



## United States Conference of Catholic Bishops

3211 FOURTH STREET NE • WASHINGTON DC 20017-1194 • 202-541-3000

WEBSITE: WWW.USCCB.ORG • FAX 202-541-3339

August 22, 2019

Hon. Mike Kelly, Ranking Member  
U.S. House Committee on Ways and Means  
Subcommittee on Oversight  
Washington, DC 20515

Hon. Jackie Walorski, Ranking Member  
U.S. House Committee on Ways and Means  
Subcommittee on Worker and Family Support  
Washington, DC 20515

Dear Ranking Member Kelly and Ranking Member Walorski:

Thank you for the opportunity to provide input for your committee's investigation into the waiver granted on January 23, 2019, by the U.S. Department of Health and Human Services to Miracle Hill Ministries of South Carolina, from federal regulation 45 C.F.R. §75.300(c), with respect to its provision of foster care services.

Miracle Hill is not a Catholic organization. We may have differences in philosophy and, more pertinently, policy and operations. Where we, and hopefully the Committee on Ways and Means, share common cause, however, is in the paramount importance of helping children in need find loving homes. Catholic charities across the country do this for thousands of children every year (completing adoptions in over 70 dioceses in 2016, for example) and have been respected for their work for an entire century in some communities. Their dedicated personnel strive to serve every child they encounter regardless of demographics, characteristics, or background.

Providing foster care and adoption services to as many children as possible in a time of escalating need requires a vibrant and diverse partnership of families, government, and local non-profit organizations, including faith-based providers. To shut down or restrict faith-based organizations' work by infringing on religious liberty is gravely regrettable and serves no one, especially the children, who should be our first priority. Children need more options, not fewer. To that end, we lament that, in some jurisdictions, the religious freedom of certain charitable providers to operate in accord with their beliefs has been threatened or even taken away entirely. Catholic providers, and more importantly the children and families they serve, experienced this in states such as Massachusetts and Illinois in past years and face the same threat in Michigan and Pennsylvania today.

In support of your investigation, and of the freedom to serve, we enclose several documents that you may find illustrative. These include information from some of our local providers on the nature and scope of their work as well as concerns and observations in the current landscape, our pertinent public policy statements and supporting documents, and stories from children helped through faith-based foster care and adoption. In your review of these documents, please give special attention to the testimony of Shamber Flore in Michigan, who recounts St. Vincent Catholic Charities' life-saving role in her journey to the love and safety of the Flore family.

We thank you for your consideration and pray for your work.

Sincerely,

Most Rev. Robert J. McManus  
Bishop of Worcester  
Chairman, Committee  
for Religious Liberty

Most Rev. James D. Conley  
Bishop of Lincoln  
Chairman, Subcommittee for the  
Promotion and Defense of Marriage

Most Rev. Frank J. Dewane  
Bishop of Venice  
Chairman, Committee on  
Domestic Justice and Human  
Development

# EXHIBIT

## A

# The Detroit News

<http://detne.ws/2ttlwFv>

## Column: My adoption agency saved me

Shamber Flore Published 10:48 p.m. ET March 7, 2018 | Updated 10:13 a.m. ET March 8, 2018



(Photo: Courtesy of the Becket Fund)  
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At the age of 5, gunshots and sirens were my lullaby. I was exposed to gangs, prostitution, drugs, and abuse before most kids learn their ABCs. My earliest memories are walking to the bus stop for school a half mile away by myself (even in the cold Michigan winters), or going with my mom to foreign places while I waited anxiously for her to come back from long meetings with strange men.

My mom was a prostitute, and when my dad happened to be around he only added to the abuse in my life. My two siblings and I were just the byproducts of their rocky relationship, and so we were burdens. We were dragged from apartment to apartment, never knowing what the next day would bring or what the next meal would be.

Until one day, a knock on the door changed my life. It was Michigan's Child Protective Services.

These strangers took me from the only home we had ever known, though unhealthy and dysfunctional, and separated me from my brother and sister. During the next chapter of my life, I was bounced from family to family, and I almost never saw my brother and sister. Each time I came to a new home, I got my hopes up that this would be my forever

family. But it always felt like once again, I was packing up my bags, moving on to the next strange place.

That changed when an adoption agency called St. Vincent Catholic Charities helped to piece together the brokenness of my life by finding a permanent home for me.

In 2005, St. Vincent placed me and my siblings with the Flore family. I quickly came to know them as mom and dad. They were stable and loving — toward each other, and just as importantly, toward me and my siblings. Not only did they give us good food, warm clothes, and cozy beds, they nurtured and cherished us, and gave us a quality education. Finally, I was able to begin real healing. I had a chance to lead a happy life. And in my new family, I've learned what love feels like.

Every child in foster care deserves to find a loving home like I did. But because of a desperate shortage of willing families, particularly for minority, older and disabled children, many won't. In Michigan alone there are nearly 13,000 children in foster care. At this moment, over 340 of those kids are just waiting to be adopted, and over half of those are minority children like me. As time goes by, the prospect of finding a family willing to permanently adopt a foster child diminishes. Every year approximately 600 children in Michigan "age out" of foster care, which means that at the age of 18 they officially leave the foster system never having found a permanent family, let alone resources or skills to make it on their own. These children are much more likely to end up in poverty and much less likely to graduate from high school, let alone college.

Adoption agencies like St. Vincent make a big difference in alleviating this problem and finding more families to provide a home for these kids. Through St. Vincent's work last year, 79 children were placed in foster care, 24 children had their adoptions finalized, and 17 additional children began the process of finalizing an adoption. Most of the children in St. Vincent's care are minority children, and it excels in providing extra support for families with special needs children and finding homes for especially hard to place kids like teens or larger sibling groups like mine. And because of its faith-based mission, St. Vincent can reach different segments of the population, recruiting families like my mom and dad who would not have adopted with another agency.

