

1 JEROME R. AIKEN (WSBA NO. 14647)
Meyer, Fluegge & Tenney, P.S.
2 230 S. Second Street / P.O. Box 22680
Yakima, WA 98907-2680
3 Phone: (509) 575-8500
Email: aiken@mftlaw.com

Honorable Salvador Mendoza, Jr.

4 Attorneys for Plaintiffs James Blais and Gail Blais

5
6 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

7 JAMES BLAIS and GAIL BLAIS,)
8) NO. 20-CV-00187-SMJ
Plaintiffs,)
9) AMENDED COMPLAINT FOR
vs.) PRELIMINARY AND PERMANENT
10) INJUNCTION
ROSS HUNTER, in his official)
11 capacity of Secretary of Washington)
State Department of Children, Youth)
12 and Families,)
13 Defendant.)
_____)

14
15 **I. INTRODUCTION**

16 1. James and Gail Blais are residents of the state of Washington who wish
17 to foster, and eventually adopt, their great-granddaughter, H.V., who has been
18 removed from her mother’s custody by the state of Idaho.

19 2. As part of the process to secure a foster parent license overseen by the
20 Washington State Department of Children, Youth and Families, headed by

1 Defendant Ross Hunter (collectively, the Department), the Department conducted a
2 home study of the Blaises.

3 3. The Blaises proved qualified to be foster parents in every respect except
4 one.

5 4. During the home study, the Blaises were asked how they would support
6 a hypothetical foster child who might in the future develop or identify as lesbian,
7 gay, bisexual, transgender, or questioning (LGBTQ+).

8 5. The Blaises responded that they would love and support the child, but
9 – consistent with their sincerely held religious beliefs – they could not presently
10 affirm that they would agree to call H.V. by a name other than her legal name, use
11 pronouns that are inconsistent with H.V.’s birth sex, or support the child in
12 undergoing counseling or medical procedures to transition to the opposite sex.

13 6. The Department repeatedly pressed the Blaises to get “educated” on
14 this issue, to change their views, and, after the Blaises still declined, the Department
15 denied their application, thereby barring them from providing any foster care
16 services ever, including for their own great-granddaughter.

17 7. The Department’s actions are subject to strict scrutiny under federal
18 law, and because the Department has other ways to pursue its alleged interests
19 without completely barring the Blaises from serving as foster parents, including for
20 their own great-granddaughter, the Department’s actions cannot survive that inquiry.

1 care, protection and development of children in state custody. At all times material
2 to this lawsuit, Defendant Hunter acted within the course and scope of his duties as
3 a public employee, was a state actor, and acted under color of state law.

4 **III. JURISDICTION AND VENUE**

5 13. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§
6 1331, 1343, and 1367(a).

7 14. This Court has personal jurisdiction over Defendant.

8 15. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(b).

9 **IV. GENERAL ALLEGATIONS**

10 **The Blaises and their Religious Beliefs**

11 16. The Blaises are observant members of the Seventh-day Adventist faith.

12 17. The Seventh-day Adventist faith is a Protestant Christian faith that
13 places a strong emphasis on family life.

14 18. Within the family structure, parenting is recognized as both a wonderful
15 blessing and an incredible challenge. But Seventh-day Adventists believe that these
16 challenges provide an opportunity for growth and afford many opportunities for
17 parents and children to grow and develop into the image of God.

18 19. Seventh-day Adventists believe that parents are to bring up their
19 children to love and obey the Lord. Parents “must gain a sympathetic understanding
20 of their [children’s] problems, seek to provide for them a Christian social

1 environment, and spiritually draw near them so [they] can impart the ideals,
2 inspiration, and power of Christianity.” *Seventh-day Adventist Church Manual* (19th
3 ed. 2015) at 152.¹

4 20. As followers of Jesus, the Church strives to treat all people with dignity
5 and respect. The Bible commands followers of Christ to love everyone. Created in
6 the image of God, they must be treated with dignity and respect. This includes people
7 of all sexual orientations and gender identities. The bible commands “You shall love
8 your neighbor as yourself” (Mark 12:31).

