



May 29, 2024

VIA US MAIL AND EMAIL

Chris Winters, Commissioner
Vermont Department for Children and Families
280 State Drive, HC 1 North
Waterbury, VT 05671-1080

Re: Unlawful Threat to Revoke / Shadow Revocation of Foster Care License

Dear Commissioner Winters:

The Center for American Liberty represents Vermont residents Melinda Antonucci and Casey Mathieu. I am writing to inform you of unlawful and retaliatory actions by the Vermont Department for Children and Families (“DCF” or the “Department”) against my clients and to demand that the Department take immediate action to remedy the situation.¹ Please direct all future correspondence regarding this matter to me (Harmeet@libertycenter.org), Josh Dixon (jdixon@libertycenter.org), Eric Sell (esell@libertycenter.org), and Robert Kaplan (rkaplan@kaplanlawvt.com).

I. Factual Background

A. Melinda and Casey

Melinda and her husband Casey are loving parents who have been blessed with a happy and stable home. They have three children—a nineteen-year-old son, a sixteen-year-old daughter, and a five-year-old son. Melinda and Casey are members of the Christian faith, and their religious beliefs guide them in all that they do. To exercise their beliefs, they seek to give back to their community by helping those less fortunate. Last year, they applied for, and obtained, a foster care license from the Department. Fostering children in need is how they intend to put their faith into practice, which the license allows them to do.

During the licensing process, the Department sought Melinda’s and Casey’s views on transgender-identifying children. On the license application, applicants must indicate whether they are willing to foster an “LGBTQ+” child. Ex. A at 9. Melinda and Casey indicated they would. The Department employee who conducted the first required home inspection also asked Melinda and Casey if they were willing to foster an LGBTQ+ child. Melinda informed the Department

¹ This letter serves as formal notice of religious discrimination under the Vermont Department for Children and Families Nondiscrimination Policy/Grievance Policy, effective March 31, 2023.



employee that they have some hesitation with fostering a transgender-identifying child, but Melinda did not go into specifics. This hesitation is due to an unwillingness to facilitate certain controversial psychological and medical treatment that a transgender-identifying child might request, such as social transitioning, administration of puberty blockers and cross sex hormones, or removal of healthy body parts. If they were not required to engage in or facilitate these practices, Melinda and Casey were willing to foster a transgender-identifying child. The Department employee advised Melinda and Casey to avoid expressing any hesitation about fostering a transgender-identifying child during the next home inspection or the Department may not issue them a license.

On October 19, 2023, a different DCF licensing employee, Paula Catherine, contacted Melinda and Casey by email to schedule the second required home inspection. Ex. B. In that email, Ms. Catherine asked Melinda and Casey to complete a supplemental training module not included in the normal training. *Id.* This supplemental training module taught foster parents to affirm a child’s transgender identity and facilitate the provision of medical and psychological treatment intended to aid in the child’s transition if the child requested it. Ex. C. Ms. Catherine indicated this supplemental training was necessary given the Department’s perceived hesitancy by Melinda and Casey to foster a transgender-identifying child.

When Ms. Catherine arrived at Melinda’s and Casey’s home later that day, she again stressed that all homes must be “affirming” of a child’s chosen gender identity. Melinda expressed reservations about facilitating psychological and medical treatment for a transgender-identifying child if requested. Because they were looking to foster a younger child closer to their five-year-old son’s age, Melinda and Casey informed Ms. Catherine that they did not think the issue of a child’s gender transition would arise. To this, Ms. Catherine stated that children are starting to question their gender at very young ages, and that Melinda and Casey must be mindful that this could come up with one of their foster children.

In January 2024, the Department approved Melinda’s and Casey’s foster care license. The following month, they began fostering an eight-year-old boy. The placement was on an emergency basis and lasted for approximately two weeks.

B. The Department’s Threat of Revocation

On February 19, 2024, Melinda posted on her personal Facebook page a link to a Petition for parental rights in the Essex Westford School District (“Petition”). Exs. D, E. The Petition called on the school district to recognize parents’ constitutional right to raise their children and to inform parents prior to assisting their child’s social transition to a new gender identity at school. *Id.* Melinda encouraged residents in the community to sign the Petition. *Id.*



On April 1, 2024, Ms. Catherine emailed Melinda requesting to speak to her about her public support for the Petition. Ex. F at 3. In a phone call later that day, Ms. Catherine informed Melinda that a third party had brought the Petition to the Department’s attention, and that Melinda’s support for it was concerning to her because all foster homes must “affirm” transgender-identifying children. Ms. Catherine did not explain how the Petition—which does not advocate for non-affirmance—was inconsistent with that requirement. She then interrogated Melinda about her beliefs on transgender-identifying children, asking questions about her willingness to use preferred names and pronouns and whether she would require her five-year-old son to use a transgender-identifying foster child’s preferred name and pronouns in the event they fostered a transgender-identifying child.

