UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

GRACEHAVEN, INC.,

Plaintiff,

v.

MONTGOMERY COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES; **MICHELLE NIEDERMIER**, in her official capacity as the Director of the Montgomery County Department of Job and Family Services; **BRYNN McGRATH**, in her official capacity as the Associate Director of the Montgomery County Department of Job and Family Services; and **JUDY DODGE**, **DEBORAH LIEBERMAN**, and **CAROLYN RICE**, in their official capacities as the Montgomery County Board of Commissioners,

Defendants.

Case No. 3:24-cv-00325-MJN-CHG

Judge Michael J. Newman
Magistrate Judge Caroline H. Gentry

PLAINTIFF GRACEHAVEN, INC.'S MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

ORAL ARGUMENT REQUESTED

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INTRODUCTION

Gracehaven is Christian ministry that serves and cares for youth survivors of sex trafficking and abuse. Gracehaven operates three state-licensed therapeutic group homes where female sex trafficking survivors can rehabilitate, heal, and learn to adjust back to "normal" life. The Christian ministry receives group home placements by contracting with various local agencies for "substitute care services." And Gracehaven did so with the Montgomery County Department of Job and Family Services ("County Department") for several years, successfully housing and caring for multiple girls who were in the Department's custody.

But during the contract renewal process this year, Defendants ("Montgomery County" or "the County") refused to contract with Gracehaven because the Christian ministry hires only employees who share its Christian faith. The County insisted that Gracehaven agree to an employment non-discrimination provision that could impede its ability to hire coreligionists. Like many religious organizations, Gracehaven depends on employees who share its beliefs to effectively advance its religious message and mission. So the ministry explained its religiously based employment policy to County officials, agreed to sign the contract "as is," and noted that it was not waiving its legal right to hire coreligionists by signing the agreement. Spring 2024 Emails, Doc. 1-4 at PageID 80.

After reviewing Gracehaven's explanation and employment policy, the County refused to "move forward" with the contract renewal. *Id*. at PageID 78. Days later, the County approved more than 30 substitute care contracts with various other secular and religious providers across the state. And when Gracehaven asked the County to reconsider at the end of summer, the County again said it would not contract with or provide funding to Gracehaven if its coreligionist hiring policy was "still an active policy." August 2024 Emails, Doc. 1-8 at PageID 192.

Gracehaven is entitled to a preliminary injunction because it is likely to succeed on the merits, is suffering ongoing harm, and an injunction benefits the public and harms no one. *See Bays v. City of Fairborn*, 668 F.3d 814, 819 (6th Cir. 2012). First, Gracehaven is likely to

succeed on the merits because the County's actions violate both the federal and state constitutions. The Supreme Court reiterated three times in the last decade that the government cannot "exclude[ ] religious observers from otherwise available public benefits" because of "their religious exercise." *Carson v. Makin*, 596 U.S. 767, 778, 789 (2022); *see also Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017); *Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464 (2020). The County's exclusion of Gracehaven because of its religious character and exercise is "odious to our Constitution and [cannot] stand." *Carson*, 596 U.S. at 779 (cleaned up). Forcing Gracehaven to choose between its faith or funding is unconstitutional.

Second, as a direct result of the exclusion, Gracehaven is suffering ongoing irreparable harm. The Christian ministry cannot care for the girls in Montgomery County without the government's cooperation and so the County's actions are directly impeding Gracehaven's religious mission. Indeed, since July 2024, lower-level Montgomery County employees (apparently unaware of Defendants' actions) have *tried to refer 14 different girls* to Gracehaven for group home placements. But Gracehaven cannot accept those referrals because County decisionmakers refuse to contract with Gracehaven. With each passing day, Gracehaven's religious mission is hindered as it continues to lose opportunities to care for sex trafficking survivors in Montgomery County. No amount of funds or damages can adequately compensate for these lost opportunities.

Third, everyone benefits from an injunction here. Gracehaven can help young sex trafficking survivors while keeping its right to hire coreligionists; the foster children in Montgomery County will have a safe place to call home and receive treatment; and the County will have an excellent (and specialized) option for placing the many children in its care and custody. No one is harmed by such an injunction.

The Court should grant a preliminary injunction, end the County's religious discrimination, and allow Gracehaven to continue helping the young girls who need it the most.

STATEMENT OF FACTS

A. Gracehaven's faith-based hiring policy is essential to advancing its religious mission to care for sex trafficking survivors.

Founded in 2008, Gracehaven is a nonprofit Christian ministry that houses and cares for young girls who have survived sex trafficking and abuse. Arnold Decl. ¶¶ 4–5. Gracehaven helps these girls through various programs and services, including through case management; educating the community, schools, and other organizations about minor sex trafficking; and by operating three state-licensed therapeutic group homes. *Id.* ¶¶ 16–21. Gracehaven's "faith" and "dependence on prayer and God's Word are fundamental" to the organization; "without them, th[e] ministry would not exist." Gracehaven Policy Manual Excerpts, Doc. 1-1 at PageID 40. The ministry is thus "compelled by the love of Christ to serve people who are suffering from the effects of exploitation and [to] motivate others to do the same." *Id.* at PageID 39. Indeed, it is precisely because the Bible instructs Christ-followers to help "orphans and widows" (*Isaiah* 1:17; *James* 1:27) and "the least of these" (*Matthew* 25:37–40) that Gracehaven cares for youth girls in foster care who have gone through unimaginable grief and pain. Arnold Decl. ¶ 10.