But now a lawsuit brought by the ACLU is threatening St. Vincent's and other faith-based adoption agencies. The ACLU is suing the state of Michigan for partnering with religious adoption agencies like St. Vincent simply because they are religious and follow a faith-based mission. If they succeed, St. Vincent will be forced to close the doors on its foster and adoption programs, and countless children still trapped in the foster system and in need of a loving home may never find it.

St. Vincent rescues children from the most vulnerable, most disadvantaged backgrounds like mine and gives them a chance to be part of a loving family and have a normal, healthy, happy childhood. We can't let the ACLU take that away.

Shamber Flore, 20, was adopted through St. Vincent Catholic Charities in 2005. She lives near Lansing.

EXHIBIT

B



## United States Conference of Catholic Bishops

3211 FOURTH STREET NE • WASHINGTON DC 20017-1194 • 202-541-3000

WEBSITE: WWW.USCCB.ORG • FAX 202-541-3339

February 1, 2019

Representative Mike Kelly  
United States House of Representatives  
Washington, DC 20515

Dear Representative Kelly,

As the respective chairmen of the U.S. Conference of Catholic Bishops' Committee on Domestic Justice and Human Development, Committee for Religious Liberty, and Subcommittee for the Promotion and Defense of Marriage, we write in strong support of your bipartisan bill, H.R. 897, the Child Welfare Provider Inclusion Act of 2019.

Our first and most cherished freedom, religious liberty, is to be enjoyed by all Americans, including child welfare providers who serve the needs of children. The Inclusion Act protects the freedom of all child welfare providers by ensuring they will not be discriminated against by the government because of their religious beliefs or moral convictions. The Act prevents the federal government and states that receive federal funds for child welfare services from excluding child welfare providers who believe that children deserve to be placed with a married mother and father. This exclusion has already happened in Massachusetts, Illinois, California, the District of Columbia, and is in progress or litigation in New York, Pennsylvania, Michigan, and at the federal level. In each of these places, religious agencies have been or are being driven out of offering adoption and foster care services due to their beliefs.

The Inclusion Act would remedy this unjust discrimination by enabling providers to serve parents and children in a manner consistent with the providers' religious beliefs and moral convictions. Women and men who want to place their children for adoption ought to be able to choose an agency that shares the parents' religious beliefs and moral convictions. The Inclusion Act recognizes and respects this parental choice.

We are pleased to support the Child Welfare Provider Inclusion Act of 2019 and urge your colleagues to join H.R. 897 as cosponsors. The freedom to serve in accord with one's religious beliefs and moral convictions is foundational to religious freedom in our nation. Thank you for introducing again this needed bill in the House of Representatives.

Sincerely,

Handwritten signature of Joseph E. Kurtz in black ink.

Most Reverend Joseph E. Kurtz  
Archbishop of Louisville  
Chairman, Committee  
for Religious Liberty

Handwritten signature of James D. Conley in blue ink.

Most Reverend James D. Conley  
Bishop of Lincoln  
Chairman, Subcommittee for the  
Promotion and Defense of Marriage

Handwritten signature of Frank J. Dewane in black ink.

Most Reverend Frank J. Dewane  
Bishop of Venice  
Chairman, Committee on  
Domestic Justice and Human  
Development

# EXHIBIT

## C



## **Child Welfare Provider Inclusion Act of 2019**

### **What does the Child Welfare Provider Inclusion Act of 2019 do?**

The Child Welfare Provider Inclusion Act of 2019 (H.R. 897, S. 274) would prohibit the federal government and any state that receives certain federal funding from discriminating against child welfare service providers (e.g., adoption and foster care providers) on the basis that the provider declines to provide, facilitate, or refer for a child welfare social service that conflicts, or under circumstances that conflict, with the provider's sincerely held religious beliefs or moral convictions.

### **Why is the Inclusion Act needed?**

The Inclusion Act is needed because child welfare service providers are being subjected to discrimination because of their sincerely held religious beliefs and moral convictions. For example, certain religiously affiliated charities in Massachusetts, Illinois, California, New York, Pennsylvania, and the District of Columbia have had to stop providing adoption and foster care services because of requirements to place children in households headed by two persons of the same sex. These requirements are contrary to their sincerely held religious belief and moral conviction that children ought to be placed in homes headed by a married man and woman. In Illinois alone, more than 3,000 children in foster care (more than 20% of the state's total) were displaced from religiously-affiliated organizations.

### **Does the Inclusion Act prevent any child welfare service provider from participating in child welfare services?**

No. Nothing in the Inclusion Act prevents any child welfare service provider from participating in child welfare services. The Act ensures that a provider will not be excluded in any manner (e.g., contracts, grants, licensing), based on its religious and moral beliefs.

### **Does the Inclusion Act deny any child or adult any service?**

No. If any child welfare service provider declines to provide, facilitate, or refer for a child welfare service for religious or moral reasons, other providers would remain free to do so. This is why the Act is called the Inclusion Act – no services are excluded.

### **Does the Inclusion Act respect the rights of mothers and fathers?**

Yes. Women and men who want to place their children for adoption should be free to choose from a diversity of adoption agencies, including those that share the parents' religious beliefs and moral convictions. The Inclusion Act recognizes and respects this parental choice.

### **What are the consequences if the federal government or a state violates the Inclusion Act?**

Any child welfare service provider aggrieved by a violation of the Inclusion Act may obtain judicial relief, and if the provider prevails in court, can recover reasonable attorneys' fees and costs. In addition, if a state is liable for violating the Inclusion Act, then the federal government will withhold fifteen percent of its federal funds for child welfare services.

