No. 2020-05

IN THE

UNITED STATES COURT OF APPEALS FOR THE FIFTEENTH CIRCUIT

AL-ADAB AL-MUFRAD CARE SERVICES,

Plaintiff-Appellee

v.

CHRISTOPHER HARTWELL, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, CITY OF EVANSBURGH,

Defendant-Appellant

BRIEF FOR PLAINTIFF-APPELLEE

TEAM 29
Attorneys for Plaintiff-Appellee

QUESTIONS PRESENTED

I. Has the Free Exercise Clause of the First Amendment been violated when the Government compels private agencies to comply with an anti-discrimination policy when doing so would run afoul to that agency's religious beliefs?

II. Has an Unconstitutional Condition under the First Amendment of the Constitution occurred when the Government compels a private, religious entity to speak on a matter of discrimination, and then forces the private entity to publish their objection to a certain discriminatory measure against that entities' desires?

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF CONTENTS..... ii

TABLE OF AUTHORITIES iv

CONSTITUTIONAL PROVISIONS AND STATUTES..... 1

OPINIONS BELOW……..... 1

STATEMENT OF FACTS…..... 2

STATEMENT OF JURISDICTION..... 6

SUMMARY OF THE ARGUMENT 7

ARGUMENT..... 11

I. THIS COURT SHOULD GRANT AACS' MOTIONS FOR A TEMPORARY RESTRAINING ORDER AGAINST HARTWELL'S REFERRAL FREEZE AND A PERMANENT INJUNCTION COMPELLING HARTWELL TO RENEW AACS' CONTRACT BECAUSE ENFORCEMENT OF THE EOCPA, AS AMENDED, AGAINST AACS, VIOLATES AACS' FREE EXERCISE RIGHTS..... 11

A. The EOCPA Is not Neutral nor Generally Applicable and Therefore Should Be Stricken As a Violation of the Free Exercise Clause of the First Amendment. 12

B. Enforcement of the EOCPA Is Subject to Strict Scrutiny to Which It Cannot Survive, Because It Infringes upon the Religious Liberties of AACS, Under the Free Exercise Clause of the First Amendment..... 16

II. THE GOVERNMENT'S REQUIREMENT FOR AACS TO PUBLISH THE DISCRIMINATION POLICY OF THE STATE OF EAST VIRGINIA, ALONG WITH THE ONLY REMEDY FOR AACS TO CONTEST THE POLICY FOR THIS CONDITION IS TO PUBLISH THEIR OBJECTION ON THEIR PRIVATE PROPERTY, ACCOMPANIED BY THE DENIAL OF FUNDS BASED OFF OF AACS'S OBJECTION, IS COMPELLED SPEECH AND AN UNCONSTITUTIONAL CONDITION UNDER THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION..... 20

A. East Virginia has Compelled AACS to Speak on a Matter in which AACS is not Involved with and to Negate their Main Purpose which is to Find the Best Possible Environment for the Adoptive and Foster Youth..... 21

B. The Government Requirement for AACS to Publish their Opinion on Sexual Orientation is Compelled Speech which Creates a Conflict not Only with the Religious Beliefs of AACS, but is an Unconstitutional Condition upon a Private Entity under the First Amendment of the United States Constitution. 24

CONCLUSION.....29

TABLE OF AUTHORITIES

United States Supreme Court Cases

Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.,
570 U.S. 205 (2013).....25, 26, 27, 28

Church of Lukumi Babalu Aye, Inc. v. Hialeh,
508 U.S. 520 (1993).....11, 12, 16, 19

Emp't Div. v. Smith,
494 U.S. 872 (1990).....11, 13, 15

Gitlow v. New York,
268 U.S. 652 (1925).....21

Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.,
515 U.S. 557 (1995).....25, 26, 28

Janus v. AFSCME, Council 31,
138 S. Ct. 2448 (2018).....21, 22, 23

Legal Services Corp. v. Velazquez,
531 U.S. 533 (2001).....26, 27, 28

Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n,
138 S. Ct. 1719 (2018).....16, 19

Obergefell v. Hodges,
576 U.S. 644 (2015).....4

Perry v. Sindermann,
408 U.S. 593 (1972).....21, 23, 24, 25, 26

Rumsfeld v. Forum for Acad. & Institutional Rights, Inc. (FAIR),
547 U.S. 47 (2006).....25, 26, 27

Rust v. Sullivan,
500 U.S. 173 (1991).....26, 27, 28

West Virginia Bd. of Ed. v. Barnette,
319 U.S. 624 (1943).....22, 23
Wisconsin v. Yoder,
406 U.S. 205 (1972).....11, 12
Wooley v. Maynard,
430 U.S. 705 (1977).....21, 22, 23, 24

United States Court of Appeals Cases

Ward v. Polite,
667 F.3d 727 (6th Cir. 2012).....12, 13, 14

State Court Cases

State v. Arlene's Flowers, Inc.,
193 Wash. 2d 469 (2019).....17, 18

Constitutional Provisions

U.S. CONST. amend. I.....passim

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, AND REGULATIONS

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend XIV

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law.

OPINIONS BELOW

The first opinion of the court of appeals (No. 2020-05) is reported on page 18 of the record, the decision by the court of appeals is not binding on this court en banc. The opinion of the district court (Civ. Action No. 18-cv-02758) is reported on page 2 of the record.

STATEMENT OF FACTS

Al-Adab Al-Mufrad Care Services (hereinafter "AACS") is one of several non-profit adoption agencies located in Evansburgh, East Virginia. R. at 3. With a population of approximately 4,000,000, Evansburgh is the largest city in East Virginia, and is home to a vast array of ethnic and racial diversity. R. at 3. Evansburgh is well-known for its sizable refugee population, where many refugees arrive from countries which include Iran, Syria, Ethiopia, and Iraq. R. at 3. While a majority of refugees are able to integrate into the Evansburgh community, those who have suffered dire personal or economic hardships are often unable to provide for their children. R. at 3. Evansburgh continues to have a long-standing shortage of both adoptive and foster homes, with nearly 17,000 children placed in foster care, and 4,000 of those children available for adoption. R. at 3.