Gracehaven helps survivors of sex trafficking by running three state-licensed group homes where young girls can heal from their trauma, receive the care they need, and learn to integrate back to "normal" life. *Id.* ¶¶ 25–26. Gracehaven is certified as a "Qualified Residential Treatment Program," meaning it uses an approved trauma-informed treatment model that is specifically designed to address the developmental and clinical needs of the girls in its care. *Id.* ¶ 23. The group homes are staffed around the clock by a team that provides comprehensive care, including counseling, case management, specialized education services, independent living skills instruction, and prevention education. *Id*. ¶¶ 27, 32.

The girls that live at Gracehaven typically stay for six to eight months, but Gracehaven continues to provide care even after they leave through its case management and other services. *Id.* ¶¶ 28–29. In Gracehaven's 2022–2023 fiscal year, 11 girls lived and were treated at Gracehaven, including some that were referred by the County. *Id.* ¶¶ 34–35.

As a Christian organization, Gracehaven depends on its board members, 35-plus employees, and volunteers to advance its religious mission by being the ministry's hands, feet, and mouthpiece. *Id.* ¶¶ 37–39. This is reflected in the ministry's mission statement: "Gracehaven serves youth and families *through a team of Christian workers and like-minded partners* by providing sex trafficking prevention services and by empowering youth rescued from sex trafficking to thrive with dignity in a renewed life." Gracehaven Policy Manual Excerpts, Doc. 1-1 at PageID 39 (emphasis added). As a result, Gracehaven requires all board members, employees, and volunteers to be coreligionists: those who share (inwardly) and live out (outwardly) its Christian beliefs and practices. Arnold. Decl. ¶ 43.

All board members, employees, and volunteers must sign and affirm Gracehaven's Leadership Standards and Statement of Faith. *Id.* ¶ 44; *see also* Leadership Standards and Statement of Faith, Doc. 1-2. Employees are expected to fulfill various spiritual job duties, and they must be willing and able to spiritually support and pray for Gracehaven clients, offer to pray with them and teach them about the Bible, and exemplify how to live a God-centered life. Arnold Decl. ¶ 51; *see also* Various Job Descriptions, Doc. 1-3 at PageID 54, 58, 62, 65, 69, 72.

Gracehaven employs only coreligionists for other reasons too. For one, an organization's identity is dependent on its collective parts, and by requiring all employees to share its faith, Gracehaven maintains an internal community of likeminded individuals who can compellingly articulate and share its Christian beliefs with the girls it serves and to the world. Arnold Decl. ¶¶ 53–54. For another, every single employee is essential to forming Gracehaven's faith community inwardly (toward other employees), which therefore contributes to the success of the ministry outwardly (toward the community). *Id.* ¶ 52. This spiritually supportive environment facilitates the Bible's commands that Christians: (a) are to "be united in the same mind and the same judgment," (*I Corinthians* 1:10); (b) should "exhort one another every day" so that they will not "be hardened by the deceitfulness of sin," (*Hebrews* 3:13); and (c) should "[b]ear one another's burdens" to "fulfill the law of Christ," (*Galatians* 6:2). *Id.* ¶¶ 57–59. This is a primary reason many people desire to work at Gracehaven. *Id.* ¶ 60.

B. Ohio's foster-care system and funding is implemented at the county level.

Gracehaven receives most of its group home placements through Ohio's foster-care system, which is administered at the county level. *H.C. v. Governor of Ohio*, No. 1:20-CV-00944, 2021 WL 3207904, at *4 (S.D. Ohio July 29, 2021), *aff'd sub nom. T.M. ex rel. H.C. v. DeWine*, 49 F.4th 1082 (6th Cir. 2022). Local public children services agencies—like the Montgomery County Department of Job and Family Services—are responsible for the care of foster children in their custody. *See* Ohio Rev. Code § 5153.16. When those children cannot return home, local agencies place them in temporary substitute care settings such as with relatives or at state-licensed options like foster homes, group homes, or children residential centers. *See* Ohio Admin. Code § 5101:2-42-05.

The foster-care system is funded in part by federal funds under Title IV-E of the Social Security Act, 42 U.S.C. § 670 *et seq.*, which are passed down to the state and then to counties. The County Department receives Title IV-E funds and is ultimately "responsible for the administration" of making those payments to care providers. Ohio Admin. Code § 5101:2-47-01(C); *accord H.C. v. Governor*, 2021 WL 3207904, at *5. The County Department contracts with, and provides Title IV-E funds to, various other providers for substitute care services. *See, e.g.*, Montgomery County Board of Commissioners April 2, 2024 Regular Session Meeting Minutes, Doc. 1-9 at PageID 203–209 (approving substitute care contracts with other providers).