9 21. Seventh-day Adventists believe that Scripture provides principles for
10 guidance and counsel to those who experience incongruity or uncertainty between
11 their biological sex and gender identity. As with all facets of daily existence,
12 Seventh-day Adventists seek guidance from God through Scripture to determine
13 what is in their best interest and to live according to His will (2 Tim 3:16).

14 22. Seventh-day Adventists believe that Scripture provides principles for
15 guidance and counsel to those who experience incongruity or uncertainty between
16 their biological sex and gender identity. As with all facets of daily existence,
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19 ¹ The *Seventh-day Adventist Church Manual* is a Scripture-based guide that
20 describes the operation and function of church organization and governance, and sets
forth many standards of Christian living central to the Seventh-day Adventist faith.

1 Seventh-day Adventists seek guidance from God through Scripture to determine
2 what is in their best interest and to live according to His will (2 Tim 3:16).

3 **The Blaises' Desire to Become Licensed Foster Parents**

4 23. Gail Blais and her first husband had two children. Her son, in turn, had
5 five children. One of his daughters had two children, including a daughter, H.V. Gail
6 Blais is thus H.V.'s biological great-grandmother.

7 24. H.V. was born in September 2019 in Idaho.

8 25. Shortly after her birth, and while still in the hospital, H.V. was removed
9 from her biological parents and placed in foster care in Idaho based on concerns for
10 her welfare.

11 26. In December 2019, the Idaho Department of Health and Welfare—
12 which oversees the Idaho foster and adoptive care program—contacted the Blaises
13 about H.V. and, in response, the Blaises expressed an interest in fostering and
14 potentially adopting H.V.

15 **The Department's Licensing Requirements for Foster Homes**

16 27. In Washington the licensing requirements for foster homes are
17 governed by Chapter 110-148 of the Washington Administrative Code. These
18 requirements are “designed to ensure children who are in foster care are safe, healthy
19 and protected from all forms of child abuse and neglect.” WAC 110-148-1300.

1 28. An applicant must (i) be at least 21 years of age; (ii) have sufficient
2 income to support the applicant without relying on foster care payments; (iii)
3 complete training in First Aid/CPR, HIV/AIDs, and blood borne pathogens; (iv)
4 submit a negative tuberculosis test dated within the last year; and (v) have current
5 pertussis and influenza immunizations. WAC 110-148-1320; 110-148-1365; 110-
6 148-1375.

7 29. In addition, the applicant and all adult household members must pass a
8 background clearance check with the FBI and Washington State Patrol. WAC 110-
9 148-1320.

10 30. Before granting a foster license, the Department also assesses both the
11 applicant's "ability to provide a safe home and to provide the quality of care needed
12 by children placed in the home," as well as whether the applicant meets the
13 Department's training requirements. WAC 110-148-1320.

14 31. An applicant is required to demonstrate "[t]he understanding, ability,
15 physical health, emotional stability, and personality suited to meet the physical,
16 mental, emotional, cultural and social needs of children under their care," that they
17 have "functional literacy," are "able to communicate with the child, the department,
18 health care providers, and other service providers," and "may not use drugs or
19 alcohol . . . in a manner that affects [the applicant's] ability to provide safe care to
20 children" WAC 110-148-1365.

1 32. Of utmost importance, applicants “must demonstrate they have the
2 ability to furnish children with a nurturing, respectful, and supportive environment.”
3 WAC 110-148-1365.

4 33. There is nothing under Washington law that authorizes the Department
5 to impose any additional licensing requirements not set forth in the applicable
6 regulations.

7 34. There is nothing under Washington law that imposes as a separate
8 licensing requirement that prospective applicants must consider and definitively
9 determine how they will care for a hypothetical child at some point in the distant
10 future.

11 **Licensed Foster Parents’ Duty Towards Children In Their Care**

12 35. After a home has been licensed, the Department then identifies the
13 “maximum number, age range, and gender of the children that may be placed” in the
14 foster home, based on the foster parent’s “skills, the number of care providers, the
15 physical accommodations of [the] home and the needs of the children placed in [the]
16 home.” WAC 110-148-1385.

