Miracle Hill’s president and CEO Reid Lehman stated that unless granted license to discriminate, the agency would no longer be able to recruit foster families or support them financially.¹⁵ Sponsors of this type of legislation similarly threaten this “forced closure” of religiously affiliated agencies who would be mandated to place children in households that do not share the agency’s values. They threaten to close all operations, because if they are required to provide services to people they object to, they will refuse to service any youth at all. In reality, agencies in states who choose to discriminate in this way have not been compelled to close—they are simply no longer eligible for public funding. Religious freedom does not provide a right to demand government funding if an organization is not willing to serve the community as a whole.

However, under the Aderholt Amendment, states which prohibit discrimination in foster care and adoption – eight states and the District of Columbia do so by statute, and 44 states have nondiscrimination protections for parents and children on the basis of religion¹⁶ – stand to lose

¹⁰ U.S. Const. Amend. I; *Cutter v. Wilkinson*, 554 U.S. 709, 720, 722 (2005) (to comply with the Establishment Clause, courts “must take adequate account of the burdens a requested accommodation may impose on nonbeneficiaries” and must ensure that the accommodation is “measured so that it does not override other significant interests”) (citing *Estate of Thornton v. Caldor*, 472 U.S. 703, 710 (1985)); see also *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2781 n.37 (2014); *Holt v. Hobbs*, 135 S. Ct. 853, 867 (2015) (Ginsburg, J., concurring).

¹¹ *Cutter v. Wilkinson*, 544 U.S. at 722.

¹² *Id.* at 726.

¹³ *Id.* at 720, 722; See also *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. at 2781; *Estate of Thornton v. Caldor*, 472 U.S. at 710 (“unyielding weighting” of religious exercise “over all other interests...contravenes a fundamental principle” by having “a primary effect that impermissibly advances a particular religious practice.”); *Texas Monthly, Inc. v. Bullock*, 480 U.S. 1, 18 n.8 (1989) (religious accommodations may not impose “substantial burdens on nonbeneficiaries”).

¹⁴ Respecting religious exercise may not “unduly restrict other persons, such as employees, in protecting their own interests, interests the law deems compelling.” See *Burwell v. Hobby Lobby*, 134 S. Ct. at 2787. When considering whether the birth control coverage requirement was the least restrictive means in *Hobby Lobby*, the Court considered that the accommodation offered by the government ensured that affected employees “have precisely the same access to all FDA-approved contraceptives as employees of companies whose owners have no religious objections to providing coverage.” See *id.* at 2759. In other words, the effect of the accommodation on women would be “precisely zero.” *Id.* at 2760.

¹⁵ Angelina Davis (2018), *Scrutiny of Miracle Hill’s Faith-Based Approach Reaches New Level*. Greenville News: Greenville, SC. <https://www.greenvilleonline.com/story/news/2018/03/01/miracle-hill-foster-care/362560002/> (last visited May 25, 2018).

¹⁶ Movement Advancement Project (2018). *Creating a License to Discriminate: 2018 Federal Child Welfare Amendment*. Issue Brief, July 2018. <http://www.lgbtmap.org/file/AderholtAmendmentAnalysis.pdf> (last visited July 17, 2018).

hundreds of millions of dollars in child welfare funding received through Title IV-E, which reimburses costs associated with placing children in foster or adoptive homes. For example, in California alone, which currently serves 54,685 children,¹⁷ stands to lose \$249,332,272.¹⁸ In total, 46 states and the District of Columbia risk a 15% reduction in funding because of this amendment, a cumulative cut of \$1.04 billion dollars to an already strained system that currently serves more than 395,000 children.¹⁹ Those children, already at-risk, will pay the price if this amendment passes into law.

Child welfare systems must hold the best interests of young people as their first priority. When taxpayer funds are used to assist in the placement of foster children, those funds should be spent ensuring that children are placed in loving, safe, nurturing environments as soon as possible. The ability to love and care for a child is not limited to people of one particular faith. As advocates for equal protection of secular Americans and the separation of religion from government, we believe that taxpayer funding should be reserved for those adoption agencies that put the interests of the children first, not those who seek to indoctrinate and discriminate. We urge you to reject the Aderholt Amendment; the vulnerable young people in our Nation's child welfare systems deserve better.

If you should have any questions about this issue or our position, please contact Alison Gill, American Atheists Legal & Policy Director, at agill@atheists.org or by phone at 908.276.7300 Ext. 9.

Sincerely,

American Atheists
American Humanist Association
Freedom From Religion Foundation
Center for Inquiry
Secular Coalition for America
Secular Student Alliance

¹⁷ U.S. Department of Health and Human Services, Administration for Children and Families, "Adoption and Foster Care Analysis and Reporting System (AFCARS): Number of Children Served in Foster Care, by State, FY 2007- 2016," Data as of October 2017, https://www.acf.hhs.gov/sites/default/files/cb/afcars_state_data_tables_07thru16.xlsx.

¹⁸ Child Trends, "Child Welfare Financing SFY 2014: State-Level Data Table," October 3, 2016, <https://www.childtrends.org/publications/child-welfare-financing-sfy-2014-state-level-data-table>.

¹⁹ *Id.*; U.S. Department of Health and Human Services, *supra* at 17.