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KIDS PAY THE PRICE: HOW RELIGIOUS EXEMPTIONS FOR CHILD WELFARE AGENCIES HARM CHILDREN

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movement advancement project ▶

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Movement Advancement Project

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INTRODUCTION

Freedom of religion is an important American value, which is why it is already protected by the First Amendment of the Constitution. That freedom doesn't give people the right to impose their beliefs on others or to discriminate. Yet many states, and the federal government, have passed or are considering legislation that would allow child placement and adoption agencies to do just that, while providing government services paid for with taxpayer money.

Religious exemptions for child welfare providers hurt children and vulnerable families. Agencies that provide services to children and parents should focus on providing loving, stable homes for children and helping families in need. Instead, these laws encourage and enable adoption agencies and their workers to reject qualified parents who don't share the agency's or worker's religious beliefs.

Rejecting qualified parents simply means a longer wait for children in government group homes and foster care rather than being adopted into forever homes, placed into kinship or guardianship placements, or reunited with their families. Families may go without supportive services, increasing the likelihood of children being removed.

As if these consequences weren't serious enough, these laws also enable workers and organizations to prioritize their own religious beliefs when determining treatment options for children in their care. The potential for abuse of this legislation is far-reaching, as agencies and individual workers—like all Americans—have a broad range of beliefs, and these laws would legally prioritize those religious beliefs over the best interests of children.

CHILD SERVICES AGENCIES SHOULD PUT CHILDREN FIRST; INSTEAD, CHILDREN PAY THE PRICE

Child services organizations should prioritize the best interests of children. Yet legislation has been passed or is being considered in many states and by the federal government to allow publicly funded child services agencies to make placement and program decisions based on their moral or religious beliefs as opposed to the child's best interests. Service agencies need not be religiously-affiliated

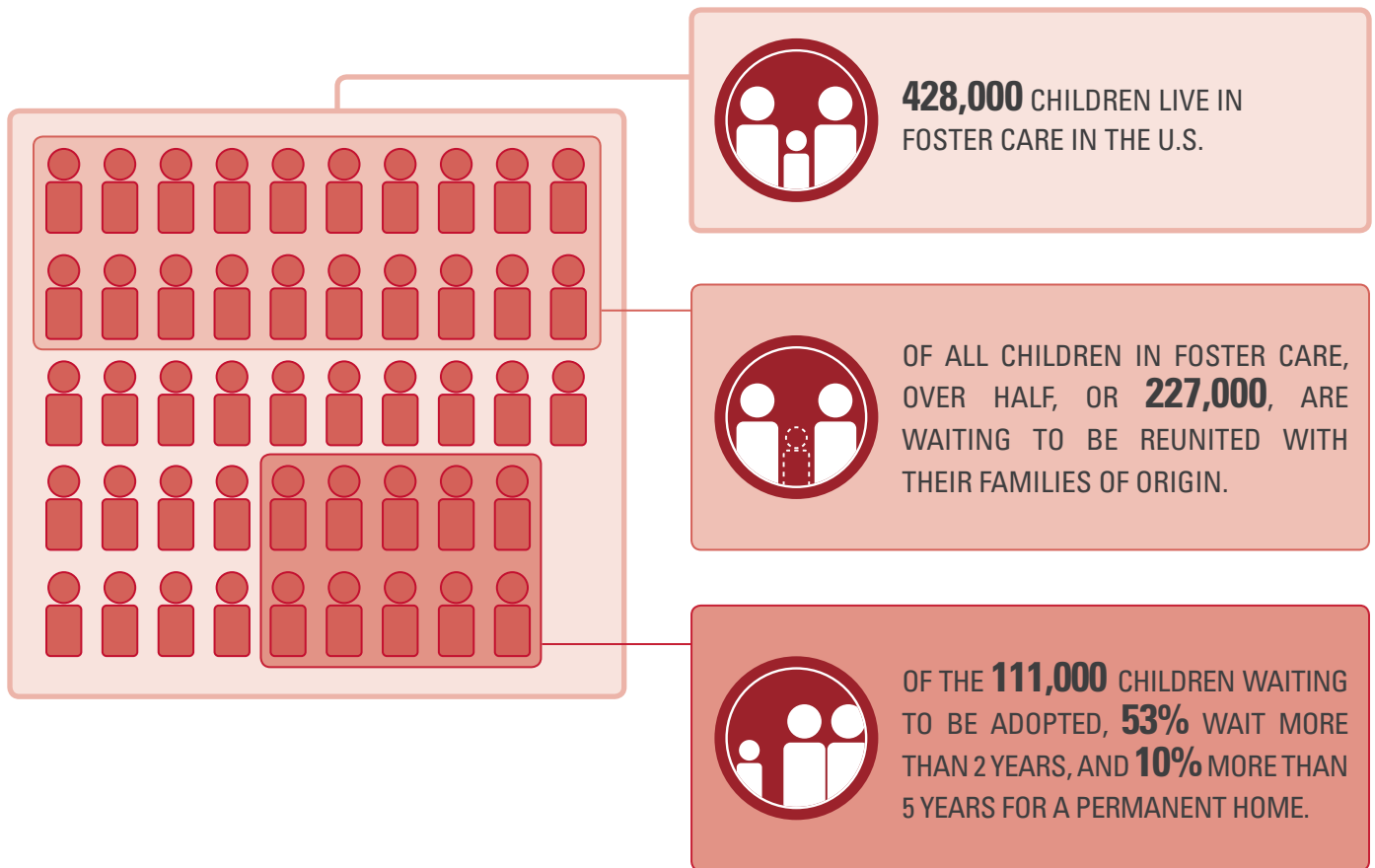
to be permitted to discriminate, and under such legislation they could discriminate and still continue to receive state funding to care for children in the child welfare system. For example, South Dakota recently passed a bill that allows agencies receiving state funding to decline to serve or place children with parents if doing so would “conflict with their religious or moral beliefs.”¹ The potential impact of this type of legislation on the provision of child services is breathtaking.