Ms. Catherine ultimately demanded that Melinda commit to fostering a transgender-identifying child under the terms required by the Department—that is, by affirming the child’s transgender identity through social and medical transition. Melinda said she was willing to foster a transgender-identifying child, but she would not facilitate a child’s medical transition or require her son to use the child’s preferred names and pronouns. Because the Department allows parents to select the child before agreeing to foster, Ex. G at 6, Melinda did not think this would ever be a problem—if the Department insisted that foster parents must agree to transition transgender-identifying children, she and Casey could simply choose not to foster a transgender-identifying child. And if a child in their care began identifying as transgender, the Department could find an alternative placement if it believed that certain psychological or medical treatment was necessary. But this did not satisfy Ms. Catherine, who indicated that Melinda’s and Casey’s views were disqualifying and that their license could be revoked because of them.

On April 4, 2024, Ms. Catherine emailed Melinda and informed her that “since [she] will not foster a transgender child and discuss they/them pronouns with [her] child, then [the Department does not] know how [it] can move forward with fostering given the inability to predict any foster child’s journey with their own identity.” Ex. F at 1. Ms. Catherine then informed Melinda that she “can chose (sic) to close [her] foster care license or [Ms. Catherine] will need to formally deny [their] license.” *Id.* Ms. Catherine gave Melinda until April 30 to decide. Ex. H.

On April 30, 2024, Melinda emailed Ms. Catherine and informed her that she and Casey were not willing to voluntarily close their license, and that if the Department wished to revoke it, it needed to provide them with a formal notification. Ex. I. To date, the Department has not yet informed Melinda or Casey if it has—or intends to—make good on Ms. Catherine’s threat to revoke their license. Melinda and Casey have not received an email notifying them of foster placements since May 10, prompting their belief that they are no longer allowed to participate in the program. Thus, it appears the Department has made the decision to exclude Melinda and Casey from being a foster family without formally revoking their license.



II. The Department's Actions are Unlawful

The Department's conduct violates the First and Fourteenth Amendments to the United States Constitution and the Vermont Constitution.

A. The Department Violated the First Amendment

The First Amendment to the United States Constitution prohibits the government from both retaliating against individuals for exercising their First Amendment rights and from compelling individuals to convey the government's preferred message. The First Amendment also prohibits the government from interfering with the free exercise of religion. The Department's threat to revoke Melinda's and Casey's license violates these constitutional prohibitions.²

Retaliation. The "First Amendment prohibits government officials from subjecting an individual to retaliatory actions for engaging in protected speech." *Nieves v. Bartlett*, 587 U.S. 391, 398 (2019). The government impermissibly retaliates against individuals based on their speech when the speech was "constitutionally protected" and "was a substantial factor or a motivating factor for the defendant's retaliatory decision." *Powell v. Alexander*, 391 F.3d 1, 17 (1st Cir. 2004) (cleaned up). To defeat a retaliation claim, the government must show that "the adverse action *would have occurred* anyway, not merely that such action *would have been warranted* anyway." *McCue v. Bradstreet*, 807 F.3d 334, 346 (1st Cir. 2015) (emphasis in original).

The Department retaliated against Melinda and Casey here. It was not until the Department learned of Melinda's support for the Petition that it began to question Melinda's and Casey's fitness to be foster parents. They had already obtained their license and they had already fostered a child for a brief period. It was Melinda's public support for the Petition alone that prompted the Department's additional scrutiny. But because Melinda's support for the Petition is protected political speech, *BE & K Constr. Co. v. NLRB*, 536 U.S. 516, 524 (2002) ("[The] right to petition is one of the most precious of the liberties safeguarded by the Bill of Rights."), Melinda has the right to engage in this activity without being subject to governmental retaliation. Ms. Catherine admitted that the Petition prompted the Department's probe, *see* Ex. F, so there is no question that the Department would not have taken the actions it did but for Melinda's protected speech, *McCue*,

² Because Melinda and Casey were exercising their fundamental rights under the First Amendment, the Department's discriminatory actions against them also violate the equal protection clause of the Fourteenth Amendment. *See Plyler v. Doe*, 457 U.S. 202, 216–17 (1982) (observing classifications that "impinge upon the exercise of a fundamental right" violate the equal protection clause).



807 F.3d at 346. This is unconstitutional. *Powell*, 391 F.3d at 17 (concluding retaliation is unlawful because it tends “to chill individuals’ exercise of constitutional rights.” (citation omitted)).