# EXHIBIT

D



**PRESS RELEASE**  
**FOR IMMEDIATE RELEASE**  
Feb. 18, 2019

Contact: Maria Aselage, Director of Media Relations  
(843) 513-7605 ~ maria@charlestdiocese.org

**The Catholic Diocese of Charleston firmly stands with Miracle Hill Ministries  
~ Religious freedom must be protected ~**

The Catholic Diocese of Charleston supports Miracle Hill Ministries' ability to assist in placing vulnerable children in safe and stable homes in our state. This organization should not be forced to discontinue these life-affirming services because they desire to serve children consistent with their Protestant faith.

The freedom of religion recognized and guaranteed by our Constitution is not merely the freedom to worship. Freedom of religion includes every sphere of teaching, service, and public witness required to live according to one's faith, and no religious group should be forced to alter their beliefs in order to exercise their legitimate freedoms in the public square.

The Catholic Church has theological disagreements with Miracle Hill Ministries; however, we applaud their remarkable service to the poor and hope that they will continue and succeed in that service in our community.

About the Catholic Diocese of Charleston

The Catholic Diocese of Charleston comprises the entire state of South Carolina with Charleston as its See city. Founded in 1820 by Pope Pius VII, it is one of the oldest Catholic dioceses in the United States.

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# EXHIBIT

E

The Honorable Rodney Frelinghuysen  
Chairman  
Committee on Appropriations  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Tom Cole  
Chairman  
Labor, HHS, Education Appropriations Subcommittee  
Committee on Appropriations  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Frelinghuysen and Chairman Cole,

We write on behalf of millions of Americans including adoptive parents, child welfare services providers, faith-based organizations, and other groups who desire to keep adoption and foster care friendly to people of faith. We respectfully request the Child Welfare Provider Inclusion Act (H.R. 1881)—a bill that protects faith-based adoption and foster agencies—be added to the fiscal year 2019 Labor, Health and Human Services, Education, and Related Agencies appropriations bill.

Ultimately, it is the child waiting to be fostered or adopted who stands to benefit or lose from child welfare policies. In order to deliver what every child deserves, our communities must provide parents the ability to choose a provider who shares their values. Birth parents often desire for their child to be placed in a family who shares their moral convictions. Fostering and adopting parents often desire to work with organizations who share their values because they need spiritual support from the early stages of home studies through the unique challenges of parenting. A diversity of providers in the adoption and foster space is the best way to facilitate those critical connections between birth parents and adoptive parents.

The state by state landscape for child welfare providers is increasingly unpredictable and overtly hostile to Americans of faith. Massachusetts, Illinois, California, and the District of Columbia have unjustly excluded credible, experienced groups from providing child welfare services. In those states, providers who wish to operate according to their religiously or morally informed conscience must check their convictions at the door if they wish to serve children.

Nine other states acted to keep the child welfare space inclusive: Alabama, Kansas, Mississippi, Michigan, North Dakota, Oklahoma, South Dakota, Texas, and Virginia. But the state laws are not sufficient. Michigan is being sued for its law. A well-established Catholic adoption agency in Texas is being targeted by a lawsuit in spite of the state law because some of the group's funding comes from a federal grant. In March, the City of Philadelphia announced its suspension of foster care contracts with Catholic Social Services because of the agency's religious beliefs. Given the heavy investment of the federal government in child services and the woefully inconsistent territory across the states, we believe this problem justifies a federal solution through the Inclusion Act.

The Committee's recent dedication of billions of dollars toward fighting our nation's tragic opioid epidemic rightly recognizes the toll that this crisis takes on our neighborhoods. Our foster care and adoption system is one of the spheres of civil society particularly strained by the opioid epidemic. Now is an especially terrible time to reduce the capacity of state governments to efficiently place children in safe, loving homes. A significant number of those homes are provided by local networks of people of faith

inspired to engage child service because of their faith. Yet, hostile state and local governments are increasingly telling people of faith they are not welcome, limiting opportunities for placement of children in need.

We ask the Committee to continue the leadership it has already shown in its response to the opioid crisis and add the Inclusion Act to Chairman Cole's FY19 appropriations bill.

Sincerely,

Russell Moore  
President  
Southern Baptist Ethics &  
Religious Liberty Commission

Most Rev. Frank J. Dewane  
Bishop of Venice  
Chairman  
USCCB Committee on Domestic Justice  
and Human Development

Most Rev. Joseph E. Kurtz, D.D.  
Archbishop of Louisville  
Chairman  
USCCB Committee for Religious Liberty

Most Rev. James D. Conley  
Bishop of Lincoln  
Chairman  
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Jimmy Dobbs  
Executive Director  
Agape of Central Alabama

Donnas Kinton  
Executive Director  
Amazing Grace Adoptions

Brian Luwis  
President & Executive Director  
America World Adoption

Eric Porter  
Founder & President  
Backyard Orphans

Chris Palusky  
President & CEO  
Bethany Christian Services

Albert L. Reyes  
President & CEO  
Buckner International

Kevin Hewitt  
President & CEO  
Christian Children's Home of Ohio, Inc.

Mark Upton  
President & CEO  
Christian Family Care

Beth Woods  
Executive Director  
Hope's Promise Adoption & Orphan Care

Jacqui Jackson  
CEO  
Ignite Hope

Herbert M. Newell IV  
President & Executive Director  
Lifeline Children's Services, Inc.

Andy Lehman  
Vice President  
Lifesong for Orphans

Elizabeth Occhipinti  
President  
Miriam's Heart

Tom Velie  
President  
New Beginnings International  
Children's & Family Services, Inc.

Marlys Ubben  
Executive Director  
New Horizons Adoption Agency, Inc

Daniel Nehrbass  
President  
Nightlight Christian Adoptions

Walter E. Gilbert  
CEO  
Open Door Adoption Agency, Inc.

