



# Americans United for Separation of Church and State ALABAMA CHAPTER

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April 22, 2016

## **Re: Oppose HB 158 Because It Would Sanction Discrimination and Harm Children**

Dear Representative:

On behalf of its Alabama members and supporters, Americans United for Separation of Church and State urges you to oppose HB 158. This bill would allow an agency to refuse to provide child placement services based on the agency's sincerely held religious beliefs—even where those actions would be contrary to the best interests of the children. It would permit discrimination against prospective foster and adoptive parents and irrevocably harm youth in care, all with state funds. This bill must be rejected.

### **This Legislation Would Allow Agencies to Override the Best Interests of Children**

Child placing agencies that provide critical services to children must do so based solely on what is in the best interests of the child.<sup>1</sup> This legislation undermines this bedrock child welfare standard—and contradicts state law—by placing an agency's religious beliefs over the best interests of the children they agree to serve. Working in the best interests of each child means agencies must consider and work with all qualified prospective parents, regardless of the agency's religious or moral beliefs. By allowing agencies to turn away qualified prospective parents, this bill would increase both wait times for children in care as well as the number of youth leaving care without finding their forever family.

### **HB 158 Would Permit State-Funded Discrimination**

HB 158 is a thinly veiled attempt to give taxpayer-funded agencies a special right to discriminate for any reason, as long the agency claims the discrimination is based upon its religious beliefs. Under this legislation, agencies could claim they have a right to

- Refuse to place a child with a married couple when the husband had been previously divorced;
- Place a gay or lesbian youth only with a family who promises to send the youth to dangerous and discredited, “conversion therapy”;
- Refuse to place children with their grandparents because of the grandparents' religious beliefs; and
- Refuse to place a child with a married same-sex couple.

Allowing state funds to flow to these institutions without holding them to non-discrimination standards contradicts one of the central principles of our country's constitutional order: “the Constitution does not permit the State to aid discrimination.”<sup>2</sup> In addition, polls<sup>3</sup> consistently show

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<sup>1</sup> ALA. ADMIN. CODE r. 660-5-22-.03 (2106).

<sup>2</sup> *Norwood v. Harrison*, 413 U.S. 455, 465-66 (1973).

<sup>3</sup> E.g., *The State of the First Amendment: 2014*, FIRST AMEND. CTR. <http://www.firstamendmentcenter.org/madison/wp-content/uploads/2014/06/State-of-the-First-Amendment-2014-report-06-24-14.pdf>; *PRRI/RNS Religion News Survey: March 7-*



that Americans overwhelmingly understand and agree that when tax dollars are in play, discrimination is wrong.

### **This Exemption Raises Significant Constitutional Concerns**

The legislature may create religious exemptions even where the Free Exercise Clause does not require one,<sup>4</sup> but there are limits. “At some point, [such an exemption] may devolve into an unlawful fostering of religion”<sup>5</sup> and run afoul of the Constitution. For example, an exemption must not place “substantial burdens on nonbeneficiaries”<sup>6</sup> and “must be measured so that it does not override other significant interests.”<sup>7</sup>

The sweeping exemption in HB 158, however, does exactly what the Constitution forbids. As explained above, it harms children by denying them homes and harms potential parents by subjecting them to discrimination.

Moreover, the Supreme Court, however, has ruled that that the government may not delegate or share “important, discretionary governmental powers” with religious institutions.<sup>8</sup> This bill, however, would impermissibly grant state-funded child welfare service providers the right to use religious criteria to determine who they will serve and what services they will provide based on the religious beliefs of the providers.<sup>9</sup> Taxpayer funds may not fund services contingent on a religious litmus test—nor should it fund programs that use religion to deny essential services to those who need them.

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Although Americans United supports appropriate accommodations to protect religious exercise, the exemption in HB 158 is too broad. It would, in fact, harm religious liberty because it would impermissibly sanction state-sponsored discrimination and would override children’s rights to be placed in foster and adoptive homes according to their best interests. Accordingly, I urge you to oppose HB 158.

Sincerely,



Vivian Beckerle  
President, Alabama Chapter  
Americans United for Separation of Church and State

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11, 2012, PUB. RELIGION RES. INST. <http://publicreligion.org/site/wp-content/uploads/2012/03/PRRI-RNS-March-2012-Topline.pdf>.

<sup>4</sup> Of course, in some instances exemptions may be constitutionally permissible but unwise public policy.

<sup>5</sup> *Corporation of the Presiding Bishop v. Amos*, 483 U.S. 327, 334-35 (1986) (internal quotation marks omitted).

<sup>6</sup> *Texas Monthly, Inc. v. Bullock*, 480 U.S. 1, 18 n. 8 (1989); see also *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 704, (1985).

<sup>7</sup> *Cutter v. Wilkinson*, 544 U.S. 709 (2005).

<sup>8</sup> *Larkin v. Grendel’s Den*, 459 U.S. 116, 127 (1982).

<sup>9</sup> See *ACLU of Mass. v. Sebelius*, 821 F. Supp. 2d 474, 487-488 & n.26 (D. Mass. 2012), *vacated as moot sub nom., ACLU of Mass. v. U.S. Conference of Catholic Bishops*, 705 F.3d 44 (1st Cir. 2013) (citing *Larkin*, 459 U.S. at 125-26 (1982)).