Hundreds of Thousands of Children Need Stable Homes

There are nearly 428,000 children in foster care across the United States; over 111,000 of those are awaiting adoption and another 227,000 are in foster care awaiting family reunification.² Children who lack permanent homes have added risk of major difficulties in transitioning to a healthy adulthood.³ Despite the importance of permanency, children may face years of instability before they are adopted or reunited with their families of origin. Of the 111,000 children waiting to be adopted in 2015, 53% had been waiting more than two years, while 10% had been waiting more than five years for a permanent home (see *Figure 1* on the next page).⁴ Older children are adopted at lower rates, and may exit care without finding a loving, permanent home. In 2015, twenty thousand children “aged out” of the foster system without the support of an adoptive family.⁵

States consistently report that one of the biggest obstacles to providing stability for children in state care is finding interested, qualified families who want to foster or adopt.⁶ All kinds of families are needed to care for the thousands of children in the child welfare system, including the hundreds of thousands needing foster homes and those awaiting adoption. Research finds that diverse families serve a frequently under-appreciated role in the child welfare system; single parents, unmarried couples, relatives, and families headed by LGBT people have all been important members of the foster and adoptive community. For example, same-sex couples are four times more likely than married opposite-sex couples to raise an adopted child, and they are six times more likely to raise foster children.⁷ There are more than 22,000 adopted children residing with same-sex couples.⁸

Figure 1: Thousands of Children Are Waiting to Be Fostered, Adopted, Or Reunited With Their Families



Source: U.S. Department of Health and Human Services, "The AFCARS Report: Preliminary FY 2015 Estimates as of June 2016, No. 23," <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport23.pdf> (accessed March 6, 2017).

Yet adoption discrimination laws protect workers and agencies who reject these and other qualified parents simply because those parents fail to meet the religious criteria imposed by the agency, forcing children to pay the price of discrimination.

Child Services Agencies Must Put Children First

At the heart of child-welfare service is the well-being of the child. Each agency and staff member is tasked with ensuring the safety, permanency, and well-being of every child in their care. This is called a duty-of-care, a legal obligation to care for children who are the state's charge. Agencies have this duty-of-care because children cannot care for themselves, find their own foster and adoptive homes, get their own food and shelter, or enroll themselves in school. Adults must help them obtain these crucial needs.