Before it refused to do so this year, Montgomery County contracted with, funded, and placed multiple girls at Gracehaven for substitute care without any issue. Arnold Decl. ¶¶ 81–83. Gracehaven would continue accepting such placements if it had a contract in place with the County. *Id.* ¶¶ 157, 161. Gracehaven is approved by the state to receive Title IV-E funds, and the ministry is currently contracted with and receiving Title IV-E funding from various other Title IV-E agencies across the state. *Id.* ¶¶ 78–80.

C. Montgomery County suddenly decides it will no longer contract with Gracehaven because of the ministry's faith-based hiring policy.

In prior years, the County routinely renewed Gracehaven's substitute care contract without problem. *Id.* ¶ 81. This year, as in the past, the County sent Gracehaven a new contract

for 2024–2025 ("New Contract"). *See* 2024-2025 Contract for Substitute Care Services, Doc. 1-5; Arnold Decl. ¶¶ 86–87. The New Contract contained an employment non-discrimination provision that required Gracehaven to agree to "comply with Executive Order 11246" and its implementing regulations ("the Equal Employment Provision"). New Contract, Doc. 1-5 at PageID 111. That executive order prohibits federal contractors and subcontractors from "discriminat[ing] against any employee or applicant for employment because of ... religion," among other characteristics. 41 C.F.R. § 60-1.4(a)(1); *see also* Exec. Order No. 11246, Equal Employment Opportunity, 30 FR 12319.

Because of the Equal Employment Provision's ban on religious employment discrimination, Gracehaven wanted to ensure that signing the New Contract would not affect its ability to hire coreligionists. Arnold Decl. ¶ 104. So as it routinely did with multiple other local agencies, Gracehaven asked the County to include a "Non-Discrimination Clarification" to the New Contract. *Id.* ¶ 105. That document explained that Gracehaven was not a federal subcontractor and so Executive Order 11246 did not apply to it. *See* Non-Discrimination Clarification, Doc. 1-7 at PageID 183. It also noted that Gracehaven has a "legal right" and "inten[ds] to continue" to "screen staff based on religious beliefs" and that the ministry would sign the contract with an understanding that this practice would not violate the Equal Employment Provision. *Id.* To be sure, Gracehaven was right: Executive Order 11246's regulations permit religious organizations to employ "individuals of a particular religion." 41 C.F.R. § 60-1.5(a)(5).

When Montgomery County refused to include the addendum,[1] Gracehaven agreed to sign the New Contract "as is" but reiterated that it was not waiving its "constitutional right to hire according to its religious beliefs." Arnold Decl. ¶¶ 106–107; Spring 2024 Emails, Doc. 1-4 at PageID 80–81. In response, the County abruptly canceled the contract and announced it would "not move forward with the renewal." Spring 2024 Emails, Doc. 1-4 at PageID 78. The County

[1] Montgomery County is the only Title IV-E agency to refuse the Clarification as an addendum.

cited Gracehaven's Non-Discrimination Clarification and reservation of constitutional rights as the reason for its decision. *Id.*

At the end of summer, Gracehaven asked the County to reconsider entering into a substitute care contract, but the County again said that if Gracehaven's coreligionist hiring policy was "still an active policy," it still would not "move forward with a contract." August 2024 Emails, Doc. 1-8 at PageID 192. Between the County's first and second refusal, the Ohio Civil Rights Commission granted Gracehaven a Certification for Bona Fide Occupational Qualification ("BFOQ")[2] confirming the ministry could hire "staff members ... who subscribe to Christian faith/belief." Gracehaven BFOQ Certificate, Doc. 1-6 at PageID 181. After the second denial, Gracehaven's executive director sent the BFOQ to the County and asked that "the decision makers in [the] county" review it and "reconsider [the] contract impasse." August 2024 Emails, Doc. 1-8 at PageID 189–90. An employee replied that the Director of the Department would decide whether to renew its contract with Gracehaven. *Id.* at PageID 189. After multiple follow-ups, Defendant McGrath confirmed that the County would not contract with Gracehaven, despite all of the ministry's extra-efforts and requests to reconsider. *Id.* at PageID 185–88.

After the County's two refusals, the Montgomery County Juvenile Court—a separate Title IV-E agency in the same county—gladly contracted with Gracehaven (and included the Non-Discrimination Clarification). Arnold Decl. ¶ 102. Worse still, since July 2024, lower-level Montgomery County employees—apparently unaware of Montgomery County decision-making officials' actions—have tried to refer at least 14 substitute care placements to Gracehaven, but the ministry cannot accept those placements without a substitute care contract. Arnold Decl. ¶ 133. In the end, the County's refusal to contract with and fund Gracehaven obstructs the ministry's mission to care for and treat young survivors of sex trafficking. *Id.* ¶¶ 131–50. An injunction is thus necessary to end Gracehaven's ongoing harm and lost ministry opportunities.

[2] Although unnecessary under state law, *see* Ohio Rev. Code § 4112.02(O) (religious employer exemption), Gracehaven took the additional, protective step of applying for a BFOQ in 2020.