In order to respond to the increasing number of children seeking foster care and adoption services, Evansburgh has tasked the City's Department of Health and Human Services (hereinafter "HHS") with creating a system to help address and serve the needs of these children. R. at 3. HHS has thus entered into 34 foster care and adoption service contracts with private child placement agencies throughout Evansburgh. R. at 3. The contracts between HHS and the private child placement agencies work as follows: HHS provides public funding to the private agencies, and in exchange, these agencies provide a plethora of services, including counseling, home studies, and placement recommendations to HHS. R. at 3. HHS sends a referral of a child it receives into custody to the contacted private foster care and adoption agencies. R. at 3. These private agencies maintain lists of potential families, and, after receiving the referrals, they inform HHS of potential matches. R. at 3. The private agencies provide details about the family makeup and history, to which HHS then compares with the child's information. R. at 3. When making

adoption and foster care placements, HHS then decides which of the private agencies has the most suitable family, looking at factors including "the referred child's age, sibling relationships, race, medical needs, and disability, if any." R. at 3.

According to the East Virginia Code (hereinafter "E.V.C.") §37(d), "the determination of whether the adoption of a particular child by a particular prospective adoptive parent or couple should be approved must be made on the basis of the best interests of the child." R. at 3-4. Further, according to E.V.C. §37(e), some of the considerations in making placement decisions include: the children and prospective parents' ages; the physical and emotional needs of the child; the child's cultural or ethnic background; and the child's ability to be placed in a home alongside siblings and half-siblings. R. at 4.

The Equal Opportunity Child Placement Act (hereinafter "EOCPA"), adopted in 1972, "imposes nondiscrimination requirements on private child placement agencies receiving public funds in exchange for providing child placement services to HHS." R. at 4. When it was originally enacted, the EOCPA's nondiscrimination requirements encompassed race, religion, national origin, sex, marital status, and disability "when screening and certifying potential foster care or adoptive parents or families." R. at 4. Should a child placement agency fail to comply with the EOCPA, municipal funds are not to be dispersed to those agencies. R. at 4. However, the EOCPA must "give preference to foster or adoptive families in which at least one parent is the same race as the child needing placement." R. at 4.

Of the thirty-four private child placement agencies that HHS contracts with, Appellee AACS specifically serves Evansburgh's refugee population, and is focused toward adoption placement "for war orphans and other children in need of permanent families." R. at 5. AACS follows the teachings of Islam, and its mission statement includes that "All children are a gift

from Allah." R. at 5. Contracts between AACS and HHS have been renewed annually since 1980, its most recent contract was signed on October 2, 2017. R. at 5. The contract requires AACS "to be in compliance with the laws, ordinances, and regulations of the State of East Virginia and City of Evansburgh." R. at 5-6.

As a result of the landmark *Obergefell v. Hodges*, 576 U.S. 644 (2015) case, East Virginia's Governor directed the state Attorney General to conduct a review to ensure that all state statutes were compliant and eradicated all types of discrimination, "particularly against sexual minorities, regardless of what philosophy or ideology drives or undergirds such bigotry." R. at 6. Following the review, the EOCPA was amended "to prohibit Child Placement Agencies from discriminating on the basis of sexual orientation." R. at 6. The amendment further provided that "where the child to be placed has an identified sexual orientation, Child Placement Agencies must give preference to foster or adoptive parents that are the same sexual orientation as the child needing placement." R. at 6. The amendments to the EOCPA also include a provision requiring child placement agencies to sign and post at their places of business the statement that it is "illegal under state law to discriminate against any person, including any prospective foster or adoptive parent, on the basis of that individual's race, religion, national origin, sex, marital status, disability, or sexual orientation." R. at 6. However, the amendment allows religious-based agencies to post a written objection to the policy on their premises. R. at 6.

In July 2018, Christopher Hartwell, Commissioner of the Department of Health and Human Services for the City of Evansburgh (hereinafter "Hartwell"), spoke with Executive Director of AACS, Sahid Abu-Kane (hereinafter "Abu-Kane"). R. at 7. During their conversation, Hartwell learned from Abu-Kane that "AACS's religious beliefs prohibited it from certifying qualified same-sex couples as prospective adoptive parents." R. at 7. Abu-Kane also

informed Hartwell that AACS was unable to perform home studies for same-sex couples "because the Qur'an and the Hadith consider same-sex marriage to be a moral transgression." However, on the seldom occasions where same-sex couples contacted their agency, AACS "treated them with respect and referred them to other agencies that served the LGBTQ community." R. at 7. There has never been an occasion where a same-sex couple filed a formal complaint against AACS for discriminatory treatment. R. at 7.

On September 17, 2018, Hartwell, informed AACS in a letter that it was not in compliance with the EOCPA, and because of this, HHS would not be renewing its contract with AACS. R. at 7. The letter further explained that "AACS's policy prohibiting it from certifying same-sex couples would necessitate an immediate referral freeze that would be communicated to all other adoption agencies serving Evansburgh." R. at 7. Those agencies would be prohibited from making any adoption referrals to AACS, unless AACS provided HHS within 10 business days, "full assurance of its future compliance with the EOCPA." R. at 7-8.

After a three-day hearing in March 2019, there are several facts that are undisputed. R. at 8. There are four adoption agencies in Evansburgh that expressly serve the LGBTQ community. R. at 8. On August 22, 2018, HHS sent out an urgent notice to all child placement agencies addressing the need for more adoptive families due to a shortage because of a recent influx of refugee children. R. at 8. In October 2018, "a young girl whose two brothers had been placed by AACS with a family was placed with another family by another agency because of the freeze against referrals to AACS." R. at 8. A five-year old boy with autism was denied adoption placement through AACS "with the woman who fostered him for two years because of the referral freeze. R. at 8. In November 2014, HHS placed a white child with special needs with an African American couple, although three other adoption agencies had previously screened and

certified white adoptive families for the child. R. at 8-9. Despite the fact that relations within different Islamic sects of the community have typically been positive, from 2013 to 2015, tensions arose between Sunni and Shia refugees. R. at 9. During that time, HHS approved AACS's recommendation for children to not be placed with adoptive parents from their opposite sect. R. at 9. Further, in March 2015, HHS refused the placement of a 5-year-old girl with a family that consisted of only a father and son, even though the family was certified and approved by their sponsoring adoption agency. R. at 9.

