



2833 Smith Ave Ste 225
Baltimore, MD 21209

t 301.727.2700

f 410.602.1351

www.cjvalues.org

office@cjvalues.org

Rabbi Pesach Lerner

President

Rabbi Yoel Schonfeld

Vice-President

Rabbi Avrohom Gordimer

Chairman, Rabbinic Circle

Rabbi Dov Fischer

Western Regional VP

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International Liaison

Rabbi Yaakov Menken

Managing Director

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The Honorable Xavier Becerra
Secretary of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Mr. Secretary,

We write to request that you permit the regulatory changes to rule 45 CFR § 75.300, made by your predecessor late in the Trump Administration, to go into effect. These changes acknowledge the rights of religious organizations (of all kinds and of all faiths) to act according to their own principles and beliefs when aiding America's most vulnerable children.

The new rules were published at 86 Fed. Reg. 2,257 (Jan. 12, 2021), but the Department has repeatedly agreed to stay the effective date of those rules in the case *Facing Foster Care in Alaska v. U.S. Department of Health and Human Services*, No. 1:21-cv-00308-JMC (D.D.C.). The Department should withdraw its agreement and allow the rules to go into effect immediately, as published.

Our organization represents over 2,000 traditional rabbis in matters of public policy — and the clear consensus of the traditionally-observant Jewish community, the Orthodox. We support the core principles of our faith, including the idea that every Jewish child should be raised in a Jewish home and taught the principles of Judaism. It is our principles and emphasis upon religious upbringing which have preserved our minority community through millennia of pressure, often at the tip of a sword, to abandon our beliefs and assimilate into society around us.

To be certain, we do not share the religious beliefs and practices of organizations such as the Holston United Methodist Home for Children in Tennessee, Catholic Social Services in Philadelphia, or Miracle Hill Ministries in South Carolina. We plainly believe that a Jewish couple is no less qualified than a Christian one to raise a child, and if any of these organizations were discriminating against Jewish families or, indeed, anyone else, we would find that abhorrent.

But that is not the case, and their observance of their religious tenets should not be mischaracterized as such. As people of faith ourselves, we recognize the key difference between discrimination against others and affirming our own religious principles.

For a religious organization to function, its doctrine must guide everything it does. For many religious organizations involved in foster care, including our own, that means bringing children into foster homes which share the religious foundations, mission and motivations of the sponsoring organization. To require any such organization to abandon its own requirements in order to offer foster care, which many of us regard as a religious service, denies such a group the free practice of religion guaranteed under the First Amendment. To disqualify it from neutral, per-child funding would similarly amount to unconstitutional discrimination against them as a religious group.

Were we to object to such policies on faith-neutral grounds, we would logically be unable to defend Jewish organizations that prioritize (and indeed, insist upon) placement of Jewish children with Jewish families. In order to preserve our own religious freedom, we must respect the right of Catholic and Evangelical organizations to conduct themselves in ways that conform to their own faiths as well. There's a word for that: *tolerance*.

It is for this reason that we deplore claims that the practices of these organizations are "discriminatory." Such a position makes a mockery of the First Amendment, forcing religious organizations to choose between sincerely-held beliefs and the privilege of serving children.

We must also underscore that these misguided positions exact a direct human toll specifically from America's most vulnerable children: those who lack parents able to care for and raise them into adulthood. Due to Philadelphia's destructive action against Catholic Social Services, for example, dozens of children were forced to wait in group homes rather than placed with foster parents able to care for them as individuals. Who could contend that this result is better for our country, or for our very humanity? Children were harmed on a daily basis by Philadelphia's discriminatory, misguided policy, until the Supreme Court brought it to an end.

Thus we implore you to act without further delay, that no further harm to children be threatened by the previous, damaging policy — which also runs contrary to the First Amendment that ensures our freedoms. Please allow the new rules to go into effect.

Yours Sincerely,


Rabbi Pesach Lerner
President


Rabbi Yaakov Menken
Managing Director