According to the Michigan Department of Health and Human Services, "When the state cannot return a foster child to their home, the goal is to place children into adoptive homes as quickly as possible after parental rights

have been terminated."⁹ How can agencies, including those in Michigan, which permits child-placing agencies to discriminate in the provision of care (see sidebar on page 4), ensure that children get placed in adoptive homes as quickly as possible when the agencies are turning away qualified prospective parents?

Children also cannot choose which child placement agencies take their cases. It is the responsibility of the state to ensure that every child serving agency is showing the strictest duty-of-care; that each agency receiving state funding is doing everything in its power to ensure the well-being of children in its charge. Yet these laws allow individual workers and agencies to impose their own religious views on the children in their care, forcing children to pay the price of the discrimination. For example, under such a law, an agency could decide that LGBT children in their care should undergo harmful, discredited conversion therapy—and the agency and worker would still maintain their state license. Similarly, a child who just lost both parents could be denied adoption by an aunt who is an unmarried mother or who doesn't meet other religious criteria imposed by the agency.

LAWS PERMITTING DISCRIMINATION HARM CHILDREN AND FAMILIES



CHILD WELFARE ORGANIZATIONS AND SOCIAL WORKERS CAN CHOOSE TO ONLY SERVE:

- DIFFERENT-SEX MARRIED COUPLES
- PARENTS WHO USE STRICT DISCIPLINE
- FAMILIES WHO SIGN A DECLARATION OF FAITH
- PARENTS WHO WANT TO FORCE LGBT YOUTH INTO HARMFUL CONVERSION THERAPY

CHILD WELFARE ORGANIZATIONS AND SOCIAL WORKERS CAN TURN AWAY FAMILIES WHO:

- ARE LGBT
- ARE INTERFAITH
- DON'T ATTEND CHURCH
- ARE UNMARRIED
- SUPPORT TRANSGENDER YOUTH





Spotlight on Michigan

In 2015, Michigan passed a law 1) permitting private child welfare agencies to discriminate in the provision of all child welfare services other than adoption and foster case management services under state contract, such as physical or mental health care, or family therapy; and 2) permitting all child welfare agencies contracting with the state to refuse to take any referral of an adoption or foster care placement, if doing so would conflict with the agency's written religious or moral policy. The agencies are required to refer families to another agency or to the Michigan Department of Health and Human Services website, but they are not required to inform prospective parents of their discriminatory policies, and they are allowed to discriminate even if there are no other nearby services agencies. Nearly half of private agencies under contract with the Michigan Department of Health and Human Services in 2016 were seemingly religiously-affiliated (i.e. had names that indicated religious affiliation).¹⁰

The law is complex and unclear in its application. But what is clear is the legislators' intent when passing it. The Michigan Senate Fiscal Agency analyzed the bill and found that arguments in favor of its passage were rooted in objections to adoption by same-sex couples. The Agency found that contrary to proponents' arguments, expanding the possible pool of adoptive parents increases the adoption rate, saving state dollars.¹¹

Amendments were offered to the bill that would have legalized second-parent adoptions in Michigan, required child welfare agencies to comply with Michigan civil rights law, and required child welfare agencies to prominently display the circumstances under which the agency would decline to provide any services.¹² All these amendments failed.

When the Michigan House of Representatives held a vote on the bill, several Representatives formally lodged their protest against the bill. Representative Erika Geiss commented that the state's constitution clearly states

"that 'No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging to the state be appropriated for any such purpose. The civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his [or her] religious belief.' In allowing adoption agencies to exercise 'sincerely held religious beliefs' as a way to deny children an adoptive family and while simultaneously receiving funding from the state, this bill and its companions violate this section of the Constitution of Michigan [that prohibits religious sects to be given state money]. Further, by enlarging the capacity of such institutions and diminishing the beliefs of potential adoptive parents, this bill and its companions violate the Constitution of Michigan."¹³

Senator Jim Ananich said,

"These RFRA adoption bills will do nothing to help the thousands of kids waiting for a family in Michigan. These bills allow private adoption agencies to turn away qualified parents for no reason other than their sexual orientation. Thousands of Michigan children are waiting for homes. Yet today, these bills say that it is more important to honor the discriminatory beliefs of some service providers instead of the best interests of the 3,000 Michigan children waiting for a family. The child loses out on a family. How does that help the child? What we are doing here is allowing the beliefs of the few to have horrible consequences for the many.