ARGUMENT

The Court should grant Gracehaven's requested preliminary injunction because the ministry: (1) is likely to succeed on the merits; (2) is suffering and will continue to suffer irreparable harm absent an injunction; (3) an injunction would not harm any third parties; and (4) an injunction would benefit the public interest. *Bays*, 668 F.3d at 819. In "First Amendment cases" like this, "the crucial inquiry" is "likelihood of success on the merits." *Id.*

I. Gracehaven is likely to succeed on the merits of its claims.

The County's actions violate the Free Exercise Clause, the church autonomy doctrine and ministerial exception, the right to expressive association, and the Ohio Constitution's Religious Freedom Clause.

A. The County violates the Free Exercise Clause.

1. The County's exclusion of Gracehaven triggers strict scrutiny under *Trinity Lutheran, Espinoza,* and *Carson*.

The Free Exercise Clause "protects against indirect coercion or penalties on the free exercise of religion, not just outright prohibitions." *Carson*, 596 U.S. at 778 (cleaned up). As a result, the Supreme Court has "repeatedly held"—three times in the last seven years—that the government "violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits" because of their "religious character" or "religious exercise." *Id.* at 778–81 (cleaned up).

First, *Trinity Lutheran* held that Missouri violated the Free Exercise Clause by excluding "otherwise eligible" churches from a playground resurfacing grant program "solely because of their religious character." 582 U.S. at 462. By "condition[ing] a benefit" based on a recipient's religious status, the state "punished the free exercise of religion" thereby triggering strict scrutiny. *Id.*

Second, *Espinoza* held that the Montana constitution's no-aid provision violated the Free Exercise Clause because it barred religious schools from participating in a scholarship program "solely because of the religious character of the schools." 591 U.S. at 476. By requiring schools

to "divorce [themselves] from any religious control or affiliation" to receive government aid, Montana "punishe[d] the free exercise of religion." *Id.* at 478 (cleaned up).

And most recently, *Carson* held that Maine could not exclude private religious schools from the state's tuition assistance program because of their "anticipated religious use of the benefits." 596 U.S. at 789. Trying to escape *Trinity Lutheran* and *Espinoza*, Maine argued a school wasn't excluded because of its "religious status" but "only if it promotes a particular faith and presents academic material through the lens of that faith." *Id.* at 787 (cleaned up). The Court rejected that argument, explaining that "[a]ny attempt to give effect to [a status/use] distinction ... would raise serious constitutional concerns about state entanglement with religion and denominational favoritism." *Id.* So "the prohibition on status-based discrimination under the Free Exercise Clause is not a permission to engage in use-based discrimination." *Id.*

Montgomery County is violating Gracehaven's free exercise rights under *Trinity Lutheran*, *Espinoza*, and *Carson.* First, the County offers a "benefit" that Gracehaven is "otherwise eligible" to receive: County-administered Title IV-E funding. *Id.* at 779–80; *Dahl v. Bd. of Trustees of W. Mich. Univ.*, 15 F.4th 728, 732 (6th Cir. 2021) ("all plaintiffs must show is that they are 'otherwise eligible' ... apart from the regulation that burdens their religious exercise"). Gracehaven is approved by the State to receive Title IV-E funds and does so from many other local agencies. Arnold Decl. ¶¶ 78–80. Government funding is a quintessential public benefit, and like the grants in *Trinity Lutheran*, the scholarships in *Espinoza*, and tuition in *Carson*, the Title IV-E funds at issue fall in that category.

Second, the County has excluded Gracehaven solely because of its religious character and exercise. *Carson*, 596 U.S. at 789. Hiring coreligionists is a defining feature of religious organizations. *See LeBoon v. Lancaster Jewish Cmty. Ctr. Ass'n,* 503 F.3d 217, 226 (3d Cir. 2007) (one factor for whether an organization qualifies as "religious" is "whether its membership is made up by coreligionists"). And the ministry exercises its religion by requiring that all employees share and live out its faith. But it was precisely because of this religious hiring practice that the County refused to contract with, and fund, Gracehaven. *See* Spring 2024 Emails,

Doc. 1-4 at PageID 78 (explaining that the County would not "move forward" with Gracehaven because of its "non-discrimination clarification" and Director Arnold's email explaining the ministry's hiring policy); August 2024 Emails, Doc. 1-8 at PageID 192 (again refusing to contract if Gracehaven's coreligionist hiring practice was "still an active policy").

Gracehaven's practice of hiring coreligionists is essential to its ministry and message. After all, Gracehaven's ability to remain a *Christian* organization depends on having *Christian* employees. If Gracehaven is forced to employ those who do not share its faith, it could not accurately share its beliefs, its internal Christian fellowship community would be destroyed, and it would lose the very force behind its existence. *See* Gracehaven Policy Manual Excerpts, Doc. 1-1 at PageID 40 ("Faith and our dependence on prayer and God's Word are fundamental to us; without them, this ministry would not exist."). Religious organizations everywhere expect their employees and volunteers to share their religious beliefs and mission—that is what gives them their *religious character*.