Compelled Speech. The Department also unlawfully sought to compel Melinda and Casey to engage in speech they do not wish to engage in. The First Amendment prohibits “the government from compelling individuals to express certain views.” *United States v. United Foods, Inc.*, 533 U.S. 405, 410 (2001); *see also W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (“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.”). The government compels speech when it “compel[s] a person to speak its own preferred messages.” *303 Creative LLC v. Elenis*, 600 U.S. 570, 586 (2023). This is especially true when the compelled speech is a prerequisite for obtaining or maintaining a government license. *See, e.g., Minn. Voters All. v. City of Saint Paul*, 442 F. Supp. 3d 1109, 1114, 1116 (D. Minn. 2020) (holding government may not make license dependent on speaking the government’s preferred message).

By requiring Melinda and Casey to “speak to [their] child about they/them pronouns” and to call a transgender-identifying child by a cross-sex name and pronouns in order to maintain their license, *see* Ex. F, the Department is attempting to “compel [them] to convey the government’s speech,” *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 208 (2015). It is impermissible for the Department to make such speech a necessary condition to obtaining and maintaining a foster care license. *See Meriwether v. Hartop*, 992 F.3d 492, 510 (6th Cir. 2021) (holding policy requiring use of preferred pronouns violated First Amendment); *see also Minn. Voters All.*, 442 F. Supp. 3d at 1114, 1116.

Free Exercise. Finally, the government may not interfere with the free exercise of religion. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993). The government violates this command when it “regulates or prohibits conduct because it is undertaken for religious reasons.” *Id.* While “neutral laws of general applicability” generally do not interfere with the free exercise of religion, *Emp. Div., Dep’t of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 879 (1990), laws that contain exemptions for certain conduct but not for exercising religious beliefs are not “neutral” or “generally applicable,” *Fulton v. City of Phila.*, 593 U.S. 522, 537 (2021) (“The creation of a formal mechanism for granting exceptions renders a policy not generally applicable, regardless of whether any exceptions have been given.” (cleaned up)).

Here, the Department’s non-discrimination policy provides an exemption for parents who cannot or are unwilling to foster a child of a certain age or with certain medical conditions. Ex. J



at 8.³ By allowing exemptions for age and medical conditions but not religious beliefs, the policy is not neutral or generally applicable because “it invites the government to decide which reasons for not complying with the policy are worthy of solicitude.” *Fulton*, 593 U.S. at 537. Moreover, the requirement that foster families use preferred names and pronouns “is not neutral” when there are other viable alternatives that would accomplish the state’s objective while accommodating the exercise of religion. *Meriwether*, 992 F.3d at 512. And because the Department’s policy does not satisfy strict scrutiny, it is unconstitutional.⁴

B. The Department Violated its Own Policies and Basic Principles of Due Process

Melinda and Casey have engaged in no conduct that warrants revocation of their license. If the Department has already informally revoked the license—or if the Department moves forward with formal revocation—it will do so in violation of its own regulations and the procedural guarantees set forth in the Fourteenth Amendment to the United States Constitution and the Vermont Constitution.

As an initial matter, pursuant to the Department’s own policies, any revocation of Melinda and Casey’s license can only occur after they have been provided a formal hearing before the Commissioner. Ex. J at 5. Though the Department has provided no formal notice that Melinda’s and Casey’s license has been revoked, Ms. Catherine’s email indicated that the Department has made such a determination. Melinda and Casey also have not received notices of children in need of a foster home since May 10, leading them to believe their status as a licensed foster family has changed. If their license has indeed been revoked, the revocation violated the Department’s internal policies. In turn, the revocation also violates basic requirements of due process under both federal and state law. *See Clukey v. Town of Camden*, 717 F.3d 52, 59 (1st Cir. 2013) (holding procedural due process requires “some kind of notice and some kind of opportunity to be heard” prior to deprivation of the protected interest); *Perry v. Dep’t of Emp. Training*, 147 Vt. 621, 624, 523 A.2d 1242, 1244 (1987) (same).

³ The primary reason Melinda and Casey are unwilling to foster a transgender-identifying child in the manner required by the Department is the mandate that they facilitate the child’s social and medical transition. Thus, even under the Department’s own policy, Melinda and Casey should not be required to foster a transgender-identifying child because of these “special needs.” Ex. J. at 8. If the Department does not read this exception to the non-discrimination policy as applicable here, then law cannot be considered “neutral” or “generally applicable.”

⁴ For similar reasons to those set forth in the text, the Department’s actions violate the Vermont Constitution. *See* Vt. Const. ch. I, art. III, XIII, and XX. The Vermont Constitution protects the right to exercise religion against unlawful discrimination, *Hunt v. Hunt*, 162 Vt. 423, 436, 648 A.2d 843, 853 (1994), and the right to freedom of speech, *State v. Masic*, 2021 VT 56, ¶ 7, 215 Vt. 235, 240, 261 A.3d 646, 651 (2021).