17 36. For children placed by the Department, foster parents must “make all
18 reasonable efforts to ensure that children are not abused or neglected.” WAC 110-
19 148-1520. Foster parents “must provide and arrange for care that is appropriate for
20 the child's age and development including: (a) Emotional support; (b) Nurturing and

1 affection; (c) Structured daily routines and living experiences; and (d) Activities that
2 promote the development of each child. This includes cultural and educational
3 activities in your home and the community.” WAC 110-148-1520.

4 37. With regard to infants and young children, the Department specifies
5 that foster parents “must: (a) Hold infants, under the age of six months, for all bottle
6 feedings; (b) Hold infants at other times for the purposes of comfort and attention;
7 and (c) Allow children plenty of free time outside of a swing, crib or playpen.” WAC
8 110-148-1520(3).

9 38. The Department also specifies that foster parents “must follow all state
10 and federal laws regarding nondiscrimination while providing services to children in
11 your care. You must treat foster children in your care with dignity and respect
12 regardless of race, ethnicity, culture, sexual orientation and gender identity.” WAC
13 110-148-1520(6).

14 39. Foster parents similarly “must connect a child with resources that meets
15 a child’s needs regarding race, religion, culture, sexual orientation and gender
16 identity. These include cultural, educational and spiritual activities in your home and
17 community including tribal activities within the child's tribal community or extended
18 tribal family.” WAC 110-148-1520(7). The child’s social worker or case manager is
19 tasked to assist “with identifying these resources.” *Id.*

1 40. Licensed foster parents also “must ensure that children receive
2 appropriate medical and dental care.” WAC 110-148-1550.

3 **The Department’s Policy to Support LGBTQ+**
4 **Children and Youth**

5 41. In July 2018, the Department enacted Policy 6900, entitled “Supporting
6 LGBTQ+ Identified Children and Youth.”

7 42. The Policy explicitly “applies to [Department] staff,” and does not
8 address the extent or manner in which it applies to foster families.

9 43. The Policy’s stated purpose is “[t]o address the specific needs of
10 children and youth under the age of 21 receiving Children’s Administration (CA)
11 services who are developing, discovering, or identifying themselves as lesbian, gay,
12 bisexual, transgender and questioning (LGBTQ+)” and to “provide guidance to
13 assist CA staff in identifying and referring LGBTQ+ children and youth to
14 appropriate and culturally responsive services.”

15 44. Under the Policy, a caseworker must “[c]onsider the child or youth’s
16 LGBTQ+ identity as a factor when making placement decisions,” including
17 “[d]etermining, on a case-by-case basis, which placement option would be in the
18 child or youth’s best interest for their safety and well-being.” (Emphasis added.)

19 45. The Policy also mandates that a caseworker “[s]upport any youth
20 identifying as transgender and seeking gender affirming medical services. This

1 includes, but is not limited to: Following the advice of the medical and therapeutic
2 professionals working with the youth. Standard medical protocols must be
3 followed.”

4 46. The Policy further authorizes a caseworker to “[o]btain[] a court order
5 or parent or legal guardian consent before providing consent for a youth to undergo
6 gender affirming related medical care” such as “Hormone blockers,” “Hormone
7 Replacement Therapy (HRT),” or “Behavior Health Services (Gender Dysphoria).”

8 47. There is nothing in Policy 6900 that applies to the Department’s foster
9 parent licensing requirements or that authorizes the Department to impose any of the
10 Policy’s caseworker mandates on prospective foster parents.

11 48. There is nothing in Policy 6900 that imposes any separate foster parent
12 licensing requirement with which applicants must comply.

13 49. There is nothing in Policy 6900 that applies to children who are not
14 within the Department’s custody and care, and nothing that applies to hypothetical
15 children who may be in the Department’s custody and care sometime in the future
16 from the date of the prospective foster parents’ application.

17 Foster Care in Washington

18 50. As of June 2018, Washington had approximately 9,200 children and
19 youth in out-of-home placements, with only about 5,110 available foster homes.

1 source of questions or topics during the process, as the worker’s responsibility is to
2 complete a holistic assessment to ensure that foster family homes are safe and
3 suitable for foster children.”

4 **The Blaises’ Home Study**

5 57. In early January 2020, around the same time that the new “Family
6 Home Study Questions & Prompts” issued, the Blaises heard from Patrick Sager, the
7 Foster Home Licensor assigned to conduct their home study.