The County has conditioned Gracehaven's ability to receive government funds on foregoing its constitutional (and statutory) right to employ those who share its religious beliefs. There is no denying that the County would have continued to fund Gracehaven had it removed its "active policy" of hiring coreligionists. *See* August 2024 Emails. Doc. 1-8 at PageID 192. Indeed, the County willingly contracted with and funded Gracehaven until April of this year, and only refused to continue the partnership once it learned that Gracehaven would "screen staff based on religious beliefs." Non-Discrimination Clarification, Doc. 1-7 at PageID 183. "Regardless of how the benefit and restriction are described" the County excludes Gracehaven—an "otherwise eligible" entity—"on the basis of its religious exercise." *Carson*, 596 U.S. at 789. Forcing Gracehaven to choose between its faith or funding triggers—and fails—strict scrutiny. *Id.* at 780; *see infra* § I(A)(3).

2. The County's actions also trigger strict scrutiny because they are not neutral or generally applicable.

Trinity Lutheran, *Espinoza*, and *Carson* control here. In those cases, the Supreme Court declined to apply the neutral and generally applicable standard from *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990). That's because "there is nothing neutral about" about excluding religious observers from otherwise available public benefits, *Carson*, 596 U.S. at 781, and it's "clear" that the Free Exercise Clause "guard[s] against the government's imposition of 'special disabilities on the basis of religious views or religious status.'" *Trinity Lutheran*, 582 U.S. at 460–61 (quoting *Smith*, 494 U.S. at 877).

Yet the County's actions trigger strict scrutiny for a second reason because they are not neutral or generally applicable and substantially burden Gracehaven's religious exercise. *Fulton v. City of Philadelphia*, 593 U.S. 522, 532–33 (2021). "Neutrality and general applicability are interrelated" and "failure to satisfy one requirement is a likely indication that the other has not been satisfied." *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 531 (1993). Here, the County fails both.

Neutrality. The Free Exercise Clause "forbids subtle departures from neutrality and covert suppression of particular religious beliefs" and "protects against governmental hostility which is masked, as well as overt." *Id.* The "[g]overnment fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature." *Fulton*, 593 U.S. at 533. To determine whether government action is neutral, courts must "scrutinize the history, context, and application of" the challenged government conduct. *Meriwether v. Hartop*, 992 F.3d 492, 512 (6th Cir. 2021).

To start, the County's refusal to work with and fund Gracehaven *because* of the ministry's religious practice of employing coreligionists is *facially* discriminatory. Government action that "single[s] out" religious practice for "discriminatory treatment" is never neutral. *Lukumi*, 508 U.S. at 538. As the Court put it in *Carson*, "there is nothing neutral" about "exclud[ing] some members of the community from an otherwise generally available public

benefit because of their religious exercise." 596 U.S. at 781 (emphasis added). That principle applies here.

For over seven years the County successfully worked with Gracehaven by placing (and funding) multiple girls in the ministry's group homes for care and treatment. The *only* reason the County decided to stop working with Gracehaven was because the ministry has an "active policy" of hiring only coreligionists. August 2024 Emails, Doc. 1-8 at PageID 192. Such "[o]fficial action that targets religious conduct for *distinctive treatment*" fails the neutrality requirement. *Lukumi*, 508 U.S. at 534 (emphasis added).

What's more, the County's hostility and lack of neutrality is evidenced by its disregard for, and refusal to apply, the religious employer exemption under the Equal Employment Provision. The County cannot defend its actions by claiming the Equal Employment Provision prohibits Gracehaven from making employment decisions based on its religious beliefs—because it doesn't. The federal law cited in the Equal Employment Provision (Executive Order 11246) explicitly permits religious organizations to employ "individuals of a particular religion." 41 C.F.R. § 60-1.5(a)(5). Moreover, the cited federal law only applies to federal "contractors or subcontractors" in the first place. *Id.* § 60-1.1. Despite both the religious employer exemption and the limited scope of Executive Order 11246, the County superimposed an extra condition on Gracehaven and refused to contract with the ministry. The County has thus "improper[ly] target[ed]" Gracehaven by "proscrib[ing] more religious conduct than is necessary to achieve" any government interest. *Lukumi*, 508 U.S. at 538.

Gracehaven tried to clarify all this when it proposed its Non-Discrimination Clarification as an addendum to the New Contract. That document explained (1) Gracehaven has a right to hire coreligionists, and (2) the federal law cited in the Equal Employment Provision did not apply to Gracehaven because it is not a federal subcontractor. *See* Non-Discrimination Clarification, Doc. 1-7. Every other Title IV-E agency has willingly accepted the ministry's Clarification document as an addendum to near-identical contracts—only Montgomery would not. Arnold Decl. ¶ 101. In fact, when the County refused the addendum, Gracehaven agreed to

sign the New Contract "as is," so long as the County understood the ministry could continue "to hire according to its religious beliefs." Spring 2024 Emails, Doc. 1-4 at PageID 80. Still, the County refused and insisted on an additional condition "specifically directed at [Gracehaven's] religious practice." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 526 (2022) (cleaned up). Those actions do "not qualify as neutral." *Id.*

At bottom, the County "single[s] out" Gracehaven for "especially harsh treatment" by excluding the ministry from group home placements and funding due to its religious practice. *Roman Cath. Diocese of Brooklyn v. Cuomo,* 592 U.S. 14, 17 (2020) (per curiam). The County's religious targeting must, at a minimum, satisfy strict scrutiny, *id.* at 18, but the overt religious "hostility" is also per se unconstitutional. *See Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 584 U.S. 617 (2018).

