

# LICENSE TO DISCRIMINATE: HOW RELIGIOUS EXEMPTION LEGISLATION FOR SOCIAL SERVICE AGENCIES HARMS CHILDREN

Issue Brief | March 2017



## 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 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.

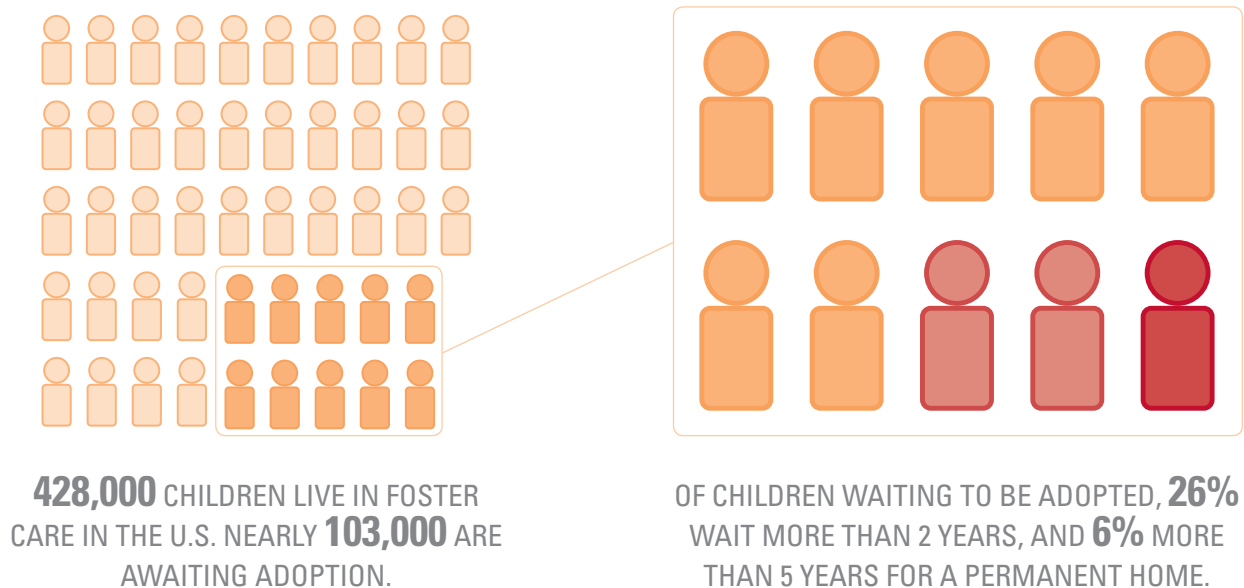
This type of religious exemption legislation only hurts children. Child placement agencies should focus on providing loving, stable, forever homes for children. Instead, these laws encourage and enable adoption agencies and their workers to reject parents who don't share the agency's or worker's religious beliefs. As a result, children may remain in government group homes and foster care rather than

being adopted by qualified parents. 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—may have a very broad range of beliefs, and these laws would legally prioritize those religious beliefs over the best interests of children.

## CHILD PLACEMENT & CHILD WELFARE AGENCIES SHOULD PUT CHILDREN FIRST

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 child-placement agencies that receive government funding to refuse to provide services

Figure 1: Thousands of Children Are Waiting to Be Fostered or Adopted



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).