8 58. After the Blaises confirmed their interest in becoming foster parents,
9 Mr. Sager provided them with information about the Washington foster-parent
10 license process and that same month sent a link where they could take online
11 Caregiver Core Training and secure a certificate of completion.

12 59. The Blaises were also contacted by Amber Moody, a Recruiter Peer
13 Mentor, who works with the Department in Eastern Washington to provide support
14 to relative/foster/ adoptive families in Stevens County.

15 60. Amber Moody provided the Blaises with additional information about
16 the Caregiver Core Training program, certification classes for CPR training, and
17 foster parent orientation sessions in their area.

18 61. In mid-January 2020, Mr. Sager interviewed the Blaises and performed
19 an inspection of their home.

1 62. At the time of the interview, Gail Blais had begun the training mandated
2 by the Department to become a licensed foster parent. The interview with Gail lasted
3 approximately 90 minutes and the interview with James took roughly one hour.

4 63. At the time of the interview, H.V. was four months old.

5 64. During Mr. Sager's interviews of Gail and James:

6 a. Mr. Sager was aware that both Gail and James are observant
7 members of the Seventh-day Adventist faith.

8 b. Mr. Sager asked a number of appropriate questions dealing
9 directly with the Washington foster parent licensing requirements focusing on
10 such things as the Blaises' family history, the manner in which Gail and James
11 had raised their children, communication issues, dietary considerations, and
12 the use of corporal punishment.

13 c. In addition to these questions, Mr. Sager also extensively
14 questioned both Gail and James with regard to hypothetical issues related to
15 H.V.'s possible future sexual orientation and gender identity.

16 65. These questions included such things as:

17 a. How would the Blaises react if H.V. was a lesbian?

18 b. Would the Blaises allow H.V. to have a girl spend the
19 night at their home as H.V.'s romantic partner?
20

1 c. If at 15 years old, H.V. wanted to undergo hormone
2 therapy to change her sexual appearance, would the Blaises support that
3 decision and transport her for those treatments?

4 d. If, as a teenager, H.V. wanted to dress like a boy and be
5 called by a boy's name, would the Blaises accept her decision and allow
6 her to act in that manner?

7 66. Gail and James were both surprised and taken aback by these questions.
8 Given that H.V. was only 4 months old, they had a difficult time imagining how they
9 would respond to circumstances that may or may not occur 15 years into the future.
10 Nonetheless, both Gail and James cooperated with the interview and responded to
11 all of the questions openly, honestly, and in a manner consistent with their religious
12 beliefs.

13 67. Gail and James made clear to Mr. Sager that, as Seventh-day
14 Adventists, they believe it is important and part of their Christian obligation to love
15 and support all. This duty especially applies to youth who may feel isolated or
16 uncomfortable because of who they are, including those who are realizing their
17 sexual orientation or identity. The Blaises made clear that they would provide a
18 supporting and loving home for any child placed under their care—particularly their
19 own great-granddaughter—regardless of how that child might identify.
20

1 68. With regard to the specific hypothetical questions relating to possible
2 hormone therapy, the Blaises responded that although they could not support such
3 treatments based on their sincerely-held religious convictions, they absolutely would
4 be loving and supportive of H.V.

5 69. The Blaises also indicated that, in the unlikely event H.V. may develop
6 gender dysphoria (or any other medical condition) as a teenager or young adult, they
7 would provide her with loving, medically and therapeutically appropriate care that
8 is consistent with both then-current medical principles and their beliefs as Seventh-
9 day Adventists and Christians.

10 70. At the conclusion of the interview, Mr. Sager indicated that, most
11 likely, the Department would not approve the Blaises' application to become foster
12 parents. According to Mr. Sager, the Blaises' responses to questions about H.V.'s
13 future gender identity were inconsistent with the Department's policy to support
14 LGBTQ+ children and youth.

15 71. In early February 2020, Mr. Sager emailed James Blais and stated that
16 he had been "tasked with ensuring you are provided relevant information and
17 research regarding LGBTQ+ youth in foster care." Mr. Sager asked James to review
18 these materials so that he might "make a more informed decision about supporting
19 LGBTQ+ youth in foster care." In response, James promised they would review the
20 materials within the coming week.