Lastly, Hartwell contends that the EOCPA functions to serve a myriad of governmental purposes, including that: laws are enforced for child placement contractors who voluntarily agree to be bound by those laws; child placement services are equally accessible for all Evansburgh residents who qualify for such services; the pool of foster and adoptive parents is diverse and broad enough for the children who require such parents; and those who pay taxes "to fund government contractors are not denied access to those services." R. at 9.

STATEMENT OF JURISDICTION

Pursuant to Federal Rule of Appellate Procedure 35(a)(2), this case will be heard en banc by the United States Court of Appeals for the Fifteenth Circuit.

SUMMARY OF THE ARGUMENT

Appellee Al-Adab Al-Mufrad Care Services (AACS) asks this panel En Banc to reinstate the District Court's order granting the Temporary Restraining Order and Injunction against the Department of Health and Human Services of the City of Evansburgh (HHS) based upon their utilization of the EOCPA to violate Appellee's Free Exercise and Free Speech rights under the First Amendment of the United States Constitution.

1. The EOCPA Enforced by Evansburgh's Department of Health and Human Services violates the Freedom of Religion of AACS because the Law is not Neutral or Generally Applicable and Cannot Survive Strict Scrutiny.

First, the EOCPA is not neutral nor generally applicable, and therefore should not be applied to AACS, a private religious-based service. When it was originally enacted, the EOCPA banned child placement agencies from "discriminating on the basis of race, religion, national origin, sex, marital status, or disability when screening and certifying potential foster care or adoptive parents or families." Given that AACS follows the teachings of Islam, AACS' religious beliefs prevent it from certifying otherwise qualified same-sex couples as potential adoptive parents. AACS' Executive Director, Sahid Abu-Kane, explained to Hartwell that the Qur'an and Hadith "consider same-sex marriage to be a moral transgression."

The amendment to the EOCPA includes an exemption for sexual orientation, providing that, "where the child to be placed has an identified sexual orientation, Child Placement Agencies must give preference to foster or adoptive parents that are the same sexual orientation as the child needing placement." Another codified exemption of the EOCPA also permits discrimination based upon race, as East Virginia requires agencies to "give preference to foster or adoptive families in which at least one parent is the same race as the child needing placement." Abu-Kane politely referred the few same-sex couples who previously contacted

AACS to other agencies which served the LGBTQ community, rather than leaving them without alternative options

Additionally, The EOCPA, as amended, is subject to strict scrutiny because it imposes regulations that are hostile to AACS' religious beliefs. The EOCPA thus cannot survive the constitutional muster that strict scrutiny requires because its effects have accomplished anything but a compelling governmental interest. As a result of Hartwell's referral freeze and refusal to renew AACS' contract, "a young girl whose two brothers had been placed by AACS with a family was placed with another family by another agency." R. at 8. Among the myriad of issues that have arisen due to Hartwell's referral freeze, a five-year-old boy with autism was denied adoption placement services through AACS with the woman who was his foster mother for two years. Additionally, there are four adoption agencies in Evansburgh which are dedicated solely to serving the LGBTQ community.

The government's enforcement of the EOCPA cannot survive strict scrutiny, and is therefore unconstitutional under the First Amendment. A law is not neutral nor generally applicable when the object of a law is to infringe upon or restrict practices because of their religious motivation. The compelling state interests Hartwell alleges the EOCPA serves are severely undermined by the fact that there are not one, but four--adoption agencies where same-sex couples looking to adopt can seek guidance. AACS has been treated less favorably than other child placement agencies in Evansburgh because the EOCPA allows discrimination on the basis of age, ethnicity, and culture, among others, but refuses to allow similar exemptions for religion.

2. HHS Infringes upon The Freedom of Speech of AACS by requiring AACS to Speak on a Matter for which they had no Active Stance on, and by Placing an Unconstitutional Condition on AACS to permit Funding.

The government’s requirement for AACS to publish the discrimination policy of the state of East Virginia, along with the only remedy for AACS to contest the policy for this condition is

by publishing their objection on their private property, followed by the denial of funds based off of AACS's objection, is compelled speech and an unconstitutional condition under the First Amendment of the United States Constitution.

The Supreme Court has been clear in this area of the law; compelled speech is not Free Speech. The government, through Evansburgh's Department of Health and Human Services has compelled AACS to speak on a matter in which they have not taken a stance on. AACS has always worked alongside partner agencies, including LGBT based agencies, to provide the best possible solution for children and prospective parents.

The initial panel's perspective that "merely posting a factual statement about East Virginia's anti-discrimination policy law does not compel AACS itself to say anything nor does it interfere with AACS' ability to communicate its own message," is misguided. HHS is picking and choosing which portion of the First Amendment AACS may follow when operating their private entity. This violates the core tenant of the Free Speech Clause.

Additionally, the government has placed an unconstitutional condition on AACS in violation of the Freedom of Speech clause of the First Amendment. The only ability for AACS to maintain funding from HHS to provide their services to the refugee children in Evansburgh is by adopting the government's official message. This is an unconstitutional condition because the purpose and message for AACS is to provide the best option for children and parents under the core teachings of Allah, the purpose of East Virginia's program is to provide funding to adoption agencies' who fit the criteria for serving different segments of the population.

AACS's longstanding message and purpose are clear. They are the sole providers for child adoption services specifically focusing on the Middle Eastern and North African refugee populace in an urban locale of over four million people. Their purpose is not to restrict the rights

of LGBT couples from adopting, and their purpose is not to instill their ideology on people outside of their focused population. The purpose of the East Virginia code regarding child adoption is not to further anti-discrimination policies either. The focus of the statutes governing child adoption agencies is to provide the best familial situation they can provide for the children, especially for the refugee populations with which they share the same religion and ethnicity.

The government has infringed upon AACS's Freedom of Religion and Freedom of Speech rights under the First Amendment of the United States Constitution. Appellee seeks to have the Temporary Restraining Order and Injunction against the Department of Health and Human Services of the City of Evansburgh reinstated to allow AACS to continue to operate for the benefit of all children and prospective adoptive parents.