General applicability. The County's policy and actions are not generally applicable. Government action is not generally applicable if it "provid[es] a mechanism for individualized exemptions." *Fulton*, 593 U.S. at 533–34 (cleaned up). Put another way, the government fails general applicability when it can hand out "entirely discretionary exceptions" from the challenged rule or conduct. *Id.* at 536; *accord Dahl*,15 F.4th at 733 (vaccination requirement that allowed university to consider medical and religious exemptions requests was not generally applicable). And government action is "not neutral and generally applicable ... whenever [it] treat[s] *any* comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 593 U.S. 61, 62 (2021).

The County has a system of exceptions in two ways. First, the County requires that providers must not discriminate based on religion in employment to receive funding. That requirement is not required by any law,[3] the County created it ad hoc, and the County can

[3] As explained above, the federal law cited in the Equal Employment Provision—Executive Order 11246 and its regulations—*applies only* to federal contractors and subcontractors, and even if it did apply here, it *exempts* religious organizations like Gracehaven. *See* 41 C.F.R. § 60-1.1; *id.* § 60-1.5(a)(5).

therefore exempt from it "entirely" at its discretion. *Fulton*, 593 U.S. at 536. Second, even if the Equal Employment Provision prohibited Gracehaven's coreligionist hiring practice (it doesn't), the County can create exceptions from that provision by amending the terms of its contracts. *See* New Contract, Doc. 1-5 at PageID 112 (permitting the agreement to be "amended" by "written Addendum signed by both parties"); *see also* Ohio Admin. Code § 5101:2-47-23.1(E) (permitting an agency to make "additions" to a Title IV-E contract by "attachment" or "exhibit").

Gracehaven requested an exception by offering its Non-Discrimination Clarification as an addendum to the New Contract, but the County exercised its discretion and rejected the request. And other Title IV-E agencies have gladly accepted Gracehaven's clarification statement as an addendum, thus showing that accommodations are possible. Montgomery County's "broad discretion to grant exemptions on less than clear considerations removes" its self-imposed requirement "from the realm of general applicability and thus subjects the policy to strict scrutiny." *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 687 (9th Cir. 2023) (en banc).

And the County gladly contracts with myriad other providers. The County pursues its interests—whatever they may be— against Gracehaven alone. There is no permissible explanation for why the County can contract with others but not with Gracehaven. This unequal treatment also triggers strict scrutiny. *Lukumi*, 508 U.S. at 542–47.

3. The County fails strict scrutiny.

"To satisfy strict scrutiny, government action must advance interests of the highest order and must be narrowly tailored in pursuit of those interests." *Carson*, 596 U.S. at 780 (cleaned up); *Fulton*, 593 U.S. at 541. Government action "that targets religious conduct for distinctive treatment will survive strict scrutiny only in rare cases." *Carson*, 596 U.S. at 780 (cleaned up).

The County cannot rely on "broadly formulated interests" but must instead prove it has a compelling interest in refusing to contract with Gracehaven specifically. *Fulton*, 593 U.S. at 541 (cleaned up). The County lacks such an interest. There is no legitimate justification for the

sudden refusal to contract with Gracehaven, especially when the County placed multiple foster children at Gracehaven over the last seven years without issue.

Nor can the County justify its actions based on an interest in preventing employment discrimination. For one thing, such an interest can't qualify as compelling because it is stated at too "high a level of generality." *Id.* For another, the County's actions "cannot be regarded as protecting an interest of the highest order when it leaves appreciable damage to that supposedly vital interest unprohibited." *Lukumi*, 508 U.S. at 547 (cleaned up). And here the County contracts with other organizations that similarly employ only coreligionists. Arnold Decl. ¶ 125. Finally, any interest in preventing employment discrimination is undercut by the fact that the federal law in the Equal Employment Provision does not try to advance that interest against religious organizations, *see* 41 C.F.R. § 60-1.5(a)(5), and various other entities or contracts, *see id.* § 60-1.5(a), (b), (c).

The County's actions are not narrowly tailored for many of the same reasons. If the Department "can achieve its interests in a manner that does not burden religion, it must do so." *Fulton*, 593 U.S. at 541. This possibility is evident by the County's willingness to contract with all other foster care providers except Gracehaven. Plus, federal and state law prove accommodations are more than possible. *See* 41 C.F.R. § 60-1.5(a)(5) (religious exemption from Executive Order 11246); 42 U.S.C. § 2000e-1(a) (religious exemption from Title VII); Ohio Rev. Code § 4112.02(O) (religious exemption from Ohio Civil Rights Act). As a result, there are less restrictive alternatives that can advance any purported government interest while still respecting Gracehaven's religious practice. Because the County's actions fail strict scrutiny, Gracehaven is likely to succeed on its free exercise claim.

