COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6100

November 1, 2018

The Honorable Alex M. Azar II
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Azar:

I write to raise serious concerns about reports that the Department of Health and Human Services (HHS) is considering using the Religious Freedom Restoration Act (RFRA) to allow a taxpayer-funded child welfare provider to violate laws and policies that bar discrimination. The exemption under consideration is not justified under applicable legal standards and threatens to tear a hole in our nation's social safety net, while undermining both civil rights and religious liberty.

When Congress passed RFRA in 1993 in response to a Supreme Court case,[1] the discussion centered on how the law would help religious minorities exercise their faith. It was not intended to be a tool to violate constitutional and statutory protections against discrimination. Moreover, RFRA explicitly requires that any exemption abide by the limits of the Establishment Clause of the First Amendment which prohibits granting religious exemptions that would detrimentally affect any third party.[2] When considering such an exemption, the government "must take adequate account of the burdens" that it "may impose on nonbeneficiaries" and must ensure that any exemption is "measured so that it does not override other significant interests."[3]

Faith-based child welfare agencies have and will play a vital role in serving children in the foster care system, often in partnership with the government. However, religious freedom does not give these agencies a right to use taxpayer dollars to fund discriminatory practices. A child should not be denied a loving, stable home because prospective parents are Humanist, Jewish, Mormon, or Catholic. Qualified LGBTQ families, families who do not attend worship services every week, and families who use contraception should not be told they are not good enough in

---

[1] *Employment Division v. Smith*, 485 U.S. 660 (1988).
[2] *E.g.*, *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2781 n.37 (2014) (citing *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005)); *Holt v. Hobbs*, 135 S. Ct. 853, 867 (2015) (Ginsburg, J., concurring); *Cutter*, 544 U.S. at 726 (may not "impose unjustified burdens on other[s]"); *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 18 n.8 (1989) (may not "impose substantial burdens on nonbeneficiaries").
[3] *Cutter*, 544 U.S. at 720, 722; *see also Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 709-10 (1985).

the eyes of a taxpayer-funded provider to serve children in need. Finally, employees paid for with federal money should be selected based on qualifications, not religious beliefs.

Child welfare policies should be guided solely by what is in the best interest of the child. An exemption under RFRA would undermine this principle by using tax dollars to fund discriminatory practices, which place the religious beliefs of social service providers above the best interest of children.

Thank you for your attention to this matter.

Sincerely,

ROBERT C. "BOBBY" SCOTT
Ranking Member