ARGUMENT

I. THIS COURT SHOULD GRANT AACS' MOTIONS FOR A TEMPORARY RESTRAINING ORDER AGAINST HARTWELL'S REFERRAL FREEZE AND A PERMANENT INJUNCTION COMPELLING HARTWELL TO RENEW AACS' CONTRACT BECAUSE ENFORCEMENT OF THE EOCPA, AS AMENDED, AGAINST AACS, VIOLATES AACS' FREE EXERCISE RIGHTS

Christopher Hartwell's (hereinafter "Hartwell") enforcement of East Virginia's Equal Opportunity Child Placement Act (hereinafter "EOCPA"), as amended, violates Al-Adab Al-Mufrad Care Services' (hereinafter "AACS") Free Exercise Rights under the First Amendment. First, the EOCPA is not neutral nor generally applicable. Additionally, enforcement of the EOCPA cannot survive strict scrutiny. Therefore, Hartwell's enforcement of the EOCPA, subsequent referral freeze, and refusal to renew AACS's contract violate AACS' constitutionally protected Free Exercise rights under the First Amendment.

The First Amendment of the Constitution states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...." (U.S. CONST. amend. I.). Free Exercise protections apply "if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." *Church of Lukumi Babalu Aye, Inc. v. Hialeh*, 508 U.S. 520, 532 (1993). When a law is "neutral" and "generally applicable," it is not subject to strict scrutiny. *Id.* at 546. Although a regulation may be neutral on its face, it does not meet the constitutional requirement for governmental neutrality if, in its application, "it unduly burdens the free exercise of religion." *Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972). When such a burden on the free exercise of religion is present, the law is subject to strict scrutiny and can only be justified by a compelling governmental interest. *Emp't Div. v. Smith*, 494 U.S. 872, 883 (1990). Further, the compelling governmental interest must be "narrowly tailored to advance that interest." *Lukumi*, 508 U.S. at 533.

A. The EOCPA Is not Neutral Nor Generally Applicable and Therefore Should Be Stricken As a Violation of the Free Exercise Clause of the First Amendment.

Hartwell's enforcement of the EOCPA, subsequent referral freeze towards AACS, and refusal to renew AACS's contract violate AACS' constitutionally protected Free Exercise rights because the EOCPA is not neutral nor generally applicable. The EOCPA is thus subject to strict scrutiny and must be justified by a compelling governmental interest.

A law that is neutral and generally applicable is not subject to strict scrutiny. *Lukumi*, 508 U.S. at 546. The Free Exercise Clause serves to protect "against governmental hostility which is masked as well as overt." *Lukumi,* 508 U.S. at 534. Thus, even if a law is neutral on its face, it may still fall short of the neutrality requirement if it hinders the free exercise of religion in its application. *Yoder*, 406 U.S. at 220. A law is not neutral if the object of the law is to "infringe upon or restrict practices because of their religious motivation." *Lukumi,* 508 U.S. at 533.

A law is not neutral nor generally applicable when, despite facial neutrality, in practice it is "riddled with exemptions or worse is a veiled cover for targeting a belief or a faith-based practice." *Ward v. Polite*, 667 F.3d 727, 738 (6th Cir. 2012). Such laws that are not neutral nor generally applicable may only survive constitutional muster when they can satisfy the strict scrutiny requirement and prove a compelling governmental interest. *See id.* at 740. In *Ward*, a graduate counseling student's university asked the student, Ward, to counsel a gay client. *Id.* at 730. Ward subsequently asked her faculty supervisor to refer the client to a different student counselor, or, if Ward were to begin counseling the client, to allow Ward to make a referral if the counseling session began to involve same-sex relationship issues. *Id.* Ward's university had an anti-discrimination policy that prohibited students from discriminating against others on the basis of their sexual orientation. *Id.* at 729. Additionally, Ward's university taught students to affirm

clients' values during their counseling sessions. *Id.* Ward made this request because her religious beliefs prevented her from following the school's model if she would be required to affirm a same-sex relationship. *Id.* at 731. The school expelled Ward from the counseling program following her refusal to abide by their policies. *Id.* at 731-32. Although the school's anti-discrimination policy was neutral on its face and generally applicable, the policy permitted secular exemptions but not religious ones. *Id.* at 738-39. The Court held that these individualized exemptions were "the antithesis of a neutral and generally applicable policy and just the kind of state action that must run the gauntlet of strict scrutiny." *Id.* at 740.

In contrast, in *Smith*, two employees of a drug rehabilitation organization, both members of the Native American Church, were fired after they ingested peyote for sacramental purposes. *Smith*, 494 U.S. at 874. The employees' home state of Oregon had a general criminal prohibition against possession of peyote, a controlled substance. *Id.* at 891. When the employees applied for unemployment compensation, they were ruled ineligible for benefits because they were discharged for work-related "misconduct." *Id.* at 874. The Court held that because the employees' use of peyote was illegal under state law, and the state law was constitutional, Oregon could deny unemployment compensation to the two employees. *Id.* at 890. The Court further stated that, "if prohibiting the exercise of religion...is not the object of the [law] but merely the incidental effect of a generally applicable and otherwise valid provision, the First Amendment has not been offended." *Id.* at 879.

The EOCPA, as amended, is not neutral nor generally applicable because, despite its facial neutrality, it is discriminatory in its application towards AACS. When it was originally enacted, the EOCPA banned child placement agencies from "discriminating on the basis of race, religion, national origin, sex, marital status, or disability when screening and certifying potential

foster care or adoptive parents or families." R. at 4. The EOCPA was later amended to include provisions prohibiting child placement agencies from discriminating based upon sexual orientation. R. at 6. AACS was formed in 1980 to provide adoption placement services to war orphans, and to help support its large refugee population from countries including Iraq, Iran, Syria, and Ethiopia. R. at 5. Given that AACS follows the teachings of Islam, AACS' religious beliefs prevent it from certifying otherwise qualified same-sex couples as potential adoptive parents. R. at 7. AACS' Executive Director, Sahid Abu-Kane, explained to Hartwell that the Qur'an and Hadith "consider same-sex marriage to be a moral transgression." R. at 7.