# LAWS PERMITTING DISCRIMINATION HARM CHILDREN AND FAMILIES



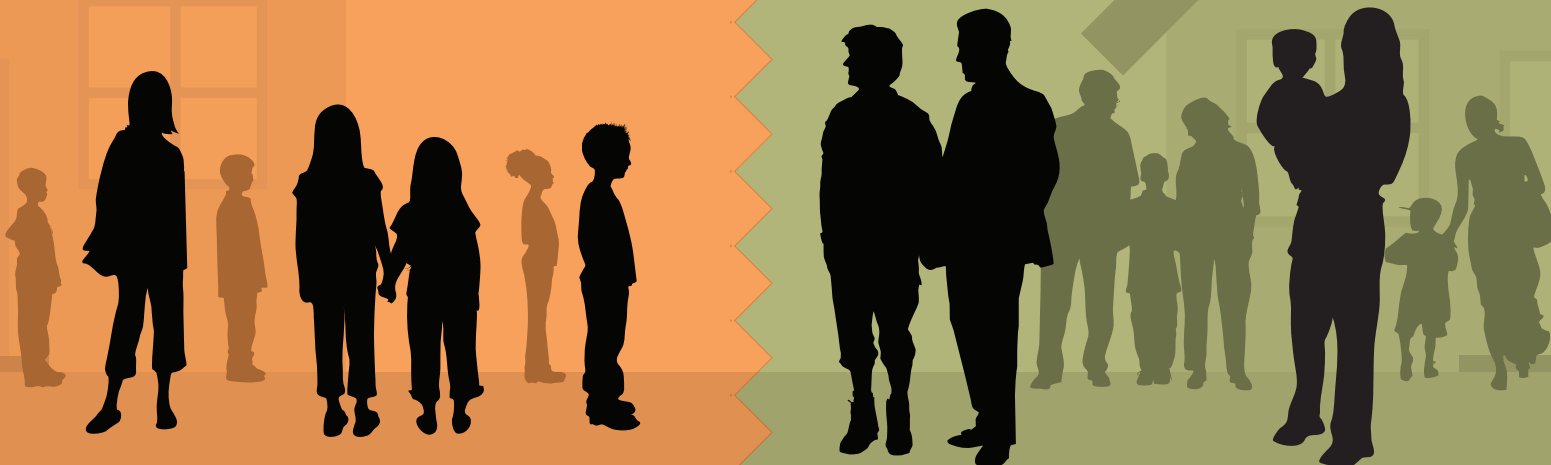
## TAXPAYER DOLLARS SHOULDN'T BE USED TO KEEP CHILDREN AND LOVING FAMILIES APART

ADOPTION AGENCIES WOULD NO LONGER NEED TO MAKE PLACEMENT DECISIONS BASED ON THE BEST INTERESTS OF THE CHILD AND INSTEAD PRIORITIZE FAMILIES THAT:

- ✓ USE CORPORAL PUNISHMENT
- ✓ BELIEVE IN FAITH HEALING
- ✓ BELIEVE IN HARMFUL CONVERSION THERAPY

ADOPTION AGENCIES COULD REJECT QUALIFIED PARENTS WHO DON'T MEET THEIR RELIGIOUS CRITERIA:

- ✗ ARE LGBT
- ✗ AFFIRM TRANSGENDER YOUTH
- ✗ ARE COHABITATING
- ✗ ARE INTER-FAITH



if doing so would conflict with their moral or religious beliefs. 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.”<sup>1</sup> The potential impact of this type of legislation on the provision of child services is breathtaking.

## Hundreds of Thousands of Children Need Forever Homes

Consider that there are nearly 428,000 children in foster care across the United States, and nearly 103,000 of those are awaiting adoption.<sup>2</sup> Children who lack permanent homes have added risk of major difficulties in transitioning to a healthy adulthood.<sup>3</sup> Despite the importance of permanency, there is a significant shortage of quality homes for children, and children may face years of instability before they are adopted. Of the 108,000 children waiting to be adopted in 2014, 29% had been waiting more than two years, while 11% had been waiting more than five years for a permanent home (see *Figure 1* on the previous page).<sup>4</sup>

States consistently report that one of the biggest obstacles to placing children is finding interested, qualified families who want to foster or adopt.<sup>5</sup> 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.<sup>6</sup> There are more than 22,000 adopted children residing with same-sex couples.

Yet these 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.

## Child Placement and Child Welfare 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.”<sup>7</sup> How can agencies 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. 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.

## 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 and allows taxpayer dollars to be used to discriminate.

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 reject 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 agencies' 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.
- A Christian child placement agency could refuse Jewish parents, and Jewish child placement agency could refuse Christian parents.
- 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 basic necessities such as appropriate clothing. An agency could also refuse to take an LGBT youth into their care entirely, while continuing to receive state funding.

#### **Agencies and workers could discriminate against and refuse to serve sweeping categories of 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 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 belief that the Bible supports spanking.

