UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MELISSA BUCK; CHAD BUCK; and SHAMBER FLORE; ST. VINCENT CATHOLIC CHARITIES,

Plaintiffs,

v.

ROBERT GORDON, in his official capacity as the Director of the Michigan Department of Health and Human Services; HERMAN MCCALL, in his official capacity as the Executive Director of the Michigan Children's Services Agency; DANA NESSEL, in her official capacity as Michigan Attorney General; ALEX AZAR, in his official capacity as Secretary of Health and Human Services; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Defendants.

No. 1:19-cv-00286

HON. ROBERT J. JONKER

MAG. PHILLIP J. GREEN

BRIEF IN SUPPORT OF STATE DEFENDANTS' EMERGENCY MOTION FOR STAY PENDING APPEAL OR, IN THE ALTERNATIVE, TO AMEND THE PRELIMINARY INJUNCTION

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EXPEDITED CONSIDERATION REQUESTED

BRIEF IN SUPPORT OF STATE DEFENDANTS' EMERGENCY MOTION FOR STAY PENDING APPEAL OR, IN THE ALTERNATIVE, TO AMEND THE PRELIMINARY INJUNCTION

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Dated: October 10, 2019

TABLE OF CONTENTS

INDEX OF AUTHORITIES

CONCISE STATEMENT OF ISSUES PRESENTED

1. When properly analyzed and balanced together each factor for staying an injunction speaks in favor of granting the stay. Should this Court stay the injunction entered on September 26, 2019 pending an appeal?

2. This Court found that St. Vincent Catholic Charities (SVCC) places children for foster care or adoption with same-sex couples or LGBTQ individuals licensed or certified by the State through another agency. If the Court denies a stay of the injunction, should the Court amend the injunction to require SVCC to continue making such placements?

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Authority:

Cases

Coalition to Defend Affirmative Action v. Granholm, 473 F.3d 237 (6th Cir. 2006)

Trump v. Hawai'i, 138 S. Ct. 2392 (2018)

Laws

Mich. Comp. Laws §§ 722.124e and .124f

INTRODUCTION

State Defendants have appealed this Court's September 26, 2019 Opinion and Order granting preliminary injunctive relief. The injunction should be stayed pending appeal because all the stay factors are met and because:

- The injunction turns the status quo on its head rather than maintaining it;
- The Opinion misinterprets Michigan law, and its Order demands that the Department turn a blind eye if SVCC violates Michigan law;
- The Court's Opinion ignores unrefuted testimony and documentary evidence demonstrating that the Michigan Department of Health and Human Services (Department) contracts with SVCC regardless of its religious beliefs and does not require SVCC to endorse or approve any type of relationship to carry out its state-funded contracts;
- The Court used Dana Nessel's statements as a private citizen and candidate regarding pending legislation—statements that do not even refer to, let alone, attack religion—to subject the Department's long-standing facially neutral non-discrimination policy to strict scrutiny, contrary to recent Supreme Court authority on this issue; and
- The Court's legal conclusions are unsupported by the substantial and unrefuted factual record submitted by the Department.

If, however, the Court denies a stay, at a minimum the Court must amend the preliminary injunction to require SVCC to—as the Court found it already does—place children for foster care or adoption with same-sex couples or LGBTQ individuals licensed or certified by the State through another agency.

STATEMENT OF FACTS

The facts of this case are set forth in the State Defendants' Response (Doc.34) and are largely unrefuted. (*See* PageID.907-961.)

ARGUMENT

I. This Court's preliminary injunction should be immediately stayed pending emergency appeal.

In *Coalition to Defend Affirmative Action v. Granholm*, this Court set out the familiar standard for a stay pending appeal:

> [W]e consider "(1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay." All four factors are not prerequisites but are interconnected considerations that must be balanced together.

473 F.3d 237, 244 (6th Cir. 2006) (citations omitted). Every factor of this balancing test supports an emergency stay. Instead of maintaining the status quo, this Court's injunction disrupts it without legal or factual support.

A. The State Defendants have demonstrated a substantial likelihood of success on the merits.

The Court wielded a "very far-reaching power" in granting this preliminary injunction. *Leary v. Daeschner,* 228 F.3d 729, 739 (6th Cir. 2000). And, neither the law nor the record supports it. Accordingly, State Defendants are likely to succeed on the merits of their appeal.