The amendment to the EOCPA, which provides that child placement agencies may not discriminate based upon sexual orientation is similar to the anti-discrimination policy in *Ward*. Much like the policy in *Ward*, the amendment to the EOCPA is neutral and generally applicable on its face, but, in practice, it is discriminatory in its effect because it permits "secular exemptions but not religious ones." *Ward*, 667 F.3d at 739. The amendment to the EOCPA includes an exemption for sexual orientation, providing that, "where the child to be placed has an identified sexual orientation, Child Placement Agencies must give preference to foster or adoptive parents that are the same sexual orientation as the child needing placement." R. at 6. Another codified exemption of the EOCPA also permits discrimination based upon race, as E.V.C. §42.-2(b) requires agencies to "give preference to foster or adoptive families in which at least one parent is the same race as the child needing placement." R. at 4. Similar to *Ward*, Abu-Kane politely referred the few same-sex couples who previously contacted AACS to other agencies which served the LGBTQ community, rather than leaving them without alternative options. Also similar to *Ward*, the EOCPA's exemption permitting discrimination on the basis of one's sexual orientation while simultaneously preventing individuals from freely exercising their

religious beliefs invokes a double standard, which then becomes "the antithesis of a neutral and generally applicable policy" which "must run the gauntlet of strict scrutiny." *Ward*, 667 F.3d at 740.

This case may be distinguished from *Smith*, where the Court upheld as constitutional the denial of unemployment compensation for two employees who were fired because they violated a general state criminal law when they ingested peyote for sacramental religious purposes. In *Smith*, the Court found that prohibiting the exercise of the employees' religion was merely the incidental effect of the state's otherwise generally applicable and neutral provision. However, the EOCPA's anti-discrimination provision relating to sexual orientation is not neutral nor generally applicable because it targets AACS on the basis of its religious beliefs, while giving other individuals and agencies the right to discriminate on secular grounds. Further, in *Smith*, the state's denial of unemployment compensation benefits was a result of work-related "misconduct," including the employees' use of peyote, and the state's general prohibition against possession of controlled substances does not include any exemptions for the religious use of peyote. Unlike in the present case where several secular codified exemptions are listed under the EOCPA, the state law prohibiting peyote in *Smith* did not contain any such exemptions and therefore did not pose the same double standard that cannot be said to be neutral nor generally applicable in effect.

The EOCPA, as amended, is not neutral nor generally applicable because beyond its appearance of facial neutrality, it is discriminatory in effect towards AACS, as the EOCPA permits individualized exemptions for secular reasons but not religious reasons. The EOCPA is therefore subject to strict scrutiny and may only be justified by a compelling governmental interest.

B. Enforcement of the EOCPA Is Subject to Strict Scrutiny to Which It Cannot Survive, Because It Infringes upon the Religious Liberties of AACS, Under the Free Exercise Clause of the First Amendment.

The EOCPA, as amended, is not neutral nor generally applicable and is thus subject to strict scrutiny. Hartwell's actions violate AACS' constitutionally protected Free Exercise rights because the EOCPA cannot survive strict scrutiny, as it cannot be justified by a compelling governmental interest.

A law is not neutral nor generally applicable when "the object of [the] law is to infringe upon or restrict practices because of their religious motivation." *Lukumi*, 508 U.S. at 533. When a law is not neutral nor generally applicable, it "must undergo the most rigorous of scrutiny." *Id.* at 546. A strict scrutiny analysis requires such laws to be "justified by a compelling governmental interest" which is "narrowly tailored to advance that interest." *Id.* at 531-32. Laws cannot be said to be narrowly tailored if they are either overbroad or underinclusive. *See id.* at 546.

Strict scrutiny applies where the government "impose[s] regulations that are hostile to [one's] religious beliefs" which "presupposes the illegitimacy of [those] religious beliefs and practices." *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719, 1721-22 (2018). Such laws are subject to the heightened standard of strict scrutiny because they cannot be deemed neutral nor generally applicable. *See id.* at 1738. In *Masterpiece*, a same-sex couple visited a local bakery to inquire about ordering a cake for their upcoming wedding reception. *Id.* at 1723. The owner of the cake shop informed the couple that he could not create a cake for them because his religious beliefs opposed same-sex marriage (which the State of Colorado did not recognize at that time). *Id.* Although the owner could not prepare a cake for the couple consistent with his religious beliefs, he offered to make other types of baked goods for the couple, including cakes to celebrate occasions other than their marriage. *Id.* at 1735. The owner explained that "to

create a wedding cake for an event that celebrates something that directly goes against the teachings of the Bible, would have been a personal endorsement and participation in the ceremony and relationship that they were entering into." *Id.* at 1724. The couple alleged discrimination based upon their sexual orientation, which violated the state's anti-discrimination act. *Id.* at 1723. At the state commission's formal, public hearings, the state commission disparaged the owner's religious beliefs, calling them "despicable." *Id.* at 1721. The Court found that the state's commission violated the owner's right to freely exercise his religion because the commission displayed hostility toward his sincerely held religious beliefs. *Id.* at 1732. The state's judgmental dismissal of the owner's devout religious beliefs was "antithetical to the First Amendment and cannot begin to satisfy strict scrutiny." *Id.* at 1734. (Gorsuch and Alito, J.J., concurring).

In contrast, in *State v. Arlene's Flowers, Inc.*, the state of Washington had a general anti-discrimination law that prohibits discrimination in public accommodations on the basis of one's sexual orientation. *State v. Arlene's Flowers, Inc.*, 193 Wash. 2d 469, 482 (2019). The owner of a local floral shop refused to sell wedding flowers to a customer because his fiancé was a man. *Id.* The state and the same-sex couple brought suit against the owner, alleging violations of the Washington Law Against Discrimination (WLAD) and the Consumer Protection Act. *Id.* The customer had been shopping at the owner's shop for at least nine years and had purchased numerous floral arrangements from the owner throughout the years. *Id.* at 483. The owner was an active member of the Southern Baptist church, and her religious beliefs support the notion that marriage exists solely between a man and a woman. *Id.* The Court held that the owner's free exercise rights were not violated because WLAD was a neutral, generally applicable law that served the state's compelling governmental interest in "eradicating discrimination in public

accommodations." *Id.* at 536. Additionally, there existed no same-sex wedding exemption in the WLAD's provisions. *Id.* at 506. The Court further stated that "even if the WLAD . . . trigger[ed] strict scrutiny in this case, it satisfies that standard." *Id.* at 533. The Court explained that laws such as the WLAD serve a broader societal function to "eradicat[e] barriers to the equal treatment of citizens "in the commercial marketplace. Were we to carve out a patchwork of exceptions for ostensibly justified discrimination, that purpose would be fatally undermined." *Id.* at 531.

