April 1, 2019

Re: Oppose Discrimination by State-Funded Child-Placing Agencies

Dear Senator:

On behalf of the Texas chapters, members, and supporters of Americans United for Separation of Church and State, I urge you to reject SB 17. This bill would allow any licensed professional to use religion as a justification to discriminate against any Texan. This is not just bad policy, but would also violate the Establishment Clause of the U.S. Constitution. SB 17, therefore, should be rejected.

Freedom of religion is a fundamental American value that is protected by the U.S. and Texas Constitutions. It allows all of us the freedom to believe or not as we see fit, but it does not allow anyone to use religion as an excuse to harm or discriminate against others. The broad, blanket religious exemption in this bill, however, would cause significant harm to Texans. For example, SB 17 could sanction:

- a counselor refusing to help a gay teenager who called a suicide hotline;
- a real estate agent refusing to work with a married couple because they are interfaith or the “wrong” religion;
- a doctor refusing to see a mother and her teen who is experiencing severe depression because the woman is unmarried; or
- a therapist refusing to work with a couple because they are considering divorce.

Paradoxically, this bill uses the concept of religious freedom as a justification for discriminating against people on the basis of religion. For example, a licensed professional could refuse to serve someone just because they are Jewish, Catholic, Latter-day Saint, Sikh, or nonreligious. This violates core values of religious freedom.

In addition to being bad policy, this bill would violate the Establishment Clause of the U.S. Constitution.¹ Although the state may offer religious exemptions even where it is not required to do so by the Free Exercise Clause of the U.S. Constitution, its ability to do so is not unlimited. The Establishment Clause requires the government to “take adequate account of the burdens” that an exemption “may impose on nonbeneficiaries” and must ensure that any exemption is “measured so that it does not overrule other significant

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interests.”² SB 17, in contrast, would provide a blanket religious exemption for all licensed professionals without taking into account the discrimination and denials of service that members of our communities, and particularly those most likely to experience discrimination, could face. As explained above, the harms are likely to be widespread and significant.

Although Americans United supports appropriately tailored accommodations to protect against government actions that substantially burden religious exercise, the exemption in the bill goes too far. Prohibiting licensed professionals from discriminating in providing services is not hostile to religion—turning away people because they fail a religious test is. For these reasons, I urge you to oppose SB 17.

Sincerely,

Nikolas Nartowicz
State Policy Counsel

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