The Court's animosity toward Attorney General Dana Nessel's viewpoint on previously pending legislation is only thinly veiled. Despite the Supreme Court's direction to the contrary, this Court denounces religiously neutral statements that Dana Nessel made long before she ran for and took public office. And the Court uses these as a basis for applying strict scrutiny to the Department's neutral and generally applicable non-discrimination policy, over which Ms. Nessel exercises no control and which the Department adopted and enforced long before she took office.

The *Dumont*[1] settlement provides no evidence or basis to conclude otherwise. The Department Defendants'[2] position in *Dumont* was to defend "facially neutral contracting policies that neither establish a religion nor discriminate." (Defs.' Mot. to Dismiss, 2:17-cv-13080 (E.D. Mich.), Doc.16, PageID.51, ¶2.) They also argued that 2015 Public Act 53 "avoid[s] religious entanglement by not putting Defendants in the position of evaluating the … merits or demerits of a CPA's reason for declining a case referral." (*Id.* at PageID.81.) Similarly, SVCC refuted any argument it was "on the same side" as the Department Defendants in *Dumont* and, in fact, recognized that their interest would be adverse. (Ex. 1 to Mot. Transfer, Doc. 31-1, PageID.585, 610-619.) To the extent this Court relied on the settlement as evidence of a change in policy or a reason for finding religious hostility, this reliance is contrary to the filings in *Dumont*.

[1] *Dumont v. Gordon,* Case No. 2:17-cv-13080 (E.D. Mich. Sept. 20, 2017).

[2] Attorney General Dana Nessel was not a defendant in *Dumont*.

The Court also misinterprets Michigan law. 2015 Public Act 53 permits CPAs to reject for any reason the Department's referral of a State-supervised child needing foster care or adoption services, but prohibits CPAs from turning away a prospective family based on sincerely held religious beliefs *except* when performing private and direct placement services—i.e., except when the agency is providing foster care case management and adoption services for State-supervised children. And the Court misapprehends the parties' positions in *Dumont* and the status quo that must be maintained—not upended—by a preliminary injunction. Finally, the Court references a "State-orthodoxy test," which is unknown to the State Defendants.

The Department's longstanding non-discrimination policy is religiously neutral and generally applicable, and therefore appropriately analyzed under rational-basis review. The policy survives that standard of review.

1. State Defendants are substantially likely to succeed on appeal when the free-exercise claim is properly analyzed.

When analyzed in light of the applicable law and unrefuted facts, it is State Defendants—and not SVCC—who have a substantial likelihood of success on the merits of the free-exercise claim. This is set forth in detail in the State Defendants' brief, and briefly detailed below. (*See* PageID.940-50.) They are likely to succeed on the merits of this on appeal.

a. The Department's Non-Discrimination policy is not new, but has been in place and enforced for years.

The Department's policy prohibiting non-discrimination in services provided to State-supervised children did ***not*** change in the "wake of the 2018 general election." (Op., Doc.69, PageID.2498.) For several years now, the Department's policy and practice has been to follow 2015 Public Act 53, to include a non-discrimination clause in the standard contract entered with all CPAs, and to uniformly enforce both. Written testimony and documentary evidence on the record demonstrate this.

Michigan law and Department policy permit a CPA to reject a Department referral of a child needing foster care case management or adoption services for any reason and without explanation. (PageID.996, 1001, ¶¶ 11, 26); Mich. Comp. Laws § 722.124f. But once a CPA accepts a referral, Michigan law and Department policy prohibit the CPA from refusing to assess a prospective foster or adoptive parent, to determine whether they meet state licensing or certification requirements, on the basis of sexual orientation.[3]

The Department uniformly enforces this policy. It has investigated reports of noncompliance on several occasions and required corrective action to remedy violations of its non-discrimination policy. (*See e.g.,* PageID.996, ¶¶6-8; PageID.1009-1011, ¶¶20-22.)

The record shows that the Court erred in concluding that the Department adopted a new policy as a result of the *Dumont* settlement. Requiring SVCC to

[3] Michigan law permits CPAs to turn away families based on sincerely held religious beliefs *only when providing private adoption or direct placement services*, which are *not* state-contracted services. Mich. Comp. Laws § 722.124e.

comply with the Department's long-standing non-discrimination policy is the status quo that must be maintained.

b. The Department's Non-Discrimination Policy does not violate the Free Exercise Clause of the First Amendment as interpreted by the Sixth Circuit.