1 72. In mid-February, after having read those materials, James and Gail
2 responded to Mr. Sager. They reiterated their sincerely-held religious belief in loving
3 all persons regardless of their sexual orientation or identity. They repeated their
4 commitment to provide a loving and supportive home for any foster child in their
5 care. And they again expressed their conviction—based on their faith—that they
6 could not support hormone treatment for transition purposes. They also stated that
7 they did not think that their religious beliefs were incompatible with providing care
8 for gender dysphoria or any other issue, and committed to providing H.V. the best
9 care and most loving home that they can.

10 73. The Blaises repeated that they would love nothing more than to
11 welcome H.V. into their home and raise her as their own child, with the same
12 unconditional love they showed to their other children. They asked the Department
13 to approve their application to become foster parents, and offered to meet again in
14 order to further explain their position and beliefs.

15 74. Mr. Sager emailed James and thanked him for his honesty. He also
16 informed James “that this is being staffed with additional parties” and that “this will
17 be discussed further.”

18 75. During this same time period (January and February 2020), Gail and
19 James were in contact with the Idaho Department of Health and Welfare about a
20

1 possible visit with H.V. They finally were able to travel to Idaho and meet with H.V.
2 in late February.

3 76. Soon after Gail and James returned from visiting H.V. in Idaho, Mr.
4 Sager called them. During this telephone call, Mr. Sager asked additional questions
5 concerning H.V.'s possible future sexual orientation and gender identity. These
6 questions included

7 a. If H.V. had a lesbian girlfriend, would the Blaises be willing to
8 have her visit their home and possibly travel with them?

9 b. Would the Blaises find it acceptable if H.V. dressed like a boy?

10 c. Would the Blaises find it acceptable if H.V. wanted to be called
11 by a boy's name?

12 d. If at age 14, a doctor ordered H.V. to undergo hormone therapy
13 to change her sexual appearance, would the Blaises comply with that order?

14 e. If at age 14, H.V. said that if the Blaises did not agree with her
15 having hormone therapy she would leave their home and run away, how
16 would they respond?

17 77. Mr. Sager did not ask any questions about any other topics or issues
18 during this follow-up interview session. ‘

19 78. At the time of this telephone interview, H.V. was five months old.
20

1 79. At the conclusion of the interview, Mr. Sager told the Blaises that they
2 should drop their request to become licensed foster parents because their religious
3 views about handling H.V.’s possible future gender identity issues were inconsistent
4 with the Department’s policy.

5 80. Mr. Sager further told the Blaises that if they did not withdraw their
6 application, then their responses would be noted in the Department’s records and
7 would negatively impact their ability to be licensed foster parents in Washington in
8 the future.

9 81. The Blaises refused to change their responses and refused to withdraw
10 their foster parent application. Mr. Sager indicated that the Department would send
11 its denial letter shortly. When the Blaises pressed him for a more definite time frame,
12 Mr. Sager said the letter would take about two weeks.

13 82. Mr. Sager did not get back to the Blaises as promised, and the
14 Department did not send any letter within the anticipated timeframe. In response to
15 an inquiry from James sent one week later, Mr. Sager texted that he did not “have
16 an answer yet. I am waiting to hear back from someone.”

17 83. Two weeks later—in mid-March—Mr. Sager again texted James, this
18 time asking whether James “could meet me and a coworker” the following week.

19 84. In an email sent several days later, Mr. Sager explained to James that
20 he “wanted to meet with you and my co-worker. . . . She is a foster care licenser in

1 Spokane. She also is our LGBTQ+ lead. I was hoping we all could meet together as
2 she may have additional resources regarding LGBTQ+ that may be of benefit. We
3 felt as a department we wanted to provide another opportunity to hopefully come to
4 a resolution regarding the [Interstate Compact on the Placement of Children] request
5 for H.V.”

6 85. The Blaises agreed to meet with Department representatives and be
7 questioned for a third time. Once again, the sole focus of the interview questions
8 posed by the representatives of the Department was on the manner in which the
9 Blaises would respond to H.V.’s possible future sexual orientation and gender
10 identity when she was a teenager.

