Americans United for Separation of Church and State
ALABAMA CHAPTER

May 1, 2017

The Honorable Kay Ivey
Alabama State Capitol
600 Dexter Avenue
Montgomery, Alabama 36130

Re: Veto HB 24 – Bill Would Allow Discrimination by State-Licensed Child Welfare Service Providers

Dear Governor Ivey:

On behalf of its Alabama members and supporters, the Mobile Chapter of Americans United for Separation of Church and State urges you to veto HB 24. This bill would allow child placing agencies to invoke religion to ignore standards by which any such agency must abide in order to be licensed by the state. Bottom line, this bill would allow state-licensed child placing agencies to use religion as an excuse to discriminate. This religious exemption would place the religious beliefs of the agency above the needs of the child; therefore, this bill must be rejected.

The Constitution puts limits the government's ability to create religious exemptions: "At some point, accommodation may devolve into [something] unlawful."[1] The constitutional requirements are straightforward: "an accommodation must be measured so that it does not override other significant interests"[2] or "impose unjustified burdens on other[s]."[3] So, for example, in *Estate of Thornton v. Caldor, Inc.*,[4] the Supreme Court struck down a blanket exemption permitting employees to take off work for their Sabbath because it "unyielding[ly] weight[ed]" their religious interests "over all other interests."

[1] *Corp. of the Presiding Bishop v. Amos,* 483 U.S. 327, 334-35 (1986) (internal quotation marks omitted).
[2] *Cutter v. Wilkinson*, 544 U.S. 709, 722 (2005). Likewise, it must be calculated to lift an actual burden on religious exercise. *E.g.*, *County of Allegheny v. ACLU*, 492 U.S. 573, 613 n.59 (O'Connor, J., concurring) ("[A]n accommodation of religion, in order to be permitted under the Establishment Clause, must lift 'an identifiable burden on the exercise of religion.'") (quoting *Corp. of Presiding Bishop*, 483 U.S. at 348; *Wallace v. Jaffree*, 472 U.S. 38, 57 n.45 (1985)).
[3] *Cutter*, 544 U.S. at 726. *See also Alabama Monthly, Inc. v. Bullock*, 480 U.S. 1, 18 n. 8 (1989) (such accommodations may not impose "substantial burdens on nonbeneficiaries").
[4] 472 U.S. 703, 704f (1985).

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However, that is exactly what HB 24 does. This bill prioritizes the religious views of child placing agencies above the best interests of the child. This contradicts generally accepted standards and state law, which clearly states that "[i]f primary physical custody has not been awarded to one parent, the 'best interests of the child' standard applies."[5] And to be state-licensed, child placing agencies must adhere to the requirement to make placements "in accordance with sound child placement practices. Adoptive parents are to be selected on the basis of their capacity to meet the needs of a child."[6]

Nonetheless, this bill prohibits "adverse action" from being taken against a child placing agency that refuses to provide adoption placements that conflict with the provider's sincerely held religious beliefs. Although aimed at allowing child placing agencies to treat LGBT couples unfairly and refusing them the opportunity to provide loving homes to children, its reach is broader. Thus, an agency could refuse to place a child with a single person, with a couple who both work outside the home, or a couple who attend a church with different religious beliefs than those held by the agency, in direct violation of licensing standards and even if such placements are in the child's best interest.

This would be a major shift in public policy, conflict with prior Alabama court rulings, and raise serious constitutional concerns. HB 24 must be rejected.

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Religious freedom is a fundamental American value. It guarantees us all the right to believe—or not—as we see fit. It does not give anyone, however, a right to discriminate—or to get out of licensing requirements designed to promote the best interests of children. This legislation would burden children's rights to be placed in adoptive homes according to their best interests, permit state-licensed child placing agencies to ignore standards that bar discrimination, and would run afoul of core constitutional principles. Accordingly, I urge you to veto HB 24.

Sincerely,

Vivian Beckerle
President, Alabama Chapter
Americans United for Separation of Church and State

[5] *Ex parte Johnson*, 673 So. 2d 410, 413 (Ala. 1994).
[6] Ala. Dep't Hum. Resources, Minimum Standards for Child-Placing Agencies 38 (rev. 2016).