Congress of the United States
Washington, DC 20515

May 23, 2018

President Donald Trump
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Trump:

Our nation is facing a crisis in foster care and adoption. Child neglect, abuse, and abandonment are being fueled by the ongoing opioid epidemic, yet as more children are entering the foster care system we have fewer families available to provide safe and loving homes for them. Of the over 400,000 children in foster care, more than 100,000 of them are waiting to be adopted. Every year, over 20,000 children age out of the system having never found a permanent family to love and care for them. This number is on the rise, and these youth are particularly vulnerable to ending up in poverty, without an education, and even on the streets.

The government cannot fill this shortage for needed families on its own, which is precisely why government has long relied on private organizations, and especially faith-based agencies, to help meet this acute need. Faith-based agencies in particular are often the most successful agencies at recruiting and supporting new foster families. In fact, before the government became involved in 1912, child welfare and foster care were predominantly run by private and religious organizations.

Yet faith-based agencies now face mounting threats to their ability to continue doing their critical and mission-driven work. Without sufficient legal protection in areas like Boston, the District of Columbia, and Illinois, faith-based agencies have already been forced to close their doors. And now, that same fate is threatening faith-based agencies across the nation. For example, in Michigan, the American Civil Liberties Union (ACLU) sued last fall to forbid the state from relying on faith-based agencies such as Catholic Charities, despite the fact that the ACLU's clients had easy access to many other foster and adoption agencies. Last year in South Carolina, state officials threatened faith-based adoption agencies with closure unless they abandoned their religious beliefs. And in Philadelphia, in March of this year—the same month that the City announced it faces an urgent need for 300 more foster families to care for the growing number of children in need—the City also suspended its contracts with top-rated faith-based agencies simply because of the City's disagreement with those agencies' longstanding religious beliefs about marriage. Lastly, the Department of Health and Human Services (HHS) itself has been sued in an attempt to cut off funding for faith-based organizations serving refugee children.

We cannot allow history to repeat itself and shut out faith-based agencies doing crucial and quality work. Too much is at stake to place politics above the needs of our nation's most vulnerable children.

Members of Congress are working to develop legislative solutions. But this issue is so important that all branches of government must take responsible action. To that end, we urge you and your Administration to take the following steps:

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1. Consistent with existing HHS policies and statutory requirements, HHS should ensure that its funds are not being used to exclude any qualified faith-based agencies from the provision of foster and adoption services. For example, more than $2 billion in federal funding distributed for foster and adoption services comes from the Temporary Aid for Needy Families (TANF) block grant program. This program includes detailed requirements prohibiting discrimination against faith-based service providers. Specifically, Section 604a of Title 42 states that "neither the Federal Government nor a State receiving funds under such programs shall discriminate against an organization which is or applies to be a contractor to provide assistance, or which accepts certificates, vouchers, or other forms of disbursement, on the basis that the organization has a religious character." 42 U.S.C. § 604a(c). In addition, HHS has set forth regulations stating that "Neither the HHS awarding agency, nor any State or local government and other pass-through entity receiving funds under any HHS awarding agency program shall, in the selection of service providers, discriminate for or against an organization on the basis of the organization's religious character or affiliation." 45 C.F.R. § 87.3(a). Despite these important policies, some government bodies that receive HHS funds are likely not in compliance. For example, in Philadelphia the City cut off new foster care referrals to faith-based agencies simply based on disagreement with faith-based agencies' longstanding beliefs, and not based on any real obstacle for any families pursuing foster care or adoption in the City. HHS should consider whether investigative and enforcement action is warranted for potential religious discrimination.

2. HHS should consider issuing new regulations, guided by Executive Order 13798 and 13831, that detail how government entities should provide access to foster care and adoption contracts on an equal basis with other providers and in a way that accounts for and protects the unique religious identity, beliefs, and practices of faith-based agencies. It should also consider rescinding 45 C.F.R. § 75.300 (c) and (d) which wrongfully targets faith-based Child Placing Agencies.

3. HHS should review all policies and identify any that are creating obstacles for or excluding qualified faith-based agencies from offering foster care and adoption services and consider revising any policies if necessary.

We believe these actions are firmly in line with your Presidential Executive Orders 'Promoting Free Speech and Religious Liberty (E.O. 13798)' and 'Establishment of a White House Faith and Opportunity Initiative (E.O. 13831).' The Attorney General's 'Guidance On Federal Law Protections For Religious Liberty' further emphasizes your Executive Order stating that "government may not exclude religious organizations as such from secular aid programs, at least when the aid is not being used for explicitly religious activities." Just last year in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, the Supreme Court affirmed that the denial of a public benefit, such as Title IV-E funds, solely on the basis of an organization's religious nature violates the First Amendment's guarantee of free exercise of religion. However, in several States, religious organizations do not have the opportunity to participate in government programs – a flagrant violation of federal law protections for religious liberty such as the Religious Freedom Restoration Act.

We sincerely thank you for your leadership in safeguarding religious liberty, which is under assault. As you said, "Faith is deeply embedded into the history of our country, the spirit of our founding and the soul of our nation…[this administration] will not allow people of faith to be targeted, bullied or silenced anymore." Unfortunately, the unimaginable is happening and faith-based child welfare organizations are being targeted, bullied, and silenced across the country. We urge your support and swift action to protect these organizations who serve our children.

Sincerely,

Mike Kelly
Member of Congress

Michael B. Enzi
U.S. Senator

George Holding
Member of Congress

Roy Blunt
U.S. Senator

Jason Smith
Member of Congress

John Cornyn
U.S. Senator

Jackie Walorski
Member of Congress

Tom Cotton
U.S. Senator

James B. Renacci
Member of Congress

Steve Daines
U.S. Senator

Diane Black
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Joni K. Ernst
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Robert J. Wittman
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Daniel Webster
Member of Congress

Roger W. Marshall
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Bill Johnson
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Keith J. Rothfus
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Jim Banks
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Robert B. Aderholt
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Richard Hudson
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Marsha Blackburn
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Steve Pearce
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Duncan Hunter
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Tom Graves
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Bruce Westerman
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Lloyd Smucker
Member of Congress

Brian Babin
Member of Congress

Mia B. Love
Member of Congress

Chris Stewart
Member of Congress

Cc:

The Honorable Michael R. Pence
Vice President of the United States

The Honorable Alex M. Azar II
Secretary of Health and Human Services

The Honorable Jeff Sessions
Attorney General of the United States