"I am a man of faith, and I support religious freedom. What I don't support is using that as a cover for discrimination, especially when it hurts the 3,000 Michigan children waiting for loving, stable, and safe homes."¹⁴

The American Civil Liberties Union is currently suing the State of Michigan, claiming that it is unconstitutional to permit state-contracted and taxpayer-funded child placing agencies to turn away prospective foster and adoptive families based on religious objections to same-sex couples. The case was brought on behalf of two same-sex couples that were rejected from agencies, along with a former Michigan foster youth. The former foster youth is objecting to taxpayer dollars funding child-placing agencies that make it even harder for foster children to find families by turning away loving and qualified families simply because of the agencies' religious objections to those families.

LEGISLATION ENCOURAGES DISCRIMINATION AND HARMS CHILDREN AND FAMILIES

These laws create a broad license to discriminate in the placement and treatment of children in state care, allowing child placement agencies and workers to discriminate with taxpayer dollars and put their religious beliefs ahead of the best interests of children. Allowing agencies to fail to care adequately for children in their custody or to flatly refuse to consider well-qualified prospective families—and to still receive government funding—violates basic principles of child welfare.

When agencies that receive federal or state funding are permitted to pick and choose which children to serve and which families to consider, it is the children that the state has in their care who are harmed. Under these laws:

Agencies could refuse care for children and families who most need it:

- An agency that provides counseling services to families and youth could turn away a family in crisis, even if it is the only agency in town, because the family doesn't attend the local church or the parents are unmarried or divorced.
- An agency that provides family support and family reunification services could refuse to assist a family with two fathers or a family with a transgender child.
- Agencies could reject or refuse to serve qualified parents who don't meet their religious criteria. Adoption agencies could decide to keep a child in a government group home rather than place them with a loving, qualified couple who doesn't adhere to the agency's religious beliefs.
- A child-placement worker could decide to keep a child in foster care rather than place her with a loving, qualified lesbian couple or a Buddhist couple who wants to adopt.
- An agency could refuse to offer family reunification services to an interfaith family or a family headed by unmarried parents or an LGBT parent.

Agencies and workers could discriminate against and refuse to serve sweeping categories of parents.

- A Christian child placement agency could refuse Jewish parents, and Jewish child placement agency could refuse Christian parents.

- Social service agencies could refuse to consider families headed by LGBT people because the agency opposes same-sex couples, same-sex marriage, or transgender people.
- Single people or cohabiting unmarried couples could be excluded from consideration.
- Social service organizations could refuse to consider prospective families with a different religious practice from their own, interfaith families, or families who are not religiously-affiliated.

Agencies would no longer need to make placement decisions based on the best interests of the child.

- An agency could refuse to allow a child to be adopted by an extended family member (often called kinship adoption, and frequently the best scenario for the well-being a child because it allows them to maintain family connections) like a transgender uncle or bisexual grandparent.
- Agencies could refuse to place LGBT youth with accepting parents, but could instead place them with parents who intend to force them into conversion therapy.
- Agencies could refuse to facilitate family reunification, if they felt that a child's family of origin didn't abide by the religious tenets of the agency.

Agencies could refuse adoptions to parents who don't share their religious beliefs about childrearing.

- An agency could reject qualified parents who don't share the agency's religious belief in strictly disciplining children.

Potential for harm and abuse of children in care abounds.

- Child welfare agencies could refuse to provide appropriate medical and mental health care if they had a religious objection. For example, an agency could use the law to argue for unorthodox practices such as faith healing of sick children, military-style disciplinary practices, and more.
- An agency could itself decide to practice damaging conversion therapy on LGBT children and be protected from losing its license or government contract.
- An agency could refuse to place a child who has serious medical needs with a nurse who has the skills to care for her just because that nurse is gay, or of a different faith than the agency.