The Department's long-standing non-discrimination policy presents no conflict with the Free Exercise Clause as interpreted by Sixth Circuit precedent. The record demonstrates that the Department values its relationship with all CPAs, and does not require any CPA to endorse or approve any type of relationship or religious belief even in the context of the home study assessment.[4] (PageID.974, ¶12; PageID.967-968, ¶¶8,11; PageID.1009, ¶12; PageID.996, ¶10.) The purpose of the home study is to assess whether the prospective parents meet state licensing criteria and would be a good fit for a child in care. (*See* PageID.973-974, ¶¶9-12; PageID.1008, ¶¶8-11.)

As explained in State Defendants' Response, the lack of any evidence that the Department is excluding SVCC from the publicly funded foster care and adoption contracts due to its religious affiliation or belief distinguishes this case from others in which the U.S. Supreme Court has held that the Free Exercise Clause has been violated. *See* PageID.973-974

[4] Because the Court expressly declined to hold an evidentiary hearing, the testimony submitted in the State Defendants' affidavits constitutes the undisputed factual record on appeal. Sixth Circuit precedent requires that the Court hold an evidentiary hearing to resolve any factual dispute. *Certified Restoration Dry Cleaning Network, LLC v. Tenke Corp.*, 511 F.3d 535 (6th Cir. 2007).

The record shows that SVCC's refusal to assess same-sex and unmarried couples as part of the mandatory foster care case management and adoption services provided to each child in care, is, indeed, a contract violation. Numerous affidavits from the Department's witnesses attest that home studies, orientation, and other licensing-related activities are required by contract, law, and administrative licensing rules. (PageID.973-974, ¶¶8-9; PageID.967-968, ¶¶10, 12-13; PageID.1007-1008, ¶¶6, 8.) And CPAs are compensated for these services through the administrative rate paid under contract. (PageID.1009, ¶9; PageID.968, ¶¶12-13.)

As explained in the State Defendants' Response, the Department's non-discrimination policy is a neutral and generally applicable policy, to which rational basis review applies.

c. The Non-Discrimination Clause does not violate the Free Exercise Clause by requiring an endorsement or approval of a religious belief.

The Court erred in concluding that the Department's policy violates the Free Exercise Clause because it compels SVCC to make a statement or express values at odds with the Catholic faith. As explained in the State Defendants' Response, the Department's state-funded, standard service contracts at issue here do not compel speech or create a forum for protected speech. (PageID.952-955.)

Moreover, a CPA's assessment of a prospective family speaks to whether the family meets State requirements for foster care and adoptive parents, and nothing more. The Department does not require any CPA to endorse or approve of a

relationship or type of relationship, but instead, requires the CPA to recommend to the Department whether the prospective parent meets minimum licensing requirements required by law. (PageID.967-968, ¶¶8-12.) Recommendations as to licensing or certifying a foster care or adoption home must be based on criteria set forth in Michigan law, administrative rules and policy. The ultimate determination of whether the prospective home and family satisfies the state requirements is left to the Department. (PageID.973-974, ¶¶ 12-13) *See New Hope Family Servs. v. Poole,* No. 5:18-cv-1419, 2019 U.S. Dist. LEXIS 82461 (N.D.N.Y. May 16, 2019). Instead, the question is whether the parent(s) satisfies minimum criteria for licensing requirements, as set forth in state law, regulations and Department policy.

The Department has contracted with SVCC to provide publicly funded foster care and adoption services to children in care regardless of its beliefs, but on the same terms and conditions as all other CPAs. This Court based its free-exercise analysis on a faulty premise that the home study assessment requires a recommendation or endorsement on any grounds other than minimum state licensing criteria. This is soundly refuted by the factual record submitted by State Defendants. Thus, a stay is necessary to preserve the status quo pending appeal.

2. The Court's reliance on Attorney General Dana Nessel's statements to infer religious hostility onto this policy is contrary to law.