The EOCPA, as amended, is subject to strict scrutiny because it imposes regulations that are hostile to AACS' religious beliefs. The EOCPA thus cannot survive the constitutional muster that strict scrutiny requires because its effects have accomplished anything but a compelling governmental interest. As a result of Hartwell's referral freeze and refusal to renew AACS' contract, "a young girl whose two brothers had been placed by AACS with a family was placed with another family by another agency." R. at 8. Among the myriad of issues that have arisen due to Hartwell's referral freeze, a five-year-old boy with autism was denied adoption placement services through AACS with the woman who was his foster mother for two years. R. at 8. Additionally, there are four adoption agencies in Evansburgh which are dedicated solely to serving the LGBTQ community. R. at 8.

Hartwell alleges that enforcing the EOCPA, as amended, functions to serve "the compelling state interests of eliminating all forms of discrimination by ensuring that child placement services are accessible to all Evansburgh residents" and that "the pool of adoptive parents is as diverse and broad as the children needing placement." R. at 13. The compelling state interests Hartwell alleges the EOCPA serves are severely undermined by the fact that there are not one, but four--adoption agencies where same-sex couples looking to adopt can seek

guidance. Further, child placement services are much *less* accessible to all Evansburgh residents in light of the referral freeze. Similar to the hostile remarks the state's commission made in *Masterpiece*, the East Virginia governor previously stated in 2017 that "belief in the traditional definition of marriage equates to bigotry." R. at 21. It is irrelevant that the governor plays no role in enforcing the EOCPA, or that the comment was isolated. The governor is a state official who has the ability to influence other local and municipal governing bodies and is one who plays a role in helping serve the state's compelling governmental interests. Such statements and Hartwell's subsequent referral freeze run "antithetical to the First Amendment and cannot begin to satisfy strict scrutiny." *Masterpiece,* 138. S. Ct. at 1734 (Gorsuch and Alito, J.J., concurring).

The present case is distinguishable from that of *Arlene's Flowers*. In that case, the Court held that the state's anti-discrimination laws served the state's compelling governmental interest in "eradicating discrimination in public accommodations." *Arlene's Flowers, Inc.*, 193 Wash. 2d at 536. AACS is one of thirty-four *private* child placement agencies in Evansburgh that contracts with HHS. AACS' refusal to place children with same-sex couples is therefore not subject to the same type of anti-discrimination provisions in *Arlene's Flowers* because the adoption agencies here, although they receive some public funding, are not places of public accommodation. While the goods and services rendered in *Arlene's Flowers* were part of the "commercial marketplace," AACS and the several other adoption agencies in Evansburgh serve families looking for adoption services, which are separate and distinct from commercial goods such as flowers and household gifts.

The facts of the present case must also be viewed in light of the facts in the landmark case of *Lukumi*. In *Lukumi*, a city adopted an ordinance which prohibited animal sacrifice, which is sacred in the Santeria religion. *Lukumi,* 508. U.S. at 527. This ordinance did not survive strict

scrutiny, as it was not narrowly tailored to accomplish a compelling governmental interest. *Id.* at 546-47. Instead, the law was found to be hostile towards people of the Santeria faith. *Id.* at 541. The ordinance prohibited animal sacrifice if the animal were to be killed in any type of ritual but did not prohibit such animal sacrifice if it was done so for the primary purpose of food consumption. *Id.* at 527. At the initial hearing in the present case, the court found that "AACS has not shown any evidence that it has been treated less favorably than an agency that discriminates against same-sex couples for secular reasons." R. at 21. This argument is misguided. *Lukumi* does not require that AACS be treated less favorably than an agency that has discriminated against same-sex couples, but merely requires that the ordinance is not narrowly tailored, especially in light of other exemptions in the EOCPA. Indeed, AACS has been treated less favorably than other child placement agencies in Evansburgh because the EOCPA allows discrimination on the basis of age, ethnicity, and culture, among others, but refuses to allow similar exemptions for religion. Under this proper interpretation, *Lukumi* would apply to the present case, and the EOCPA could not survive its constitutional muster.

Hartwell's enforcement of the EOCPA, as amended, violates AACS Free Exercise Rights under the First Amendment for two reasons. First, the EOCPA is not neutral nor generally applicable. Additionally, enforcement of the EOCPA cannot survive strict scrutiny. Therefore, Hartwell's enforcement of the EOCPA, subsequent referral freeze, and refusal to renew AACS's contract violate AACS' Free Exercise rights under the First Amendment.

II. THE GOVERNMENT'S REQUIREMENT FOR AACS TO PUBLISH THE DISCRIMINATION POLICY OF THE STATE OF EAST VIRGINIA, ALONG WITH THE ONLY REMEDY FOR AACS TO CONTEST THE POLICY FOR THIS CONDITION IS TO PUBLISH THEIR OBJECTION ON THEIR PRIVATE PROPERTY, ACCOMPANIED BY THE DENIAL OF FUNDS BASED OFF OF AACS'S OBJECTION, IS COMPELLED SPEECH AND AN UNCONSTITUTIONAL CONDITION UNDER THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION.

A. East Virginia has Compelled AACS to Speak on a Matter in which AACS is not Involved with and to Negate their Main Purpose which is to Find the Best Possible Environment for the Adoptive and Foster Youth.

Adopting a child is a demanding, thorough process that must be stringent in order to find the best possible match and environment for the children. East Virginia understands this process is complex. In fact, their statutory requirements for placing children acknowledge the child's race or national origin, religion, and sexual orientation. But it is in the space of prospective adoptive parents that the government has interfered with this process by enforcing an unconstitutional condition on AACS. Private entities, especially those with a religious base to the services they provide, cannot be compelled by the government to provide an endorsement or disapproval of a particular group under the Freedom of Speech Clause of the First Amendment of the United States Constitution.