JT Olsen  
Executive Director  
Both Hands

Jan Druckenmiller  
Executive Director  
The Sacred Portion Children's Outreach

Brian L. Carpenter  
Executive Director  
Ting Ministries

Carl Herbster  
President  
AdvanceUSA

Terry Schilling  
Executive Director  
American Principles Project

David Nammo  
Executive Director & CEO  
Christian Legal Society

David Stevens  
CEO  
Christian Medical Association

Rabbi Pesach Lerner  
President  
Coalition for Jewish Values

Penny Nance  
President & CEO  
Concerned Women for America LAC

Patrick Purtill  
Director of Legislative Affairs  
Faith & Freedom Coalition

David Christensen  
Vice President of Government Affairs  
Family Research Council

Kelly Shackelford  
President & CEO  
First Liberty Institute

Jonathan Imbody  
Director  
Freedom2Care

Tim Chapman  
Executive Director  
Heritage Action

Jonathan Alexandre  
Director of Public Policy  
Liberty Counsel Action

Gregory P. Seltz  
Executive Director  
Lutheran Center for Religious Liberty

Tom McClusky  
President  
March for Life Action

Jonathan M. Saenz, Esq.  
President & Attorney  
Texas Values

Paul Weber  
President & CEO  
Family Policy Alliance

Jim Minnery  
President  
Alaska Family Action

Cathi Herrod  
President  
Center for Arizona Policy

Jonathan Keller  
President & CEO  
California Policy Council

Aaron Baer  
President  
Citizens for Community Values

Debbie Chaves  
Executive Director  
Colorado Family Action

Shannon McGinley  
Executive Director  
Cornerstone Action

Nicole Theis  
President  
Delaware Family Policy Council

John Stemberger  
President  
Florida Family Policy Council

Cole Muzio  
President & Executive Director  
Family Policy Alliance of Georgia

Eva Andrade  
President  
Hawaii Family Forum

Ed Randazzo  
Director of Political Operations  
Family Heritage Alliance Action

Brittany Jones  
Policy Director  
Family Policy Alliance of Idaho

Curt Smith  
President  
Indiana Family Institute

Eric Teetsel  
President & Executive Director  
Family Policy Alliance of Kansas

Kent Ostrander  
Executive Director  
The Family Foundation of Kentucky

Gene Mills  
President  
Louisiana Family Forum

Carroll Conley  
Executive Director  
Christian Civic League of Maine



Andrew Beckwith  
President  
Massachusetts Family Institute

John Helmberger  
CEO  
Minnesota Family Council

Karen Bowling  
Executive Director  
Nebraska Family Alliance

Len Deo  
Founder & President  
New Jersey Family Policy Council

Vince Torres  
President & Executive Director  
Family Policy Alliance of New Mexico

John L. Rustin  
President  
North Carolina Family Policy Council

Mark Jorritsma  
President & Executive Director  
Family Policy Alliance of North Dakota

Michael Geer  
President  
Pennsylvania Family Institute

Chris Plante  
COO & Policy Director  
Family Policy Institute of Washington

Allen Whitt  
President  
Family Policy Council of West Virginia

Julaine K. Appling  
President  
Wisconsin Family Action

# EXHIBIT

## F



PENNSYLVANIA  
CATHOLIC  
CONFERENCE

August 24, 2018

The Honorable Teresa D. Miller  
Secretary, Pennsylvania Department of Human Services  
Room 333, Health & Welfare Building  
Harrisburg PA 17120

Re: SWAN Program Contract Nondiscrimination Provision  
Notice of Violation Under the Pennsylvania Religious Freedom Protection Act

Dear Secretary Miller:

The Pennsylvania Catholic Conference is the public affairs agency that represents the eight Latin Rite and two Eastern Rite Dioceses in the Commonwealth of Pennsylvania. On behalf of those dioceses and of the Catholic Charities agencies of the Dioceses of Greensburg, Erie, Harrisburg, Allentown, Scranton and the Archdiocese of Philadelphia, and in fulfillment of the requirements of the Pennsylvania Religious Freedom Protection Act, under 71 P.S. § 2405(b), the Department of Human Services is hereby put on NOTICE that the nondiscrimination clause added by the Department to the 2018-2020 Purchase of Service Affiliate Agreement under the SWAN Program will substantially burden the free exercise of religion of the Catholic Church in the Commonwealth of Pennsylvania, and of its affiliated Catholic Charities agencies and the personnel employed by those agencies in the ways hereinafter described. All of those entities and associated personnel request the Department to provide a cure and to provide appropriate relief from the burden that is imposed by that nondiscrimination clause.

### **Background**

SWAN, formally known as the “Statewide Adoption and Permanency Network” was created in 1992 by Governor Casey. SWAN is a “partnership among the Department of Human Services (DHS), the Pennsylvania Adoption Exchange, public and private adoption agencies, organizations, advocates, judges, the legal community, and foster and adoptive parents.” The SWAN program is funded and overseen by DHS. The SWAN program serves children who are in the custody of county children and youth agencies and is designed to support the work of county agencies in expediting permanency services for these children.

On July 9, 2018, the DHS Office of Children, Youth and Families (OCYF) held a meeting with Diakon and the SWAN affiliates (including Catholic Charities agencies) to discuss the new contract period beginning in October 2018. The new contract is to begin October 1,

The Public Affairs Agency of the Catholic Dioceses of Pennsylvania Since 1960

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2018 and continue until June 30, 2020. Affiliate providers received the new Purchase of Service Affiliate Agreements on or around August 6, 2018, and are required to sign the new agreement, with the religiously objectionable clause, in order to participate in SWAN. The nondiscrimination clause found in ¶18(b) of the Agreement states:

*Neither the affiliate agency nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, **sexual orientation, gender identity or expression**, or in violation of the Pennsylvania Human relations Act and applicable federal laws, against or intimidate any beneficiary of SWAN services, including children and youth who are or who have been in foster care and prospective or approved qualified families who have applied or have agreed to provide permanency to children in the foster care system under this agreement.*

Any affiliate agency that is not going to sign the new contract must inform SWAN by August 31, 2018. If an affiliate agency is going to sign the new contract, it must be sent to SWAN by September 30, 2018.