B. The County violates Gracehaven's church autonomy rights.

Another way the County violates the First Amendment is by penalizing Gracehaven for exercising its rights protected by the church autonomy doctrine.

This autonomy, rooted in both Religion Clauses, gives religious organizations the "independence from secular control or manipulation" to decide "free from state interference,

matters of [internal] government as well as those of faith and doctrine." *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). The Supreme Court recently explained that this freedom from "government intrusion" protects a religious organization's "autonomy with respect to internal management decisions that are essential to [its] central mission." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020).

The County infringes two "component[s] of this autonomy." *Id.*

First, the ministerial exception bars the County from interfering with, or otherwise penalizing, Gracehaven's decisions to hire or fire one of its "ministers," no matter the reason. *Id.* at 762; *see also Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171 (2012). The County's requirement that Gracehaven end its policy of hiring only coreligionists in order to receive a contract extends to *all* employees, so it necessarily implicates the ministerial exception. And many Gracehaven employees fit comfortably within the exception because they are "entrusted with the responsibility of transmitting the [Christian] faith to the next generation." *Our Lady*, 591 U.S. at 754 (cleaned up); *see* Arnold Decl. ¶¶ 38–42, 54; Various Job Descriptions, Doc. 1-3 at PageID 54, 58, 62, 65, 69, 72 (explaining spiritual job responsibilities).

The ministerial exception prohibits any government action that "operates as a penalty" on a religious organization's employment decisions about its ministers. *Hosanna-Tabor*, 565 U.S. at 194. So the County's indirect penalty transcends this "structural limitation imposed on the government by the Religion Clauses" all the same. *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 836 (6th Cir. 2015).

Second, the right to church autonomy permits Gracehaven to require that *all* employees share and live out its religious beliefs. Sometimes called the "coreligionist exemption," this component of church autonomy protects Gracehaven's employment decisions that are "based on religious doctrine," regardless of the employee's ministerial status. *Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648, 660 (10th Cir. 2002). In short, Gracehaven has a "constitutionally-protected interest" in "making religiously-motivated employment decisions."

Hall v. Baptist Mem'l Health Care Corp., 215 F.3d 618, 623 (6th Cir. 2000). This is true no matter how others label that decision.

The ministry decided every position must share and follow its religious beliefs. If any of Gracehaven's employees are not protected by the ministerial exception, the ministry still has the right to hire coreligionists because, after all, those decisions are "religiously-motivated." *Id.* at 623. The County infringes this autonomy by requiring Gracehaven to surrender it in order to receive a substitute care contract.

C. The County violates Gracehaven's right to expressive association.

The County's decision to condition participation upon the forced inclusion of nonbelievers also infringes the ministry's First Amendment right "to associate with others in pursuit of … educational [and] religious … ends." *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 647 (2000). This right to expressive association includes the "freedom not to associate" with people who "may impair the [group's] ability" to express its views. *Id.* at 647–48. The right applies if (1) "the group engages in 'expressive association,'" and (2) "the forced inclusion" of a person "affects in a significant way the group's ability to advocate public or private viewpoints." *Id.* at 648. Gracehaven satisfies both elements.

First, "[r]eligious groups" like Gracehaven "are the archetype of" expressive associations. *Hosanna-Tabor,* 565 U.S. at 200 (Alito, J., concurring). The ministry's religious beliefs are the very reason it exists, and through everything it does, it seeks to share "the love of Christ." Gracehaven Policy Manual Excerpts, Doc. 1-1 at PageID 39. Second, the County's actions and policy force Gracehaven to expressively associate with people who do not hold the same religious views and thus cannot express the same message. Courts must "give deference to an association's view of what would impair its expression," *Dale,* 530 U.S. at 653, and the ministry here rightly believes that it can express its message only "through a team of Christian workers and like-minded partners." Gracehaven Policy Manual Excerpts, Doc. 1-1 at PageID 39.

The Second Circuit's recent decision in *Slattery v. Hochul*, is on point. 61 F.4th 278 (2d Cir. 2023). There, New York state passed a law that prohibited employment discrimination based

on an employee's "reproductive health decision making." *Id.* at 283. A pro-life pregnancy center challenged the law, arguing it violated its right to expressive association because the law forced the center to hire employees who supported abortion, undermining its pro-life message. *Id.* at 284. The court agreed, holding the law "significantly burden[ed]" the center's expressive activity because it "force[d] the center to employ individuals who act or have acted against the very mission of its organization." *Id.* at 288. The court explained that "compelled hiring, like compelled membership, may be a way in which a government mandate can affect in a significant way a group's ability to advocate public or private viewpoints." *Id.* at 288 (cleaned up).

The County's actions violate this right by compelling Gracehaven to hire employees who reject or oppose its message as a condition to receive a contract and funding. This independently triggers strict scrutiny, *id.* at 289, which the County fails, *see supra* § (I)(A)(3).