Rather than evaluating the Department's long-standing, neutral and generally applicable policy in light of the Sixth Circuit's jurisprudence on the Free

Exercise Clause, the Court attacks the Attorney General. Despite unrefuted testimony to the contrary, this Court erroneously concluded that the Department's policy must be read in light of statements that Dana Nessel made as a private citizen—which the Court misconstrued and took out of context. Even more troubling, the Court used these statements to require strict scrutiny review of the Department's neutral and generally applicable non-discrimination clause and Department policy. Binding Supreme Court precedent prohibits this, and this clear error warrants a stay.

a. The Court's focus on now-Attorney General Nessel's prior statements as a private citizen and a candidate for office constitutes clear error.

In determining whether the Department's policy should be reviewed under rational basis, the Court's focus on Attorney General Nessel's statements expressed as a private citizen or candidate, was clear error.

The statements the Court focuses on express no religious hostility. Of equal importance, at the time the statements were made, Attorney General Nessel had no authority over the Department or its policy. She did not influence, much less dictate, the Department's policy or the decision to settle the *Dumont* litigation. To the extent she expressed disagreement with pending or passed legislation, such disagreement has no relevance here because the Department's policy has been and remains consistent with the legislation as enacted. Neither the record nor applicable case law supports a finding of religious hostility. The Court's conclusion

otherwise constitutes clear error, as does its decision to apply strict scrutiny because of such statements.

i. Dana Nessel's statements address her opinion on the prudence of legislation, not religion.

Many of the statements that the Court cites express Defendant Nessel's views—as a private citizen— on pending legislation. Not one of Dana Nessel's statements reference Catholicism, or any religious belief or denomination, and none contains a reference to traditional Catholic beliefs on marriage.

For example, as a private citizen, she opined that "***a proponent of this type of bill***" would "have to concede that [s/he] dislike[s] gay people more than [s/he] care[s] about the needs of foster care kids," and that the "***These types of laws*** are a victory for the hate monger but again a disaster for the children and the state." https://michiganradio.org/post/faith-based-adoption-bills- headed-house-floor (emphasis added); http://www.fox2detroit.com/news/opponents-say-adoption-bill-discriminates-against-gays-and-lesbians (emphasis added). Even the Associated Press article quoted in the Opinion contains only commentary on the prudence of a state law. https://apnews.com/a1fc021e8e2e4b3b829586ba56ad9c07 (last visited Oct. 3, 2019). The state law about which she spoke *is not* being challenged in this case.

In context, Dana Nessel's statements demonstrate her concern for Michigan's children and her opinion that same-sex couples and LGBTQ individuals should not be barred from equal participation in publicly-funded foster care and adoption

programs due to their sexual orientation. The statements do not exhibit religious hostility, and the Court's focus on them to apply strict scrutiny review is clear error.

ii. Attorney General Nessel's statements are not actionable in this challenge to Department policy.

Even if Attorney General Nessel's statements could be construed as negative to a particular religion or belief, they do not transform the Department's longstanding, religiously neutral and generally applicable policy into pretext for religious targeting—as the Court erroneously concluded. (PageID.2520.) The Supreme Court's analysis in *Trump v. Hawai'i*, 138 S. Ct. 2392, 2416–17 (2018), makes this clear. A federal court's role is not to denounce an official's statements but, instead, to "consider the significance of those statements in reviewing a . . . directive, neutral on its face." *Id.* at 2418. In its Opinion, this Court did what the Supreme Court said it cannot do.

As explained in State Defendants' Response, the Attorney General's statements had even less significance on the non-discrimination policy that SVCC challenges than the statements at issue in *Trump*. (PageID.935-940.)

The Court erred in finding they constitute religious animus and in applying strict scrutiny to a neutral and generally applicable policy. This is contrary to the law. *See Trump,* 138 S. Ct. at 2416–17.

iii. The Court erred in using the Attorney General's past statements to support its determination of religious hostility.

The Supreme Court's decision in *Trump* makes clear that Attorney General Nessel's views on Public Act 53—expressed as a private citizen or a public official—have no relevance here. The Department established that it complies with Public Act 53—both before and after Attorney General Nessel took office—and that Attorney General Nessel's views had no impact on the Department's decision to settle the *Dumont* litigation on the terms set forth in the settlement agreement. There is no material evidence to the contrary.