**Issues raised:**

The new non-discrimination clause proposed for every SWAN contract presents religiously troubling concerns for the Catholic Charities and Catholic Social Services agencies in the several Roman Catholic Dioceses which have for many years served Pennsylvania families and children as SWAN participants.

If forced to sign the new SWAN contract, these agencies, which have provided valuable loving care to Pennsylvania's at-risk youth for decades, would be prohibited from adhering to firmly held beliefs in longstanding Catholic doctrinal and moral teachings regarding the sacredness of marriage as between one man and one woman, which is currently given expression by those agencies when declining to collaborate with same sex couples when the agencies are providing services related to adoption and foster care. Alternatively, if the agencies do not sign the new contract, they will not be able to provide adoption and foster care services through the SWAN program, which will substantially burden their ability to continue their religious ministry of providing adoption and foster care programs in a manner which does not force them to violate their religious beliefs.

**Religious Basis for the Objection:**

The Catholic Church has a long history of serving and ministering to children and families. Scripture itself describes that from the beginning of the Church, ministering to the widows and orphans has been an integral aspect of the exercise of the Catholic faith. **“Religion that is pure and undefiled before God, the Father, is this: to visit orphans and widows in their affliction, and to keep oneself unstained from the world.”** James 1:27. It is in the

service of charity to others that the Catholic meets God. Saint Augustine wrote: “If you see Charity, you see the Trinity.” *De Trinitate*, VIII, 8, 12: CCL 50, 287.

The history of the Catholic Church both in Europe and in America is replete with examples of Catholic institutions whose primary purpose was to care for parentless children. The first orphanage in the American continent was an orphanage for girls, which was established in 1548 in Mexico by a Spanish order and was called La Caridad. The first orphanage in what is now the United States was founded by the Ursulines Order in New Orleans in 1727 under the auspices of Louis XV.

In his September 13, 1987, address to Catholic Charities, USA, in San Antonio, Pope John Paul II reminded the national association of Catholic Charities agencies that:

*Works of mercy, justice and compassion are basic to the history of the Church in the United States.* The two American women who have been numbered among the saints, Frances Xavier Cabrini and Elizabeth Ann Seton, haven been thus honoured principally because of their work for their poorer brothers and sisters. The initiatives of Catholic charities in the United States go back to before the Declaration of Independence. Countless institutions and structures have been established to assist the orphan, the immigrant, the ethnic groups, all persons in need - of every race and creed. Countless Americans of all extractions have made the compassionate service of their fellow human beings the whole purpose and method of their lives. In particular, generations of religious, women and men, have consumed themselves in selfless service, under the sign of love.

In addition, excerpts from the Encyclical Letter of the Supreme Pontiff, Benedict XVI, *Deus Caritas Est*, demonstrate that the Catholic Church’s religious faith is lived out and is exercised through love of and care for others. “The Church’s charitable activity is a manifestation of Trinitarian Love.” Pope Benedict further spoke of charity (love of other) as a responsibility of the entire Church:

Love of neighbour, grounded in the love of God, is first and foremost a responsibility for each individual member of the faithful, but it is also a responsibility for the entire ecclesial community at every level: from the local community to the particular Church and to the Church universal in its entirety. As a community, the Church must practice love.

*Deus Caritas Est*, ¶ 20.

The requirement to love others as a part of the Catholic’s worship of God drives the Catholic Charities organizations to provide the services it does. This religious principle then manifests itself today in the Charities’ adoption and foster programs which are central to the exercise of the Catholic faith – never ancillary. Those individuals who direct and provide those services on behalf of the Church do so as a personal witness to their own religious principles and beliefs and in the exercise of their religious obligations to aid those in need.

The Pennsylvania Religious Freedom Protection Act, 71 P.S. §2403, describes the meaning of the imposition of a “substantial burden” on the religious liberty of a religious entity or an individual as follows:

**“Substantially burden.”** An agency action which does any of the following:

- (1) Significantly constrains or inhibits conduct or expression mandated by a person's sincerely held religious beliefs.
- (2) Significantly curtails a person's ability to express adherence to the person's religious faith.
- (3) Denies a person a reasonable opportunity to engage in activities which are fundamental to the person's religion.
- (4) Compels conduct or expression which violates a specific tenet of a person's religious faith.

By inclusion of a mandatory contractual provision (the proposed nondiscrimination clause) in the SWAN affiliates agreement, without including any possibility of the accommodation of the sincerely-held religious beliefs of the persons and religiously-affiliated agencies which have heretofore faithfully and successfully provided services under the SWAN Program, the Department will substantially burden the religious liberties and the free exercise of the religious beliefs and practices of those religiously-affiliated agencies and their personnel who cannot agree to abide by the newly-added strictures in that clause.

Specifically, governmentally compelled adherence to the proposed clause, with the price of non-acceptance of that clause being foreclosure from continued participation in the SWAN Program, will substantially burden the religious beliefs and practices of Catholic agencies and their personnel in all four of the circumstances which are stated in the disjunctive in the above-quoted statutory definition:

- (1) Catholic Charities agencies and their personnel, if forced to abandon their beliefs or else be precluded from participation in the SWAN Program, will be constrained or inhibited in the expression of essential tenets of their faith.
- (2) Catholic Charities agencies and their personnel, if precluded from participation in the SWAN Program by reason of their adherence to their religious beliefs, will be subject to a significant curtailment of their ability to express adherence to essential tenets of their faith.
- (3) Catholic Charities agencies and their personnel, if denied an opportunity to participate in the SWAN Program solely because they cannot accept the imposition of a religiously-objectionable condition on that participation, will be denied a reasonable opportunity to engage in ministerial activities that are fundamental to the practice of their religious faith.
- (4) Catholic Charities agencies and their personnel, if compelled by force of the coercive power of government to provide services that they believe to be religiously objectionable in order to participate in the SWAN Program, will have been obliged to engage in conduct that is contrary to their sincerely-held religious beliefs.

