

THE RUTHERFORD INSTITUTE

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October 11, 2011

Aradhana Sood, M.D., Chair
Board of Social Services
Martin D. Brown, Commissioner
Department of Social Services
VDSS/Office of Legislative and Regulatory Affairs
801 East Main St.
Richmond, VA 23219-2901

Re: 22 VAC 40-131 – *Standards for Licensed Child Placing Agencies*

Dear Dr. Sood and Commissioner Brown:

The Rutherford Institute¹ has grave concerns about efforts underway to prohibit child placement agencies—including faith-based organizations—from “discriminating” against applicants by considering gender, age, religion, political beliefs, sexual orientation, disability or family status in placing children for adoption.

Specifically, if such “anti-discrimination” requirements were included in 22 VAC 40-131-170(B), the regulation would constitute a significant infringement upon the rights of faith-based adoption agencies to exercise their religious beliefs, and would thus violate both the First Amendment to the United States Constitution and the Virginia Statute for Religious Freedom.² It is absolutely beyond the legitimate authority of any government agency to force faith-based agencies to choose between abandoning their adoption ministries or violating their sincerely-held religious beliefs.

The proposed interference with the internal workings of faith-based adoption agencies, which clearly touches upon doctrinal matters and religious teachings, also

¹ The Rutherford Institute is a civil liberties organization that provides legal representation at no charge to those whose civil rights are threatened or infringed.

² “All men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.”—Virginia Statute for Religious Freedom.

presents a serious concern under the Establishment Clause of the First Amendment to the United States Constitution.³ If the Establishment Clause means anything, it means that government agencies may not dictate what spiritual issues can be considered by religious organizations to be significant in determining what would serve as the best long-term placement for a child.

If the “anti-discrimination” requirements in question were adopted as part of 22 VAC 40-131-170(B) without any sort of exemption for faith-based adoption agencies, the Commonwealth of Virginia would be subjected to costly litigation from faith-based agencies seeking to preserve their right to religious freedom. Moreover, for as long as it would take for said rights to be vindicated, the Commonwealth would lose the significant contributions of these organizations to the adoption system, as many of them would undoubtedly choose to abandon their adoption ministries altogether rather than participate in a system that forces them to violate their sincerely-held religious beliefs regarding the definition of a healthy family.

While the American Civil Liberties Union has urged you to ignore the religious freedom rights of faith-based adoption agencies in the interest of advancing their brand of “equality,” we ask you to consider the vast implications of their position. For if, as the ACLU suggests, a religious organization loses its right to act in conformity with its creed anytime it participates in a “secular” activity, then the principle of religious liberty enshrined in the First Amendment would be robbed of virtually all meaning. This principle advanced by the ACLU would have horrendous, widespread ramifications for a number of other activities conducted by religious groups, not the least of which is education—another function that the state now views as “secular” and accordingly within its province. In short, the ACLU’s position is anti-civil-libertarian at its core.

While the ACLU and other groups and individuals who favor the inclusion of these “anti-discrimination” factors claim to seek “equality,” a careful examination of the context of their request exposes that argument as spurious. Current regulations do not *prohibit* persons of any certain gender, age, religion, political beliefs, sexual orientation, disability or family status from adopting a child in Virginia. Individuals and groups who believe such factors to be irrelevant to adoption decisions are free to operate their own adoption agencies according to that belief. The proper characterization, then, of what those who favor these “anti-discrimination” factors seek is not “equality,” but rather “coercion” of faith-based and other adoption agencies who rightfully consider many of these factors to be critical to determining the best interest of the child.

Please protect the rights of all child-placement agencies to exercise their own sound judgment in determining the best interests of the children they serve. Do not allow

³ “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”—First Amendment, U.S. Constitution.

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politically-motivated groups and individuals to oppress people of faith through the imposition of government regulations that advance their own cause at the expense of the children who need loving, stable homes. At the very least, should the proposed factors be included as prohibited “discriminatory” considerations, we insist that you also include an exemption for faith-based agencies.

Sincerely yours

Rita Dunaway, Esq.

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