By enacting PA 53, the Legislature authorized a CPA to reject a referral of a child from the Department for any reason. Mich. Comp. Laws § 722.124f. But the law does not permit the CPA to discriminate (even for religious reasons) when providing services under "foster care case management and adoption services provided under a contract with the Department." Mich. Comp. Laws § 722.124e(7). The Legislature expressly excluded such services from those for which a religious objection could be claimed. Licensing activities, including home studies and orientation, are services that SVCC agreed to provide as services to children accepted through referrals under contract with the Department and for which it receives compensation through its administrative rate. (PageID.967-968, ¶¶10-13; PageID.972-73, ¶¶8, 9-10)

The Court clearly erred in concluding that an agency's sole discretion to reject a Department referral of a child for any reason, including religious beliefs, under

Public Act 53 "*a fortiori*" provides a CPA the ability to "refer" prospective parents to other agencies due to a religious belief. (PageID.2518, n.11.)

The activities the CPA undertakes with prospective parents to allow it to make a recommendation as to whether s/he meets the minimum standards for licensing according to state-wide criteria are *services* that SVCC agreed to provide children in care. After accepting a child through a Department referral—as SVCC has done– no CPA may discriminate in services provided to the child. Federal and state law and the Department's policies and contracts prohibit this.

iv. The Court's reference to the *Dumont* settlement as a basis to denounce the Attorney General's statements or to support its unfounded allegation of religious hostility is equally unfounded.

The Court's opinion that the Department adopted a new policy in the *Dumont* settlement, and that strict scrutiny applies, was also clear error.

The Department Defendants' position in *Dumont* is like that the State Defendants advocate in this lawsuit. *Dumont* involved a challenge to what the *Dumont* plaintiffs described as the "provision of taxpayer-funded government services based on religious and discriminatory criteria" on the basis of the Establishment Clause and the Equal Protection Clause in the Fourteenth Amendment. (*Dumont* Compl, 2:17-cv-13080, Doc.1, PageID.3-4, ¶¶8, 10-12.) They sought to prevent the Department from contracting with faith-based agencies to provide foster care case management and adoption services. (*Id.* at PageID.20-21, ¶¶79-80, 87.)

The Department Defendants did not dispute the agencies' statutory right to reject Department referrals of children for any reason, including religious beliefs. Nor did they defend a CPA's ability to discriminate in providing services to State-supervised children in care, which is the relief that SVCC seeks here.

SVCC's position in *Dumont* is *also* remarkably similar to its position in this lawsuit, i.e., still adverse to the Department Defendants. While both the Department Defendants and SVCC were defendants in *Dumont*, SVCC did ***not*** represent to the presiding court in that litigation that it was "on the same side" as the Department Defendants, or "align[ed] with the State" – as the Court now declares. (*See* PageID.2528.) To the contrary, SVCC moved to intervene in *Dumont* because it recognized that its interests would ***not*** be represented by the Department Defendants and that its purported "Free Exercise interests" were actually adverse to the Department Defendants. (PageID.583-584, 616-619.) SVCC has, now, sued the Department over this Free Exercise interest – as its *Dumont* filings presaged.

The decision to settle the *Dumont* litigation did not represent a 180-degree pivot or a complete reversal of a prior position, as this Court opines. (PageID.2518.) The record before the Court on this motion for a preliminary injunction refutes any claim of religious hostility or targeting.

3. Rational-basis review applies and supports the State Defendants' likelihood of success on appeal.

As explained in the State Defendants' Response, the Department's neutral and generally applicable non-discrimination provision must be evaluated and

upheld under rational basis review. (PageID.951.) The non-discrimination clause reflects federal requirements, the Department's goal of non-discrimination in the context of foster care and adoption services, and the best interest of children. *See* 45 C.F.R. § 75.300(c). It should be upheld. *See Fulton v. City of Philadelphia*, 320 F. Supp. 3d 661, 686-90, 703-04 (3d Cir. 2018).

4. Even if strict scrutiny applies, the Court erred in ignoring the State's numerous, compelling interests.

As explained in the State Defendants' Response, ending invidious discrimination in government contracts is, in itself, a compelling state interest. (PageID.951-952.) Even applying strict scrutiny review, State Defendants have a substantial likelihood of prevailing on the merits on appeal.