- Upon accepting a child, an agency could refuse to continue existing, medically necessary hormone therapy for a transgender teenager.
- LGBT youth could be placed in harmful, damaging situations or refused care entirely. A child welfare agency could refuse to recognize the gender identity and/or sexuality of an LGBT youth in their care. They could make harmful statements that could result in emotional harm to the youth and deny transgender youth clothing that matches their gender identity. An agency could also refuse to take an LGBT youth into their care entirely, while continuing to receive state funding.

Taxpayer dollars would be spent on discrimination and group homes rather than adoption. When qualified families are not considered as potential foster or adoptive families simply because they do not meet an agency's religious criteria, or because of what their family looks like, children may spend more time in the child welfare system as a result. This denial of permanent homes is harmful for children and costlier to states. Research finds that excluding qualified prospective foster and adoptive parents has negative budget impacts for state governments. Group homes are estimated to cost seven to ten times more than in-home placements,¹⁵ and states spend less per child on providing basic care once a child is adopted.¹⁶

The American Public and Professional Child Welfare Organizations Do Not Support This Legislation

In 2017, numerous child welfare organization, including the Child Welfare League of America, released a position statement supporting LGBT foster and adoptive parents and the right for LGBT youth and parents to access competent services from child welfare organizations.¹⁷ According to a 2017 poll, more than two-thirds (68%) of Americans oppose permitting child welfare agencies to discriminate using federal taxpayer dollars.¹⁸

Laws, policies and regulations that sanction discrimination and prohibit placement with potentially qualified families based on sexual orientation are not in any child's best interest. These laws maintain that "religious liberty" should be a sufficient rationale for adoption service providers, even those who receive public funding, to deny services based on religious convictions or individual beliefs.

The Child Welfare League of America (CWLA), Donaldson Adoption Institute (DAI), North American Council on Adoptable Children (NACAC), Voice for Adoption (VFA), National Center for Adoption and Permanency (NCAP), Foster Club, and RESOLVE: The National Infertility Association, May 2017.



Spotlight on H.R. 1881, A Federal Child Welfare Religious Exemption Bill

Congress is currently considering legislation, H.R. 1881, that would cut federal funding for child welfare services by 15% to any state that required that its child services organizations not discriminate against families or children in care. The bill would also limit federal agencies' ability to enforce non-discrimination provisions or other conditions of receipt of federal funds.

Under H.R. 1881, the federal government could withhold two types of federal funding—Title IV-B and Title IV-E funding—from states that require child welfare organizations to adhere to non-discrimination laws and/or states who refuse to license, contract with, or reimburse agencies who do not want to follow state laws and regulations governing the children in their care. These federal funds are vital sources of funding for child welfare services, including for family support and connection and family reunification (Title IV-B) and the largest single source of funding for state adoption and foster care services (Title IV-E). Through Title IV-E, states are reimbursed for the costs associated with placing children in foster or adoptive homes, and in guardianships. In 2014, Title IV-E reimbursements to states totaled \$7 billion.¹⁹

These two sources of funding are crucial to the success of state foster and adoption services. Penalizing a state by up to 15% simply for enforcing nondiscrimination in child services would slash capacity for the state to serve children waiting to be reunited with their families, or to be placed in a forever home.

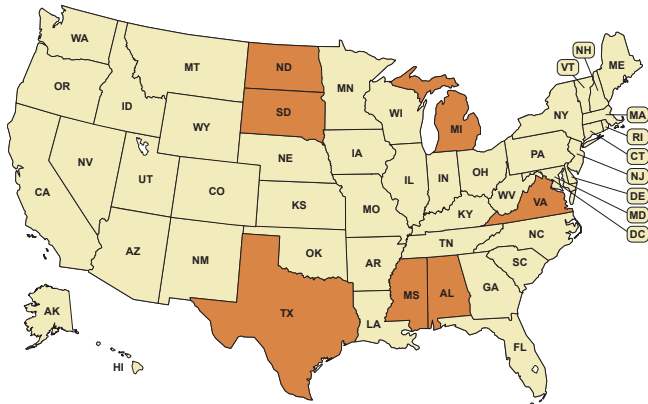
Currently, three states and the District of Columbia prohibit discrimination against potential foster and adoptive parents on the bases of sexual orientation and gender identity, and five more prohibit discrimination on the bases of sexual orientation alone (see *Figure 3* on the next page).²⁰ Each of these states risks losing 15% of its Title IV-B and Title IV-E funding if it enforces its nondiscrimination law. As seen in *Table 1*, H.R. 1881 could cost these states nearly half a billion dollars in funding that provides crucial foster and adoptive services.