11 86. At the time of this third interview, H.V. was six months old.

12 87. As they had done during the first two interviews with the Department,
13 both Gail and James cooperated fully during the third interview session, and again
14 responded to all of the questions openly, honestly, and in a manner consistent with
15 their religious beliefs.

16 88. At the end of this third interview, Mr. Sager’s co-worker told the
17 Blaises that they were at “an impasse” as how to proceed with the foster parent
18 license application.

1 89. Several days later, after hearing nothing from the Department, James
2 contacted Mr. Sager and asked whether the Department “will be able to license us
3 for foster care? Please send me your decision in writing ASAP.”

4 90. On March 30, 2020, Mr. Sager emailed James saying only “I don't have
5 an answer at this time. We are in discussion with others about how to proceed and I
6 will get an answer to you as soon as we have information to provide.”

7 91. On April 5, 2020, Mr. Sager again emailed James and again said that
8 the Department still had not made a decision. According to Mr. Sager, “Licensing
9 division is still discussing with the appropriate chain of command about how to
10 proceed, and will have an answer as soon as possible.”

11 92. Once again, Mr. Sager stated that he had “been asked to provide you
12 both with a training opportunity that pertains to what we have discussed previously,”
13 and provided a link that training. That training consisted of a two-hour course that
14 focused on such topics as “Myths and stereotypes about LGBTQ+ children/youth”
15 and “how to promote the health, safety and well-being of the children/youth in care.”

16 93. The Blaises have completed a portion of their training to become
17 licensed foster parents. After their first interview with Mr. Sager in January 2020,
18 Mr. Sager advised the Blaises not to engage in any preparation that would cost them
19 any money.

1 94. Mr. Sager told the Blaises that, but for their answers to questions about
2 H.V.'s hypothetical sexual orientation and gender identity, they were acceptable
3 applicants to become licensed foster parents.

4 **The Denial of the Blaises' Application**

5 95. After filing of this lawsuit and nearly three and a half months later, on
6 June 16, 2020, the Department sent the Blaises a letter denying their application to
7 become foster parents.

8 96. The letter acknowledged that there were "many situations" where the
9 Blaises would be able to support a foster child who identified as LGBTQ+, but not
10 if supporting services "were not consistent with their religious beliefs."

11 97. For example, the letter notes that the Blaises "would support a foster
12 child and allow the child's partner in their home and on trips."

13 98. The Blaises also stated that "[w]hile we are not willing to commit to
14 hormone treatment far into the future for an infant, in the very unlikely event that
15 baby [H.V.] develops gender dysphoria in the future (or any other medical condition)
16 we will provide her with loving, medically and therapeutically appropriate care that
17 is consistent *with sound science* and our beliefs as Seventh-day Adventists and
18 Christians." (Emphasis added).

19 99. However, the Blaises also expressed that, consistent with their sincerely
20 held religious beliefs – they could not presently affirm that they would agree to call

1 H.V. by a name other than her legal name, use pronouns that are inconsistent with
2 H.V.'s birth sex, or support the child in undergoing counseling or medical procedures
3 to transition to the opposite sex.

4 100. Concluding that “services that are consistent with [the Blaises]
5 religious beliefs” would “not meet the Department’s minimum licensing
6 requirements,” the Department denied the Blaises’ application.

7 101. The Department has never identified what standard the Blaises’ would
8 be required to meet in affirming what they would do in any given future situation
9 before they can know the precise needs of the child or the prevailing relevant medical
10 advice. The standard instead is flexible, and according to the Department’s “Family
11 Home Study Questions and Prompts,” “[c]oncerns about applicants do not
12 automatically result in a denial of a foster care license, or even require additional
13 training.”

14 102. In the meantime, while the Department has delayed and ultimately
15 denied the Blaises’ application over these uncertainties, the Idaho Department of
16 Health and Welfare has placed H.V. in foster care with non-relative foster parents in
17 Idaho and is moving forward to terminate the parental rights of H.V.’s biological
18 parents.

1 to be considered as foster parents for other children in need and maintaining their
2 religious beliefs.

3 109. The Department's ultimate decision to deny the Blaises' application
4 was based on an individualized assessment of their religious beliefs and their
5 responses to the Mr. Sager's questions.