Moreover, Melinda and Casey have not violated any law or Department policy that would warrant revocation. While the Department has adopted a general non-discrimination policy that covers gender identity, Ex. J at 8, there is no express requirement that foster parents profess a commitment to following any specific form of “affirmance” of a transgender-identifying child. The regulations are silent as to whether foster families must facilitate a *specific form* of controversial psychological or medical treatment if requested, which is Melinda and Casey’s primary objection. Even more, the Department’s own handbook for foster families makes clear that foster families “have the right to say no” to any given placement. Ex. G at 6. Simply put, the Department’s own policies do not require what Ms. Catherine claims they do.

Even if the non-discrimination policy required foster parents to use specific names and pronouns and to facilitate medical transition, it also contains an express exemption for families with the “inability to care for children of a certain age or children with special needs.” Ex. J at 8. Melinda’s and Casey’s refusal to facilitate social or medical transition would plainly fall within this category. Because Melinda and Casey have not violated any law or Department regulations, there is simply no basis for revoking their license.

Remedies for violating the United States Constitution include damages, injunctive relief, and attorney’s fees. 42 U.S.C. § 1988; *Diffenderfer v. Gomez-Colon*, 587 F.3d 445, 454 (1st Cir. 2009) (holding prevailing party can recover attorney’s fees even if action mooted by later legislative action). Government actors can also be individually liable for violating the United States Constitution. *Mihos v. Swift*, 358 F.3d 91, 110 (1st Cir. 2004) (holding governor of Massachusetts was not entitled to qualified immunity for violating the First Amendment). Given the obvious constitutional violation here, in addition to injunctive relief, official and individual liability will be warranted.

III. The Department Must Cease its Unlawful Conduct

The Department’s unlawful actions against Melinda and Casey reflect an unfortunate commitment to foisting the government’s preferred political and ideological orthodoxy onto its citizens. Melinda and Casey are loving, caring parents who wish to serve their community and improve the lives of children less fortunate than their own. They have opened their home to help children in need, and will provide the safety, support, and nurturing that all children deserve. Yet this apparently is not enough for the Department. Melinda and Casey must go further and bend to the prevailing political beliefs held by those in power in Vermont. This is unlawful.

There is simply no reason for the Department to condition a foster care license on families’ willingness to take a particular side in a divisive ideological debate. The psychological treatment and medical procedures the Department seeks to require foster families to perform and to facilitate



are controversial and subject to intense debate within the medical community.⁵ And while those in charge of the Department may view the “affirmational” approach as the best way to care for a transgender-identifying child, there is no reason why *all* foster families must share in this belief in order to participate in the program. The Department can allow certain families to provide treatment to transgender-identifying children in their own way or opt out of fostering a transgender-identifying child if the family felt they could not comply with the Department’s preferred methods. But instead, the Department has chosen to exclude these families altogether simply because they are unwilling to conform with the prevailing ideology.

To remedy the unlawful conduct against my clients, I demand the following: (1) if the Department has informally revoked Melinda’s and Casey’s foster-care license, to restore it to active status immediately; (2) the Department cease any intention it has to revoke the license based on the above-stated facts; (3) the Department cease any other discriminatory actions against Melinda and Casey based on the above-stated facts; (4) the Department inform Melinda and Casey, in writing, that their foster-care license will not be revoked and that it will not take actions against them based on the above-stated facts; and (5) the Department adopt policies to clarify that foster parents are not required to follow the Department’s preferred treatment plan for transgender-identifying children to obtain or keep their foster-care license. **I require a response to this letter by 5:00 p.m. Eastern Time on Wednesday, June 5, 2024.** If the Department fails to comply with this demand by that deadline, all options will be on the table, including the institution of legal proceedings in court.

I look forward to hearing from you.

Sincerely,

Harmeet K. Dhillon

Enclosures as stated

⁵ See *The Cass Review: Independent review of gender identity services for children and young people*, Dr. Hilary Cass, United Kingdom National Health Service (April 10, 2024) (“the Cass Review”) (observing there is “weak” evidence that gender affirming care is beneficial to children and adolescents with a gender identity disorder); see also Josh Parry, *Hilary Cass: Weak evidence letting down children over gender care*, BBC (April 10, 2024), <https://www.bbc.com/news/health-68770641>; Suzanne Moore, *Trans children have been lied to by adults – the Cass report may now see the legal dam break*, Telegraph (April 10, 2024), <https://www.telegraph.co.uk/columnists/2024/04/09/cass-report-trans-children-have-been-lied-to-by-adults/>; Denis Cambell, *et al.*, *Thousands of children unsure of gender identity ‘let down by NHS’, report finds*, The Guardian (April 10, 2024), <https://www.theguardian.com/society/2024/apr/10/thousands-of-children-unsure-of-gender-identity-let-down-by-nhs-report-finds>.