The doctrine of the Supreme Court is clear in the area of Freedom of Speech of private entities. When a State compels individuals "to voice ideas with which they disagree, it undermines [free speech]." *Janus v. American Federation of State, Cty., and Municipal Employees (AFSCME),* 138 S. Ct. 2448, 2464 (2018). Freedom of speech "includes both the right to speak freely and the right to refrain from speaking at all." *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). Additionally, the First Amendment Free Speech Clause is made applicable to the states via the Fourteenth Amendment. *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

Furthermore, the Supreme Court has set the specific parameters surrounding the unconstitutional conditions doctrine. This doctrine requires that the government cannot condition benefits on a would-be recipient's relinquishment of a constitutionally protected right, "especially, his interest in freedom of speech." *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion

or force citizens to confess by word or act their faith therein*." West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943).

In *Wooley*, the Court found that the New Hampshire state requirement to display "Leave Free or Die" on all license plates is considered dissemination of a public message on private property, therefore the state could not constitutionally require this matter under the First Amendment. *Wooley v. Maynard*, 430 U.S. at 714. In *Perry*, the Court found that when a state college terminated a professor for speaking against the school administration, the professor is entitled to due process and the government could not condition benefits on the relinquishment of a beneficiaries' constitutional rights. *Perry*, 408 U.S. at 597.

In *Janus*, the State of Illinois created a plan to force non-union public employees to pay fees for collective bargaining negotiations. *Janus*, 138 S. Ct. at 2464. The Court found this violates the First Amendment as the nonmembers were compelled to subsidize private speech on matters of public concern. In *Barnette*, the Court found that under the Free Speech Clause of the First Amendment, children in public schools are not required to salute the flag or say the Pledge of Allegiance. *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943).

In this matter, Al-Adab Al-Mufrad Care Services (AACS) is a private, religious-based entity providing a public service through a governmental contract. For forty years, they have operated in East Virginia through their cooperative agreement with the government, specifically the City of Evansburgh's Department of Health and Human Services (HHS). AACS is designed around their religious nature, specifically basing the operation of their agency in accordance with the Qur'an and the Hadith. The religious nature of AACS is undoubtedly not unknown to the government. As with many child adoption services across the country, including the 34 adoption services in the Evansburgh area, AACS has a focused service. Just as there are four other

adoption agencies in the Evansburgh area are focused on LGBT families that AACS frequently worked with. R. at 3.

The anti-discriminatory language of the EOCPA, East Virginia's Equal Opportunity Child Placement Act, has frequently been superseded in favor of what is best for the child. On several occasions, the government has permitted AACS to permissibly discriminate, be it because of no maternal figure in an otherwise qualified household, or a child of a particular sect of Islam potentially placed with a family that adheres to a different sect. R. at 9. These actions were permitted, while in violation of the language of the EOCPA, because like the speech in *Janus* and *Barnette*, the government cannot compel a public message on a private entity.

In this matter, as the government objects to the potential issue of discrimination, it conditions the benefits on the private message presented by AACS. This contention is at odds with the holding of *Janus* and the condition the government attempted to enforce in *Perry*. The service that AACS provides has been interfered with at the expense of their rights under the First Amendment. Instead of allowing AACS to provide reasonable alternatives to potential parents as they had in the past, the government is actively forcing them to speak on the matter. A private entity should not need to succumb to the enforcement of a public message, especially one that disregards other forms of discrimination it purports to protect. These are the core tenants of *Wooley* and *Janus*.

The initial panel's perspective that "merely posting a factual statement about East Virginia's anti-discrimination policy law does not compel AACS itself to say anything nor does it interfere with AACS' ability to communicate its own message," is misguided. Because the government knows that AACS conducts all matters of their business as a religious entity, HHS is picking and choosing which portion of the First Amendment AACS may follow when operating

their private entity. This violates the core tenant of the Free Speech Clause. It was the entirely the decision of the HHS to add the anti-discrimination requirement for businesses to post on their own property, AACS has never taken an active stance on this issue in their forty years of existence.

Additionally, under *Wooley*, the right to Freedom of Speech includes the right to refrain from speaking. The government is forcing AACS to have an opinion on this matter. This opinion is the double-edged sword that forces AACS into a conflict to which they had not previously taken an active stance. Their stance prohibits AACS from working alongside partner agencies to find the best possible match for all children, not just the children within AACS' purview. There is a chronic shortage of foster and adoptive homes in the city of Evansburgh, especially amongst the refugee population from the Middle East and North Africa.

The adoption process is thorough, it is difficult, and it must be stringent to find the best possible match for the children. The governmental intrusion that forces a private entity to post a public message in order to receive public funding is a violation of the Freedom of Speech clause of the First Amendment. Additionally, the speech that the government is enforcing upon AACS on condition of maintaining government funding places an unconstitutional condition on AACS in violation of the First Amendment.

B. The Government Requirement for AACS to Publish their Opinion on Sexual Orientation is Compelled Speech which Creates a Conflict not Only with the Religious Beliefs of AACS, but is an Unconstitutional Condition upon a Private Entity under the First Amendment of the United States Constitution.

The Supreme Court has clearly developed doctrine regarding what constitutes an unconditional condition under the First Amendment. Relinquishing the right to speak freely on a subject matter in order to receive government funds is an unconstitutional condition under *Perry*, 408 U.S. at 593. The government's compulsion against AACS in this matter is also unrelated to

and detrimental to AACS' focus and purpose, which is to provide adoption access for refugee children from the middle east whose families are unable to provide for them. In this case, the government is compelling AACS to speak on a matter for which they have no active stance against the private entities' objection.