### Authority to Act:

During a recent presentation and webinar for SWAN affiliate providers, the Department and Diakon personnel gave a PowerPoint presentation informing the affiliate providers of the new nondiscrimination language. Neither the PowerPoint information provided by the Department nor the 2018-2020 Purchase of Service Affiliate Agreement itself explicitly identify the legal authority upon which the Department is relying in order to advance this revised contract clause requirement.

The Pennsylvania Human Relations Act (PHRA) does not identify sexual orientation and gender identity as having legally protected status, so the Department's authority does not lie in the PHRA or any other Pennsylvania statute. Possibly the Department is relying upon the Governor's April 7, 2016, Executive Order No. 2016-05 – Contract Compliance, as authority for this recent directive. That Executive Order required all agencies under the Governor's authority to cooperate with the Department of General Services (DGS) to ensure that "contractors and grantees agree. . . not to discriminate in the award of subcontract or supply contracts . . . on the basis of race gender creed, color, sexual orientation or gender identity or expression." However, that Executive Order specifically exempted from its scope those federally funded programs which have contract compliance requirements imposed by the federal agency:

For those programs where an agency's receipt and use of federal funds are subject to approval and oversight by a federal funding agency, Agency Heads under the Governor's jurisdiction will comply with those contract compliance requirements imposed by that federal agency as a condition of eligibility for the funds rather than program requirements established by DGS.

E.O. 2016-05 §3(c).

To the extent that SWAN contracts through Diakon are funded by federal programs, "subject to approval and oversight by a federal agency," with federal compliance requirements, it is arguable that Executive Order 2016-05 does not authorize this new contract requirement. Nevertheless, to the extent that any State funds are appropriated for the SWAN Program, the Governor's Executive Order could still arguably apply to the use of those funds. However, the validity of that Order itself may be called into question under the recent decision of the PA Supreme Court in the case of *Markham v. Wolf*, Docket Nos. 109, 110 MAP 2016 (Pa. 2018).

Nevertheless, the Governor's Executive Order is not supported by any statutory warrant found in Pennsylvania law, and that Order, and any legal authority that may possibly be asserted to support it, must be "construed so as to avoid the imposition of substantial burdens upon the free exercise of religion without compelling justification." 71 P.S. §2402(2).

That principle of statutory construction is likewise in keeping with principles of avoidance of constitutional violation in the construction of statutory authority set forth by the U.S. Supreme Court in the case of *NLRB v. Catholic Bishop of Chicago*, 99 S.Ct. 1313, 1319 (1979):

“The values enshrined in the First Amendment plainly rank high ‘in the scale of our national values.’ In keeping with the Court’s prudential policy it is incumbent on us to determine whether the Board’s exercise of its jurisdiction here would give rise to serious constitutional questions. If so, we must first identify ‘the affirmative intention of the Congress clearly expressed’ before concluding that the Act grants jurisdiction.”

Consequently, absent any clearly expressed *statutory* authority that would affirmatively require the Department to apply its revised nondiscrimination clause to religiously-affiliated agencies, any attempt to coerce those entities and their personnel to adhere to such a clause would offend not only the Religious Freedom Protection Act, but also the Free Exercise Clause of the First Amendment to the U.S. Constitution.

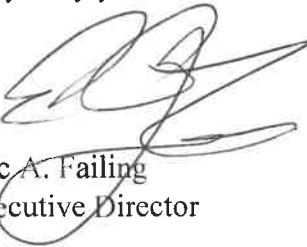
### **Proposed Solution**

The Diocesan Catholic Charities Agencies of Pennsylvania and their personnel formally request the Department to accommodate their religious convictions and practices by providing an adequate and effective exemption for conscientiously-objecting faith-based organizations from the newly-added proscriptions on discrimination on the basis of sexual orientation or gender identity or expression.

### **Conclusion**

Without the requested appropriate relief, the Catholic Charities of Pennsylvania will, by necessity to protect their religious liberties, be compelled to consider the filing of an action in the Commonwealth Court against the Department to assert a claim under the Pennsylvania Religious Freedom Protection Act, 71 P.S. §§2401, et seq. Thank you for your kind attention to this matter.

Very truly yours,



Eric A. Failing  
Executive Director

cc: Doris M. Leisch  
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# EXHIBIT

# G

# focus

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MICHIGAN  
CATHOLIC  
CONFERENCE

## Catholic Charities

### Uniting Children with Loving Families

*“When it is necessary for a child in this state to be placed with an adoptive or foster family, placing the child in a safe, loving, and supportive home is a paramount goal of this state.” —MCL 722.124e*

Throughout Catholic teaching, caring for orphans and vulnerable children is a consistent theme. Foster care and adoption are two critical vehicles for putting that teaching into action, vehicles that Catholics and Catholic institutions have long championed. In speaking about adoption, St. Pope John Paul II called it “a great work of love,” as well as “a true exchange of gifts.”<sup>1</sup> More recently, Pope Francis reiterated that for “those who live in the peripheries,” including children who have felt rejection or who have faced difficult family circumstances, “we must offer the best we have.”<sup>2</sup>

Within Michigan, “the best we have” is a constant necessity for child placement services. Prior to placement in the state’s foster care system, many children have faced trauma, abuse, or neglect. Other have struggled with special needs or the devastating consequences of the opioid epidemic on families. In order to support these children, the State of Michigan partners with a diverse range of agencies, including those that are faith-based. When family reunification is not possible, these organizations also connect children to new, safe, and love-filled homes.<sup>3,4</sup>