6 110. When a law or policy gives the government discretion to make case-
7 by-case decisions based on the unique circumstances of a particular situation, strict
8 scrutiny is required.

9 111. The Department lacks a compelling governmental interest in requiring
10 the Blaises or other foster-care applicants proactively to affirm how they will
11 respond to a hypothetical situation that may or may not happen sometime in the
12 future.

13 112. To the extent the Department has a compelling governmental interest,
14 there are other ways it could meet that interest that are less restrictive to religion.

15 113. Absent declaratory and injunctive relief, the Blaises have been, and will
16 continue to be, irreparably harmed by the Department's actions.

1 127. The Department excludes potential foster parents who will not “affirm”
2 LGBTQ+ children in specific ways, even if such acquiescence violates the foster
3 parents’ own sincerely-held religious beliefs.

4 128. The denial of their application for a foster license places via non-neutral
5 proceedings imposed a substantial burden on their religious exercise by forcing them
6 to choose between the opportunity to be considered as foster parents, including for
7 their great-granddaughter, and maintaining their religious beliefs.

8 129. The policy imposed a substantial burden on the Blaises’ religious
9 exercise by forcing them to choose between the opportunity to be considered as
10 foster parents, including for their great-granddaughter, and maintaining their
11 religious beliefs.

12 130. The Blaises are entitled to be evaluated as foster parents via a process
13 that is not biased against their religious beliefs.

14 131. At minimum, a government policy that is not neutral triggers strict
15 scrutiny.

16 132. The Department lacks a compelling governmental interest in requiring
17 the Blaises or other foster-care applicants to proactively affirm how they will
18 respond to a hypothetical situation that may or may not happen sometime in the
19 future.

1 139. The Blaises' great-granddaughter is an infant and, like most children in
2 foster care, may never identify as LGBTQ+.

3 140. Requiring foster parents to affirm as an ideological matter the state's
4 views on sexual orientation and gender identity, regardless of whether those views
5 will ever be implicated in providing foster care is a requirement of speech, not
6 conduct.

7 141. By requiring the Blaises, as a condition for getting a license, to affirm
8 what they would do in a hypothetical situation that might never arise, the state is
9 compelling speech to foster adherence to the government's preferred point of view.

10 142. The Department does not have a compelling interest in forcing the
11 Blaises to affirm that they will speak in certain ways regarding hypothetical issues
12 that may or may not ever arise.

13 143. To the extent the Department alleges a compelling interest, there are
14 other ways to meet that interest that are less restrictive of religion.

15 144. Absent declaratory and injunctive relief, the Blaises have been, and will
16 continue to be, irreparably harmed by the Department's actions.

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1 LGBTQ+ children, even though their great-granddaughter is still an infant, may
2 never identify as LGBTQ+, or could be adopted before such concerns arise.

3 151. The policy thus unduly interferes with the Blaises' substantive due
4 process right as family to be considered as foster parents for their great-
5 granddaughter.

6 152. Absent declaratory and injunctive relief, the Blaises have been, and will
7 continue to be, irreparably harmed by the Department's actions.

8 **COUNT VI**
9 **42 U.S.C. § 1983**
10 **VIOLATION OF THE FIRST AMENDMENT**
11 **TO THE U.S. CONSTITUTION**
12 **FREE EXERCISE—HYBRID RIGHTS**

13 153. Plaintiffs reallege and incorporate by reference all the foregoing
14 paragraphs and all subparagraphs as if they were fully set forth herein.

15 154. Government restrictions that burden religion are subject to strict
16 scrutiny when the restrictions simultaneously burden other constitutional rights.
17 *Employment Div. v. Smith*, 494 U.S. 872, 881 (1990).

18 155. The state's policy impinges not only on the Blaises' freedom of
19 religion, but also on their rights to freedom of speech and their substantive due
20 process right to have equal access to the right to foster and potentially adopt their
own kin without having to accept the government's viewpoints on child rearing.

1 156. Because the government regulations at issue infringe multiple
2 constitutional rights, strict scrutiny applies.