Table 1: States with Non-discrimination Laws will Lose Millions in Critical Funding

State	Children Waiting in Care in 2015	2014 Title IV-E and IV-B Funding	15%
California	55,983	\$1.66B	\$259 M
District of Columbia	947	\$14.5 M	\$2.2 M
Maryland	1,873	\$90 M	\$13.5 M
Massachusetts	10,285	\$102 M	\$15.3 M
New Jersey	6,874	\$171 M	\$25.6 M
New York	20,921	\$578 M	\$86.8 M
Oregon	7,369	\$131 M	\$19.7 M
Rhode Island	1,826	\$23.5 M	\$3.5 M
Wisconsin	7,091	\$120.6 M	\$18 M
TOTALS	113,169	\$2.9 B	\$433 M

Source: National Conference of State Legislatures, "Child Welfare Financing 101," May 2017, <http://www.ncsl.org/research/human-services/child-welfare-financing-101.aspx>.

Figure 2: States Across The Country That Have Passed Legislation Harmful to Children in State Care



- States that permit state-licensed child welfare agencies to refuse to place and provide services to children and families, including LGBT people and same-sex couples, if doing so conflicts with their religious beliefs (7 states)

Source: Equality Maps. Movement Advancement Project. http://lgbtmap.org/equality-maps/religious_exemption_laws (current as of September 2017).

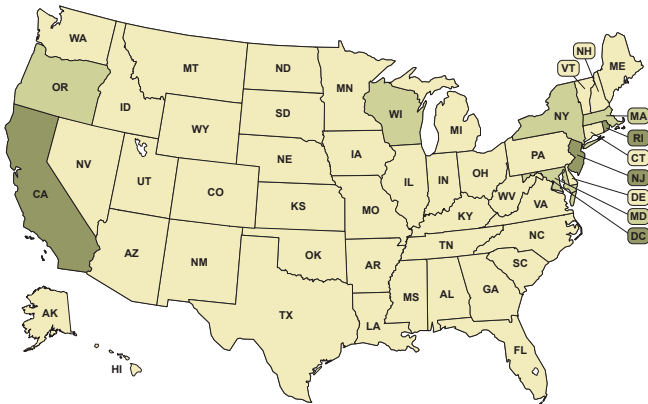
WHERE IS THIS LEGISLATION IN EFFECT?

Currently, seven states permit social service agencies to engage in this kind of discrimination and continue to receive state funding, while purporting to serve the children in state care: Alabama, Michigan, Mississippi, North Dakota, South Dakota, Texas, and Virginia (see *Figure 2*). For example, legislation enacted in Michigan in 2015 states that a “child placing agency shall not be required to provide any services if those services conflict with, or provide any services under circumstances that conflict with, the child placing agency’s sincerely held religious beliefs contained in a written policy, statement of faith, or other document adhered to by the child placing agency” and that the state and local governments may not take adverse action against such agencies, including rescinding state contracts or failing to grant a contract.²¹

CONCLUSION

Child-placement and child welfare agencies should focus on providing loving, stable, forever homes for the children in their care. There are more than 428,000 children in foster care, with one-quarter awaiting adoption. Instead, state legislatures have passed or are considering harmful legislation that would encourage and enable adoption agencies and their workers to reject parents who don’t share the agency’s or worker’s religious beliefs—all while still receiving taxpayer dollars. This legislation not only harms children in state care, it increases child welfare system costs and emboldens discrimination.

Figure 3: Few States Have Laws Prohibiting Discrimination Against Foster Parents



- Law or policy prohibits discrimination based on sexual orientation and gender identity (3 states + D.C.)
- Law or policy prohibits discrimination based on sexual orientation only (5 states)
- States are silent on fostering by LGBT parents (42 states)

Source: Equality Maps. Movement Advancement Project. http://lgbtmap.org/equality-maps/foster_and_adoption_laws (current as of September 2017).

ENDNOTES

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