#### **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.

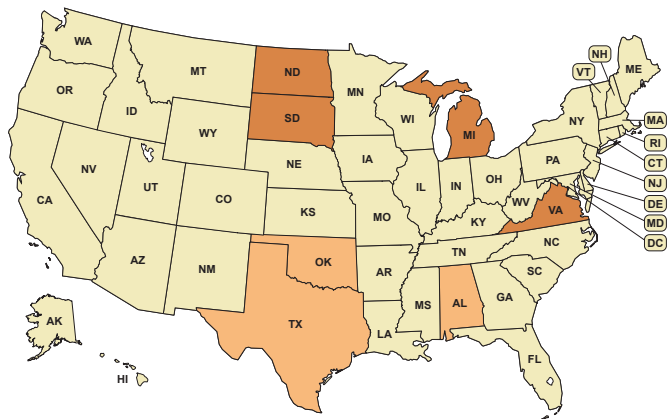
#### **Taxpayer dollars are spent on discrimination and group homes rather than adoption**

- When qualified families are not considered as potential 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 it is also 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,<sup>8</sup> and states spend less per child on providing basic care once a child is adopted.<sup>9</sup>

### **WHERE IS THIS LEGISLATION IN EFFECT?**

Currently, four states permit some 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: Michigan, North Dakota, South Dakota, and Virginia. 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

**Figure 2: States Across The Country Have Passed or Are Considering 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 (4 states)
- States considering laws that would 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 (3 states)

Note: Mississippi passed a law in 2016 permitting “adoption and foster care services” agencies to discriminate based on religious beliefs; H.B. 1523 (2016); this law has been challenged and overturned by a federal court and is currently stayed from enforcement.

Source: Equality Maps. Movement Advancement Project. [http://lgbtmap.org/equality-maps/religious\\_exemption\\_laws](http://lgbtmap.org/equality-maps/religious_exemption_laws) (current as of March 2017).

a contract.<sup>10</sup> At least four states have proposed similar legislation during the 2017 legislative session, with South Dakota passing its law in early March, (see *Figure 2*),<sup>11</sup> and various versions of the federal “First Amendment Defense Act” and a leaked draft of a federal executive order have contained similar provisions.

## 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 415,000 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.

## ENDNOTES

- <sup>1</sup> Senate Bill 149 (2017); <http://www.sdlegislature.gov/docs/legsession/2017/Bills/SB149P.htm> (not yet enrolled as of publication in March 2017).
- <sup>2</sup> 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 February 24, 2017).
- <sup>3</sup> Research review is available in “CW360: A comprehensive look at a prevalent child welfare issue.” Spring 2009. University of Minnesota. [http://cascw.umn.edu/wp-content/uploads/2013/12/CW360\\_Sp2009\\_FINAL.pdf](http://cascw.umn.edu/wp-content/uploads/2013/12/CW360_Sp2009_FINAL.pdf) (accessed March 6, 2017).
- <sup>4</sup> U.S. Department of Health and Human Services, “The AFCARS Report: Preliminary FY 2014 Estimates as of July 2015, No. 22,” <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport22.pdf> (accessed February 24, 2017).
- <sup>5</sup> The Annie E. Casey Foundation, “Every Kids Needs A Family, Policy Report.” 2015, <http://www.aecf.org/m/resourcedoc/aecf-EveryKidNeedsAFamily-2015.pdf> (accessed March 6, 2017).
- <sup>6</sup> Gary Gates, “LGBT Parenting in the United States,” The Williams Institute, 2013, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf> (accessed March 9, 2017).
- <sup>7</sup> Adult and Children’s Services, “Understanding Michigan’s Adoption Program,” Michigan Department of Health and Human Services, [http://www.michigan.gov/mdhhs/0,5885,7-339-73971\\_7116---,00.html](http://www.michigan.gov/mdhhs/0,5885,7-339-73971_7116---,00.html) (accessed March 9, 2017).
- <sup>8</sup> Annie E. Casey, “Every Kids Needs A Family, Policy Report.”
- <sup>9</sup> Adoption Advocate, “Better Prospects, Lower Cost: The Case for Increasing Foster Care Adoption,” National Council for Adoption, May 2011, [https://www.adoptioncouncil.org/images/stories/NCF\\_ADOPTION\\_ADVOCATE\\_NO35.pdf](https://www.adoptioncouncil.org/images/stories/NCF_ADOPTION_ADVOCATE_NO35.pdf) (accessed March 9, 2017).
- <sup>10</sup> MI H.B. 4188, “AN ACT to amend 1973 PA 116, entitled “An act to provide for the protection of children through the licensing and regulation of child care organizations; . . .” Enrolled as Act No. 53, 2015, <http://www.legislature.mi.gov/documents/2015-2016/publicact/htm/2015-PA-0053.htm> (accessed March 9, 2017).
- <sup>11</sup> See, for example, South Dakota SB 149 (2017), <http://www.sdlegislature.gov/docs/legsession/2017/Bills/SB149P.htm>.