D. The County violates the Ohio Constitution's Religious Freedom Clause.

The County's actions also violate the Ohio Constitution's Religious Freedom Clause. That Clause provides, in part: "[a]ll men shall have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience ... nor shall any interference with the rights of conscience be permitted." Ohio Const. Article I, Section 7. The Ohio Supreme Court has "made clear" that this Clause "grants broader protections to Ohio's citizens than the federal Constitution affords." *State v. Mole*, 74 N.E.3d 368, 375 (Ohio 2016) (citing *Humphrey v. Lane*, 728 N.E.2d 1039 (Ohio 2000)). Under this broader protection, Ohio's Religious Freedom Clause "bans" any government action that "tangentially affects religion." *Humphrey*, 728 N.E.2d at1044–45. And so "religiously neutral, evenly applied government actions" must "serve a compelling state interest and must be the least restrictive means of furthering that interest." *Id.*

Simply put, under the Ohio Constitution, *Smith*'s neutrality and general applicability standard doesn't apply, and government action that "has a coercive affect against [a religious observer] in the practice of his religion" must survive strict scrutiny. *Humphrey*, 728 N.E.2d at 1045; *State v. Whisner*, 351 N.E.2d 750, 767 (Ohio 1976) (applying strict scrutiny to state's

"minimum standards" education requirements). This is true of both "direct and indirect encroachments upon religious freedom." *Humphrey*, 728 N.E.2d at 1045.

The County's actions violate that protection here. The County has placed both a direct and indirect burden on Gracehaven's religious exercise. Direct by thwarting Gracehaven's ability to serve and help survivors of sex trafficking. And indirect by forcing the ministry to choose between a contract and public funds or its religious exercise of hiring coreligionists. *See id*. (forcing corrections officer to choose between religious exercise of wearing long hair or keeping his job infringed his "free exercise of religion"). Either way you slice it, Montgomery County places a "coercive affect" against the ministry's religious practice. *Id*.

The County's actions violate Ohio's Religious Freedom Clause. To survive, the burden must "serve[ ] a compelling state interest" and be the "least restrictive" way to accomplish that interest. *Id*. As already explained, the County fails that test. *See supra* § I(A)(3).

II. Gracehaven satisfies the other preliminary injunction factors.

"Preliminary injunctions in constitutional cases often turn on likelihood of success on the merits, usually making it unnecessary to dwell on the remaining three factors." *Roberts v. Neace*, 958 F.3d 409, 416 (6th Cir. 2020). In any event, Gracehaven satisfies the remaining factors.

Irreparable harm. Gracehaven is currently suffering irreparable harm in multiple ways. First, the County's unconstitutional actions alone constitute irreparable harm because "[t]he loss of First Amendment freedoms, for even minimal periods of time unquestionably constitutes irreparable injury." *Bays*, 668 F.3d at 825 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *see also Bonnell v. Lorenzo*, 241 F.3d 800, 809 (6th Cir. 2001) ("successful showing on [likelihood of success] mandates a successful showing on [irreparable harm]").

Second, the County is also actively preventing Gracehaven from furthering its religious mission to care for foster children in Montgomery County by refusing to contract and work with the ministry. Gracehaven seeks to care for survivors of sex trafficking by giving them a home where they can recover and heal. For instance, over the last few months, lower-level County employees have tried to refer 14 placements to Gracehaven, which has had capacity to accept

more girls. Arnold Decl. ¶¶ 131–33. *But for* the County's refusal to contract with Gracehaven, the ministry could have accepted some of those placements, cared for those girls, and advanced its purpose. *Id.* ¶ 134–35. In fact, if Gracehaven had been able to accept some of those referrals, it likely would have had enough placements to allow it to staff and open its third group home, thus expanding its ministry and resources to help survivors. *Id.* ¶ 137. If Montgomery County's unconstitutional exclusion is enjoined by the Court, Gracehaven would seek to fill its open beds with referrals from the County, open its third group home (with sufficient funding), and care for and treat young survivors of sex trafficking. *Id.* ¶ 161. Damages cannot remedy these lost ministry opportunities. *See Roberts*, 958 F.3d at 416 (in-person gathering ban "assuredly inflicts irreparable harm by prohibiting them from worshiping how they wish").

Public interest and harm to others. An injunction here benefits the public interest because "it is always in the public interest to prevent violation of a party's constitutional rights." *Bays*, 668 F.3d at 825 (cleaned up). Nor would an injunction harm anyone else. Rather, *the County's actions* are now harming multiple girls in foster care—at least 14 since July—who need housing and care services. No matter what the County thinks about Gracehaven's hiring practices, it doesn't justify denying survivors of sex trafficking a safe place to call home.

CONCLUSION

Gracehaven simply seeks to continue its faith-based work by offering hope, love, and joy to young girls who need it most while preserving its Christian character. Montgomery County has no constitutionally permissible reason for denying Gracehaven this opportunity. The Court should grant the requested preliminary injunction.

Respectfully submitted this 20th day of December, 2024,

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Certificate of Service

I hereby certify that on December 20, 2024, a true and accurate copy of this document was filed electronically using the CM/ECF system and I will serve the same on the following parties through private process server:

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