Compelled speech is not free speech. The unconstitutional conditions doctrine is defined as a constitutional requirement for the government to not condition benefits on a would-be recipient's relinquishment of a constitutionally protected right, "especially, his interest in freedom of speech." *Perry*, 408 U.S. 593 at 597. Courts are the appropriate medium to analyze whether a government condition to participate in a program is constitutional under the First Amendment. *Legal Services Corp. v. Velazquez*, 531 U.S. 533, 542, (2001). Additionally, under *Velazquez*, if the prerequisite for participating in a government program is facilitating the speech required for funding, this violates the First Amendment. *Id.* The Supreme Court held that a requirement that funding recipients must condemn or endorse a public message in order to receive money as part of a program is an unconstitutional condition. *Agency for International Development v. Alliance for Open Society International (AOSI)*, 570 U.S. 205, 214 (2013).

The government may set parameters on speech when the funding they grant to a program is solely based upon the purpose of the program. *Rust v. Sullivan*, 500 U.S. 173 (1991). But the government cannot compel a private entity or organization to speak or modify their messages under the First Amendment. *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc. (FAIR)*, 547 U.S. 47 (2006). In addition to the requirements of *FAIR*, there is the case of *Hurley v. Irish American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557, 566 (1995), which held that a private group could either exclude messages from groups it did not agree with or could not be forced to endorse a message it did not want to.

In *Velazquez,* the Court found that the government requirement for recipients of legal services funding to refrain from speaking out against welfare policy was unconstitutional under the First Amendment. *Legal Services Corp. v. Velazquez,* 531 U.S. at 542. In *Rust*, the government had the right to prohibit family planning fund recipients from utilizing abortion counseling when the purpose of the funding was to prohibit this type of counseling. *Rust v. Sullivan*, 500 U.S. at 174. The parameters for government funding were further specified in *AOSI*, where government funding for domestic organization utilizing the federal HIV/AIDS, Tuberculosis, and Malaria Act could only be sanctioned under an organization's policy committed to opposing prostitution was unconstitutional under the First Amendment. *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc. (AOSI)*, 570 U.S. 205, 214 (2013). The Court held that the government cannot leverage funding for private enitities "outside the contours of the program itself." *Id.*

Unconstitutional Conditions are examined in several ways. In *FAIR,* the Solomon Amendment, which provided for removing federal funding for law schools that did not allow military recruitment, is specifically constitutional because it does not require the entity to speak, nor does it deny them the right to say anything. *Rumsfeld v. Forum for Academic & Institutional Rights, Inc. (FAIR),* 547 U.S. 47. In *Hurley*, the Court found that a parade council, which received public funding, could statutorily prohibit a message from an LGBT group that wanted to march in their Irish heritage parade because their message did match the message of their parade. *Hurley*, 515 U.S. at 566. The council also could not be forced to endorse a message against their will. *Id.*

In this case, the government has placed an unconstitutional condition on AACS's right to speech by leveraging their funding on the endorsement of a particular message. Looking to

Velazquez and *AOSI*, the only possibility for AACS to continue providing its services is to endorse the government's message. If AACS objects to the message, it faces the double-edged sword that they would then be actively discriminating in violation of the EOCPA. The Court has been clear in its analysis that a private entity does not need to endorse nor be compelled to respond to government messaging that is not central to the recipient's purpose. HHS has violated this requirement twice in its denial of funding to AACS.

AACS's longstanding message and purpose are clear. They are the sole providers for child adoption services specifically focusing on the Middle Eastern and North African refugee populace in an urban locale of over four million people. Their purpose is not to restrict the rights of LGBT couples from adopting, and their purpose is not to instill their ideology on people outside of their focused population. The purpose of the East Virginia code regarding child adoption is not to further anti-discrimination policies either. The focus of the statutes governing child adoption agencies is to provide the best familial situation they can provide for the children, especially for the refugee populations with which they share the same religion and ethnicity.

The government is attempting to equate the decision by AACS to refer LGBT couples to another agency with the denial of the military recruiters in *FAIR*. *FAIR* is not on point in this case. AACS is highly selective of all people looking to adopt their kids. The government stipulates that this selectivity was known and allowed several years prior due to a conflict between Shia and Sunni sects. R. at 9. The initial panel's decision based on the premise in *FAIR* that the government can define the limits of any kind of funding it so pleases is contrary to the prevailing case law in this matter, as well as with the basic structure of child adoption services around the country.

AACS' decision to enter into an agreement with HHS is for a specific purpose that is not conditioned on governmental anti-discriminatory measures. Both *Hurley* and *AOSI* dispel the government's contention that AACS must succumb to the public message of the EOCPA. There are multiple instances of child adoption agencies bypassing the EOCPA regulations to provide the best outcome for the children. AACS partnered with HHS because it is the only legal means to facilitate child placements in East Virginia, just as the 34 other agencies must do. The governmental entity is a requirement here, just as the city permitting process was required for the parade in *Hurley* and the federal funding for medical services in *AOSI* was the means to facilitate the educational program. The purpose of the EOCPA is not the same as the purpose of the partnership between AACS and HHS.

The process for prospective parents to be selected a child placement agency is much more extensive and attenuated than the initial panel presents. East Virginia requires agencies by law to consider four criteria when placing children in prospective homes: the children and prospective parents' ages; the physical and emotional needs of the child; the child's cultural or ethnic background; and the child's ability to be placed in a home alongside siblings and half-siblings. R. at 4. Because of these standards required for child adoptions, this matter differentiates from *Rust* in several facets. First, the purpose behind the funding of AACS does not pertain to nondiscrimination. Second, the government has already stipulated to the fact that AACS has bypassed discriminatory measures in the past. The facts of this case are similar to the funding in *Velazquez*, where the government funding for the service is so vital that placing a condition on the funding could be the death knell for the specialized service AACS provides to children.

Without funding, AACS will lack the ability to continue their placement services for these children from refugee immigrant families. The Court and Constitution are clear; compelled

speech is not free speech. The government's mandate forces an unconstitutional condition on AACS to speak on a matter that is antithetical to their purpose or otherwise risk losing their vital funding.

CONCLUSION

For the foregoing reasons, Appellee Al-Adab Al-Mufrad Care Services asks this panel En Banc to reinstate the District Court's order granting the Temporary Restraining Order and Injunction against the Department of Health and Human Services of the City of Evansburgh based upon their utilization of the EOCPA to violate Appellee's Free Exercise and Free Speech rights under the First Amendment of the United States Constitution.

_____

Attorneys for Plaintiff-Appellee, Al-Adab Al-Mufrad Care Services.