Michigan’s diversity in the field of child placement has helped attract new foster and adoptive families, which ultimately results in more loving homes for children. The system acknowledges that prospective parents are not looking for a “one-size-fits-all” approach when considering foster care

and adoption services. Some birth, foster, and adoptive parents seek an agency that shares their religious values. Other parents consider factors such as geography, specialized services offered, or staff experience. The Michigan Department of Health and Human Services (DHHS) has long recognized that the “unique partnership between public and private agencies for adoption planning and placement of foster children” contributes to the state’s success in these areas.<sup>5</sup>

Unfortunately, a new policy crafted in March 2019 between Michigan’s attorney general and the ACLU would require DHHS to end state contracts with agencies who refuse to violate their beliefs about marriage and family.<sup>6</sup> The policy stems from a lawsuit (*Dumont v. Lyon*) against DHHS, which falsely alleges that the religious principles of faith-based organizations are discriminatory and thus disqualify their partnership with the State. Rather than benefiting vulnerable children, this change will likely have long-term consequences that negatively impact the important work of placing children in suitable homes. This **focus** delves into current challenges facing faith-based child placement programs, the agencies’ responses, and the critical role of the faith community in child welfare services. ■

### Foster Care in Michigan<sup>3,4</sup>

- Nearly 13,000 kids in foster care
- 300 still need an adoptive family
- 600+ age out of foster care every year

## Catholic Agencies and Child Placement Services

Within each Catholic charitable agency in Michigan, the beliefs of the Catholic faith “motivate and permeate all programs and services.” Staff care about the worth of every person, treating all clients with dignity and respect, regardless of their faith background. The Catholic philosophy of “love thy neighbor,” based on the *Gospel of Matthew Chapter 25*, is lived daily. It is lived both through the child placement work and through all other services the organization offers, such as counseling; immigration assistance; refugee resettlement and employment; food pantries and soup kitchens; personal needs closets; marriage, pregnancy and parenting support; substance abuse treatment; and more.



With respect to child placement work, Catholic organizations have been particularly successful at recruiting foster and adoptive parents that other agencies—and the State—cannot. Catholic agencies go beyond State minimum requirements to offer as much loving care to children and families as possible, covering additional costs with private donations and volunteers. Parents and families have long expressed gratitude for the tireless dedication of agencies and their staff as the State has partnered with Catholic Charities for well over 70 years. While each organization is different, some additional services include monthly foster parent training opportunities; comprehensive consultations, mentors, and parent support groups; medical, dental, and clothing assistance for children; funds to help children participate in extracurricular activities; and transportation for birth parents to children’s activities and appointments. The State’s new policy, however, ignores this success. In fact, the State’s ultimatum forces faith agencies to choose between violating their religious beliefs or shutting down services. Neither option benefits Michigan’s vulnerable children. ■

## Michigan’s New Foster Care and Adoption Policy

**MYTH** Michigan’s new policy will allow more of the State’s vulnerable children to find safe and loving homes.

**REALITY** DHHS will no longer work with certain adoption and foster care agencies, likely causing existing programs to close and foster parents to exit the system, which will result in longer waiting times for kids.

**MYTH** Allowing faith-based agencies to continue operating in accordance with their religious beliefs would interfere with the work of providers with different convictions.

**REALITY** Religious agencies have not prevented foster or adoption placements. The State makes the ultimate decision on a parent’s fitness, and individuals may work with other agencies.

**MYTH** Faith-based child placement agencies use public money to discriminate. As such, they should not be eligible to receive state funding.

**REALITY** DHHS does not pay for the home studies for prospective parents. And this has never been about funding—it’s about whether faith-based agencies can provide foster and adoption services to the kids most in need.

**MYTH** If the State of Michigan does not address the language outlined in the new policy in its contracts, it will be breaking the law.

**REALITY** Michigan’s new policy directly violates a 2015 state law enacted to protect the conscience rights of faith-based agencies.

**MYTH** Foster and adoptive parents aided by Catholic agencies can work with other agencies going forward, if Catholic or other faith-based agencies decide to close.

**REALITY** Parents develop relationships with their agencies and depend on them for support. Closing down agencies disrupts the lives of children and families who have already suffered too much uncertainty.

# What Does Michigan Law Say?

In 2015, the Michigan Legislature approved three bipartisan bills that protect the right of faith-based foster care and adoption agencies to operate in accordance with their religious beliefs. The legislation maintained the pluralistic, diverse nature of child placement agencies in Michigan and ensured that foster and adoptive parents would have a wide range of options. Michigan Catholic Conference (MCC) strongly advocated for the measures, which simply put the existing DHHS policy at the time into law and preserved the successful partnership between the State and faith-based agencies. The bills became Public Acts 53–55 of 2015. More specifically, these laws:

- Protect private child placement agencies who contract with the State from being forced to provide services or accept referrals that conflict with their religious beliefs.
- Prohibit the government from taking adverse action against any provider that is unable to provide certain services or to accept a referral based on its religious beliefs.
- Require a provider to refer an applicant to a list of other providers on the DHHS website or to a provider that is willing and able to help them.

The law states that Michigan agencies “*have the right to free exercise of religion under both the state and federal constitutions...[including] the freedom to abstain from conduct that conflicts with an agency’s sincerely held religious beliefs*” (MCL 722.124e). ■

## Michigan Catholic Agencies Respond

Due to their desire to continue serving families, two Catholic agencies who contract with the State for foster care and adoptive services have challenged Michigan’s new policy. Two lawsuits have been filed as a result of the State’s actions.<sup>8,9</sup> Motivated by their faith mission, Michigan Catholic agencies perform—and excel at—work within the child placement field. They also offer additional assistance to those in need, including clothing and food for low-income individuals and families, legal and practical support for immigrants and refugees, and counseling for marriages and children. Simply put, the religious beliefs of Catholic charitable organizations do not get in the way of placing children in loving and safe environments. Instead, these beliefs *are*

at the very core of why they do this critical work. The two lawsuits are detailed below:

**CASE** *Buck v. Gordon*  
**PLAINTIFF** St. Vincent Catholic Charities, the parents of five adopted children with special needs, and a former foster child  
**LAW FIRM** Becket  
**LOCATION** Western District of Michigan (Federal)  
**FILED** April 15, 2019

**ARGUES** Michigan’s new policy violates the First and Fourteenth Amendments of the U.S. Constitution and was intended to stop the State from working with religious agencies.