3 157. The Department lacks a compelling governmental interest in requiring
4 the Blaises or other foster-care applicants to proactively affirm how they will
5 respond to a hypothetical situation that may or may not happen sometime in the
6 future.

7 158. To the extent the Department has a compelling governmental interest,
8 there are other ways it could meet that interest that are less restrictive to religion.

9 159. Absent declaratory and injunctive relief, the Blaises have been, and will
10 continue to be, irreparably harmed by the Department's actions.

11 **COUNT VII**
12 **42 U.S.C. § 1983**
13 **VIOLATION OF THE FIRST AMENDMENT**
14 **TO THE U.S. CONSTITUTION**
15 **UNCONSTITUTIONAL CONDITIONS**

16 160. Plaintiffs reallege and incorporate by reference all the foregoing
17 paragraphs and all subparagraphs as if they were fully set forth herein.

18 161. In the same way that the Department generally cannot directly compel
19 speech or the free exercise of religion, it cannot do so indirectly through conditioning
20 a government benefit (here a license to foster). *Agency for Int'l Dev. v. AOSI*, 570
U.S. 205, 214 (2013).

1 policy, regulation or practice with regard to the Department's consideration of an
2 application to become licensed foster parents in a manner that conflicts with the
3 applicant's sincerely held religious beliefs concerning sexual orientation or gender
4 identity.

5 4. Reasonable attorneys' fees and costs of suit under 42 U.S.C. § 1988 or
6 such other authority as may authorize such an action; and

7 5. Such other and further relief as the Court deems just and proper.

8 RESPECTFULLY SUBMITTED this 6th day of July, 2020.

9 s/ Jerome R. Aiken
10 JEROME R. AIKEN, WSBA #14647
11 Attorneys for Plaintiffs
12 James Blais and Gail Blais
13 Meyer, Fluegge & Tenney, P.S.
14 Phone: 509/575-8500 – Fax: 509/575-4676
15 Email: aiken@mftlaw.com

13 s/ Todd R. McFarland
14 TODD R. McFARLAND
15 General Conference of Seventh-day Adventists
16 Attorneys for Plaintiffs
17 Phone: 301/680-6321; Fax: 301/680-6329
18 Email: McFarlandT@adventist.org
19 Admitted pro hac vice

17 s/ Andrew G. Schultz
18 ANDREW G. SCHULTZ, NM No. 3090
19 Rodey, Dickason, Sloan, Akin & Robb, P.A.
20 Attorneys for Plaintiffs
Phone: 505/765-5900; Fax: 505/768-7395
Email: aschultz@rodey.com
Admitted pro hac vice

CERTIFICATE OF TRANSMITTAL

I hereby certify under penalty of perjury of the laws of the state of Washington that on July 6, 2020, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF System which will automatically provide service on the below listed parties:

<p>For Plaintiffs James and Gail Blais: Mr. Todd R. McFarland, Associate General Counsel General Conference of Seventh-Day Adventists 12501 Old Columbia Pike Silver Spring, MD 20904 McFarlandT@adventist.org</p> <p>Mr. Andrew G. Schultz Rodey, Dickason, Sloan, Akin & Robb, P.A. P.O. Box 1888 Albuquerque, NM 87103 aschultz@rodey.com</p>	<p><u> X </u> via CM/ECF</p> <p><u> X </u> via CM/ECF</p>
<p>For Defendant Ross Hunter: Mr. Jeffrey C. Grant, Assistant Attorney General Office of the Attorney General 88 Fifth Avenue, Suite 2000 Seattle, WA 98104 Jeffrey.grant@atg.wa.gov</p>	<p><u> X </u> via CM/ECF</p>
<p>For Defendant Ross Hunter: Ms. Carrie Hoon Wayno, Assistant Attorney General Mr. Drew Pugsley, Assistant Attorney General Office of the Attorney General 7141 Cleanwater Drive SW / P.O. Box 40124 Olympia, WA 98504-0124 Carrie.Wayno@atg.wa.gov Drew.Pugsley@atg.wa.gov</p>	<p><u> X </u> via CM/ECF</p>

_____/s Sheryl A. Jones
 SHERYL A. JONES, Legal Assistant
 Meyer, Fluegge & Tenney, P.S.
 jones@mftlaw.com