The record supports a finding that allowing CPAs to turn away prospective foster care and adoptive parents does limit the pool of applicants. (PageID.2215-2236; PageID.2273, ¶17.) Because the Court clearly erred, State Defendants have a substantial likelihood of success on appeal on this issue.

B. Any injury to SVCC is a result of its own actions and not sufficient to warrant the preliminary injunction.

State Defendants' Response explains the lack of alleged irreparable injury to SVCC that could be attributed to a State Defendant. Any loss of business opportunity would be a result of SVCC's decision to willfully breach its contract with the Department—which has long included non-discrimination provisions that

SVCC only now contests—*not* the conduct of any State Defendant. Such allegations are insufficient to constitute irreparable injury. (PageID.955-957.)

C. Prospect of significant harm to third-parties without a stay is high.

Allowing the injunction to stand presents significant, potential injury to children who have no say in the matter at all. As explained above, requiring the Department to allow a CPA to exclude same-sex couples deters their participation in the publicly-funded foster care and adoption system, potentially limiting the number of applicable families for children in a foster care system who desperately need families. (PageID.2230-2232.) Testimony on the record demonstrates that this deterrent is real—even in our own state. (PageID.2273, ¶17.)

Allowing this injunction to stand raises a real concern of harm to children in the Department's care and to LGBTQ individuals and same-sex couples who would otherwise be, in the Court's words, "great parents" to these kids. (PageID.2498.)

The Court's Opinion failed to account for the harm to children and families caused by this discriminatory conduct, such as delay in placement, separation from siblings, residential placement for failure to find a family, and the stigma resulting from SVCC's alleged "willingness" to accept referrals of LGBTQ children who see that SVCC refuses recognize the ability of same sex and LGBTQ individuals as the "great parents" this Court claims SVCC agrees they can be.

Because the harm to these persons, and the public at large, is a necessary result of SVCC's discriminatory conduct, the balance of harms weighs in favor of staying this Court's injunction.

D. The public interest in a stay is strong.

As explained in State Defendants' Response, the public interest is served by allowing state agencies to enforce voluntarily-entered contractual obligations. *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Ran*, 67 F. Supp. 2d 764, 781 (E.D. Mich. 1999). This is equally true when the contractual provision being challenged prohibits discrimination on many grounds, including sexual orientation. There is a strong public interest in ending discrimination against LGBTQ individuals—especially in this context of a private agency's publicly funded contract with the State to provide foster care and adoption services to children in the Department's care. *Obergefell,* 135 S. Ct 2584, 2604 (2015); *Fulton v. City of Philadelphia,* 320 F.Supp.3d 661,704, n.35 (3d Cir. 2018).

Despite this strong public interest in ending such discrimination, the Opinion and Order require the Department to not only allow it, but also to fund it, through tax-payer dollars.

This improperly sends the "message . . . that [LGBTQ individuals] are outsiders, not full members of the political community." *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309 (2000). The same message applies to LGBTQ children in the Department's care when the CPA will not work with LGBTQ individuals and same-sex couples. Such directive directly conflicts with state and federal law. Any

harm to SVCC's business is due to its decision to engage in discriminatory conduct, in violation of its contract, Department policy, and state and federal law, and both the public interest concerns and the balance of harms weighs in the State Defendants' favor. *Id.*

II. If the Court denies the stay, the Preliminary Injunction must be amended.

This Court opined that SVCC places state-supervised children in care with same-sex couples licensed or certified by the State through another agency. If the Court denies a stay, the preliminary injunction should be amended to require SVCC to perform in conformance with this Court's determination, i.e., mandating that SVCC place state-supervised children in its care with a family licensed or certified by the State, "whether a same-sex couple or otherwise." (*See e.g.,* PageID.2504, 2517.)

CONCLUSION AND RELIEF REQUESTED

The factors for an emergency stay are met here. The Court should stay the preliminary injunction pending emergency appeal or, at a minimum, amend the injunction to require SVCC to place children in care with prospective parents licensed or certified by the State—as this Court found that it already does.

Respectfully submitted,

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Dated: October 10, 2019

CERTIFICATE OF COMPLIANCE

This brief complies with the word limit of W.D. Mich. LCivR 7.2(b)(i) because, excluding the parts exempted by W.D. Mich. LCivR 7.2(b)(i), it contains **4,291**words. The word count was generated using Microsoft Word 2016.

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