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March 30, 2016

## **Re: Oppose LB 975 – Permits Taxpayer-Funded Discrimination**

Dear Senator:

On behalf of its Nebraska members and supporters, Americans United for Separation of Church and State urges you to oppose LB 975, a bill that would permit child-placing agencies to discriminate against children and their families, including prospective foster and adoptive parents, with taxpayer dollars. The legislation would allow an agency to refuse to work with families, youth in care, or prospective parents based on the agency's sincerely held religious beliefs—even where those actions operate contrary to the best interests of the children. This bill must be rejected.

Religious liberty guarantees us the right to believe or not as we see fit, but it does not guarantee us the right to harm or discriminate against others. This bill flies in the face of our nation's fundamental value of religious liberty.

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

Taxpayer-funded child-placement 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 by placing an agency's religious beliefs over the best interests of the children they contract 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.

### **This Exemption Is Unconstitutionally Broad**

Although the government may offer religious accommodations even where it is not required to do so by the Constitution,<sup>2</sup> the state's ability to provide religious accommodations is not unlimited: "At some point, accommodation may devolve into an unlawful fostering of religion."<sup>3</sup> In *Texas Monthly, Inc. v. Bullock*,<sup>4</sup> the Supreme Court explained that legislative exemptions for religious organizations that exceed free exercise requirements will be upheld only when they do not impose "substantial burdens on

<sup>1</sup> E.g., *In re Adoption of Luke*, 263 Neb. 365, 640 N.W.2d 374 (2002).

<sup>2</sup> Of course, in some instances exemptions may be constitutionally permissible but unwise public policy.

<sup>3</sup> *Corporation of the Presiding Bishop v. Amos*, 483 U.S. 327, 334-35 (1986) (internal quotation marks omitted).

<sup>4</sup> 480 U.S. 1, 18 n. 8 (1989).

nonbeneficiaries” or they are designed to prevent “potentially serious encroachments on protected religious freedoms.” To meet the confines of the Establishment Clause, “an accommodation must be measured so that it does not override other significant interests.”<sup>5</sup> It may not place “unyielding weight” on the religious interest “over all other interests,”<sup>6</sup> including the interests of child placing agencies.

However, placing the interests of one group over another is exactly what LB 975, seeks to do. This bill prioritizes the religious views of child placing agencies above the best interests of the child. This contradicts state law and generally accepted standards, which require both the courts and placing agencies to prioritize the child’s best interest when placing a child in a foster or adoptive home. Therefore, this bill would facilitate a blatant contradiction of public policy and would endanger a child’s right to a suitable placement and undermine the state’s policy of putting children’s interests first. For these reasons, LB 975, must be rejected.

### **This Legislation Would Permit Government-Funded Discrimination**

LB 975 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 refuse

- To provide services to abused or neglected children in care based on the child’s sexual orientation;
- To provide counseling to parents and children who seek it based on the parents’ marital status or to place a child in a home with a parent who has been previously divorced; and
- To place children with their grandparents because of the grandparents’ religious beliefs.

Allowing government money to flow to these institutions without holding them to non-discrimination laws is a clear violation of one of the central principles of our country’s constitutional order: “the Constitution does not permit the State to aid discrimination.”<sup>7</sup> In addition, polls<sup>8</sup> consistently show that Americans overwhelmingly understand and agree that when tax dollars are in play, discrimination is wrong.

Moreover, this bill would impermissibly grant taxpayer-funded child welfare service providers the right to determine who they will serve and what services they will provide based on the religious beliefs of the providers. The government may not allow its contractors or grantees to limit services because of religious beliefs; by doing so, the

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<sup>5</sup> *Cutter v. Wilkinson*, 544 U.S. 709 (2005).

<sup>6</sup> *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 704, (1985).

<sup>7</sup> *Norwood v. Harrison*, 413 U.S. 455, 465-66 (1973).

<sup>8</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 7-11, 2012*, PUB. RELIGION RES. INST. <http://publicreligion.org/site/wp-content/uploads/2012/03/PRRI-RNS-March-2012-Topline.pdf>.

providers impose their beliefs on others with taxpayer money.<sup>9</sup> Yet, taxpayer funds should 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 freedoms, the exemptions in LB 975, would impermissibly create state-sponsored discrimination and would override children’s rights to be served according to their best interests. Accordingly, I urge you to oppose LB 975.

Sincerely,



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<sup>9</sup> *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 v. Grendel's Den, Inc.*, 459 U.S. 116, 125-26 (1982)).