AMERICANS UNITED
FOR SEPARATION OF CHURCH AND STATE

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The Honorable Henry McMaster
Office of the Governor
State of South Carolina
1100 Gervais Street
Columbia, SC 29201

Re: Veto Section 38.29 of H 4950, Which Would Allow Discrimination by State-Funded Child Placing Agencies

Dear Governor McMaster:

On behalf of the South Carolina chapters, members, and supporters of Americans United for Separation of Church and State, I urge you to veto Section 38.29 of the Provisos in H 4950 when the bill arrives on your desk. This section would allow state-funded child placing agencies to use religion to justify denying services to children and discriminating against prospective parents.

Freedom of religion is a fundamental American value that is protected by the U.S. and South Carolina Constitutions. It allows all of us the freedom to believe or not as we see fit, but it does not allow anyone to use religion as an excuse to harm or discriminate against others.

Child placing agencies must provide services based solely on what is in the best interest of the child. Section 38.29, however, would undermine this bedrock child welfare standard by putting the religious beliefs of agencies ahead of the best interests of the children whom the agencies contract with the state to serve. It would allow state-funded child placing agencies to deny children necessary services and the loving, stable, and permanent homes they deserve.

Allowing foster care providers to use religion to refuse to serve children and qualified prospective parents would violate the Establishment Clause of the U.S. Constitution in two ways. First, it would create a religious exemption that results in real harm to children and prospective parents.[1] Agencies could refuse to provide vital services to children in care. And permitting agencies to discriminate against qualified perspective parents increases the amount of time children must wait to find a stable home, results in more youth leaving care without finding their forever family, and harms the human dignity of parents who are denied the ability to foster. Second, the legislation would grant discretionary powers to

[1] *See e.g.*, *Cutter v. Wilkinson*, 544 U.S. 709, 720, 722, 726 (2005) (exemption may not "impose unjustified burdens on other[s]").

state-funded foster and adoption providers and allow them to place a religious litmus test on whom they serve and how they serve them.[2]

We appreciate the important role religiously affiliated institutions historically have played in partnership with the government to serve children in foster care. Effective government collaboration with faith-based groups, however, has not and does not require the sanctioning of discrimination with taxpayer funds. No taxpayer-funded organization should be able to use religion to justify refusing to provide services to children or place them in a safe and happy family because the prospective parents are Catholic, Jewish, or Humanist, or LGBTQ.

Although Americans United supports appropriately tailored accommodations to protect against government actions that substantially burden religious exercise, the exemption in Section 38.29 goes too far. The enclosed memorandum provides more detailed analysis of the section's troubling consequences.

For these reasons, I urge you to veto Section 38.29 when it arrives on your desk.

Sincerely,

Nikolas Nartowicz
State Legislative Counsel

[2] *See Larkin v. Grendel's Den*, 459 U.S. 116, 125-27 (1982) (government's discretionary power may not be "delegated to or shared with religious institutions").