**CASE** *Catholic Charities West Michigan v. Michigan DHHS*  
**PLAINTIFF** Catholic Charities West Michigan  
**LAW FIRM** Alliance Defending Freedom  
**LOCATION** Western District of Michigan (Federal)  
**FILED** June 26, 2019\*

*\*Originally filed in the Michigan Court of Claims on April 25, 2019 and later moved to federal court*

**ARGUES** Michigan’s new policy violates a 2015 state law that allows faith-based agencies to maintain contracts with the State while also operating in accordance with their deeply held religious beliefs.

At stake in the cases is the future of Catholic and other faith-based foster care and adoption services in Michigan. Many agencies are the oldest and most effective partners for the State, and they have played an influential role in breaking the cycle of addiction, abuse, and homelessness for children. Their work should be celebrated, not condemned. In light of ongoing and adversarial efforts to push the Catholic Church out of the public square, MCC—on behalf of the Catholic bishops in Michigan—supports these lawsuits and other actions to defend religious liberty. ■



Photo Credit: Becket

# Catholic Agencies in a National Context

Catholic adoption and foster care programs in Michigan are not alone in facing challenges from either the State or hostile organizations. Adverse actions in other areas of the country have falsely painted the beliefs of Catholic agencies about marriage and families as discriminatory and dangerous. As a result, several Catholic organizations have been forced to close their public adoption and foster care services, including in Boston, Massachusetts (2006); San Francisco, California (2006); Washington D.C. (2010); Illinois (2011); and Buffalo, New York (2018). Most recently, the City of Philadelphia prohibited Catholic Social Services (CSS) from placing children into foster homes, despite CSS's exemplary record. The decision was not based on a complaint, nor on the agency keeping children from loving homes; it was because of the organization's longstanding beliefs about marriage. A 2018 lawsuit challenged the decision, and CSS continues to explore legal options.<sup>10</sup>

In light of these challenges, Catholics and all people of goodwill should recognize and respond to the ongoing threats to religious freedom. The service of faith-based organizations is not a threat to society but rather a natural and welcome partnership that addresses real day-to-day needs for vulnerable people. Whether Catholic agencies help children find homes, support victims of human trafficking and refugees, or offer food and clothing to struggling community members, their service matters to communities across the nation. Faith-based agencies need the support of people of faith to continue their life-affirming work. Catholics must also demonstrate to elected officials why longstanding religious liberty protections should be preserved. ■

## How Can You Help?<sup>11</sup>

- Urge your members of Congress to support the Child Welfare Provider Inclusion Act (H.R. 897 and S. 274) which would prevent the federal government, and any state receiving federal child welfare dollars, from taking adverse action against a provider that declines to violate its religious or moral principles.
- Learn more about foster care (855-MICHKIDS) or adoption (1-800-589-6273).
- Become a tutor, mentor, or court-appointed special advocate (CASA) for a foster child by contacting your local child placement agency or local CASA office.<sup>12</sup>
- Offer to help foster or adoptive parents take their children to activities and appointments.
- Support Catholic foster care and adoption programs by offering administrative help or by donating clothes, suitcases, baby supplies, and other needed items.
- Visit [micatholic.org/foster](http://micatholic.org/foster) to find Catholic agencies in Michigan that provide foster and adoption services.



Photo Credit: Becket

1. "Address to the Meeting of Adoptive Families," Pope John Paul II, 9/5/2000: [tinyurl.com/yxpwrwvm](http://tinyurl.com/yxpwrwvm). 2. "Address to the Hospital of the Innocents Institute," Pope Francis, 5/24/2019: [tinyurl.com/y4scyhm1](http://tinyurl.com/y4scyhm1). 3, 11. "Adoption" and "Foster Care," Michigan DHHS websites, accessed 6/24/19: [tinyurl.com/y27yy99c](http://tinyurl.com/y27yy99c) and [tinyurl.com/yd935rhy](http://tinyurl.com/yd935rhy). 4. "Transition-Age Youth in Foster Care in Michigan," Fiscal Year 2015, Child Trends: [tinyurl.com/yxa2ofx6](http://tinyurl.com/yxa2ofx6). 5. "Adoption: Open Your Heart and Your Home," Michigan DHHS website, accessed 6/5/2019: [tinyurl.com/y27yy99c](http://tinyurl.com/y27yy99c). 6. *Dumont v. Lyon Settlement Agreement*, U.S. District Court for the Eastern District of Michigan, Southern Division, 3/22/2019: [tinyurl.com/y36dffyk](http://tinyurl.com/y36dffyk). 7. *CCWM v. Michigan DHHS*, Michigan Court of Claims, 4/25/2019: [tinyurl.com/y5kum59e](http://tinyurl.com/y5kum59e). 8. *Buck v. Gordon*, U.S. District Court for the Western District of Michigan Southern Division, 4/15/2019: [tinyurl.com/y44hbeda](http://tinyurl.com/y44hbeda). 9. *CCWM v. Michigan DHHS*, U.S. District Court for the Eastern District of Michigan, Southern District, 6/26/2019: [tinyurl.com/yysryhhu](http://tinyurl.com/yysryhhu). 10. "Sharonell Fulton et al v. City of Philadelphia," Becket Law, accessed 6/25/19: [tinyurl.com/y3w6qq6w](http://tinyurl.com/y3w6qq6w). 12. Become a CASA Volunteer," Michigan CASA website, accessed 7/11/19: [tinyurl.com/yya6n6gr](http://tinyurl.com/yya6n6gr)

## focus

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