October 4, 2022

Via Email and U.S. Mail

California Department of Social Services
744 P Street
Sacramento, CA 95814
Email: CACFPAppeals@dss.ca.gov

RE: CHURCH OF COMPASSION DAYSPRING CHRISTIAN LEARNING CENTER V. CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, NOTICE OF APPEAL AND PENDING FEDERAL CIVIL RIGHTS LITIGATION (Written Review Requested).

To Whom it May Concern,

Thank you for your prompt attention to the urgent and important matters addressed in this legal demand letter and appeal. Please be advised that the National Center for Law & Policy (NCLP) is a non-profit organization providing legal assistance to individuals and organizations whose civil rights have been threatened or infringed by the government and its various agents.

Because of the NCLP's significant experience successfully representing churches and religious organizations facing religious discrimination by government actors, I have been retained by the Church of Compassion Dayspring Christian Learning Center to represent this organization regarding the State's recent egregiously unconstitutional actions targeting the Church. Attorneys with Advocates for Faith and Freedom serve as co-counsel and should be copied on all responses.[1]

A written review is requested. Please do not contact my clients, but refer all communications regarding the important legal matters discussed herein to my attention only.

[1] The constitutional attorneys of the National Center for Law and Policy and Advocates for Faith and Freedom, have extensive experience successfully advocating against government entities on behalf of religious organizations whose civil rights have been infringed. Our legal victories include successfully advocating against the State of California and various counties to re-open churches during the pandemic (*See, i.e., Cross Culture Christian Center v. Newsom*) and prevailing against California's unconstitutional AB 775 at the U.S. Supreme Court (See *NIFLA v. Becerra*).

The purpose of this letter is both to appeal the California Department of Social Services' (CDSS) recent adverse determination against my clients (discussed below) and to notify the CDSS that, if a prompt resolution cannot be obtained, a federal civil rights lawsuit will be filed seeking declaratory and injunctive relief regarding the many constitutional and statutory violations committed by CDSS, as discussed herein.

The claims, legal arguments and description of facts embodied herein are not necessarily intended to be exhaustive and I hereby reserve the right to supplement or modify the legal theories and damages as further investigation and discovery dictate. Please understand that this letter has been sent to you for the sole purpose of exploring prelitigation settlement discussions. Its contents and all future communications are confidential and privileged pursuant to California Evidence Code §1152 and §1154.

Additionally, this letter is also written to remind you of CDSS' duty to preserve evidence pertaining to the following subject matters: Compassion Church and Dayspring Christian Learning Center's applications for funding and funding grants, both by CDSS and the DOE. This includes any and all documents, including correspondence and items maintained in my client's file. Because electronic data may be an irreplaceable source of discovery should this matter proceed to litigation, it is your duty to preserve all potentially relevant electronic data. Consistent with that duty, I request that your data be preserved and maintained in a readily accessible format, and in native format with metadata intact, regarding the above subject matters, including electronic data (electronic mail, databases, computer system logs, word processing files, excel files, video conferencing recordings, company online data storage), physical data (personal files, physical documents, CDs, DVDs, USB drives, etc.), data storage devices, cell phone data (text messages, phone call logs, etc.), personal computer data, and any other evidence.

I. Statement of Facts

The Church of Compassion (hereinafter "Church") is a non-denominational Christian church which maintains biblically orthodox religious beliefs and practices regarding human sexuality, as Christian churches have faithfully maintained for the past two thousand years. The

Church operates a daycare program in its facilities called the Dayspring Christian Learning Center (hereinafter "Dayspring"). Dayspring is licensed to serve up to 112 children in the community. The State of California Department of Social Services (CDSS) is on notice and is aware that the Church and Dayspring are a faith-based non-profit agency, under its program guidelines. It is important to note here that Dayspring does not discriminate against children based on the sexual orientation or gender identity of student family members.

The Church and Dayspring have participated in Child and Adult Food Care Food Program ("CACFP") through the California Department of Education (DOE) for approximately nearly twenty years. As a result, the Church of Compassion receives state taxpayer funds, approximately $3,500 to $4,500 a month, to cover food-related costs for students in its daycare program. The Church's Vendor Number is V6020Z.

The CDSS, after assuming responsibility from the DOE for the CACFP program, issued new compliance language in the "Assurance of Civil Rights Compliance," Permanent Single Agreement (PSA) form dated April 2022. The new language purports to require the Church to certify that CACFP will be "operated in compliance with all applicable civil rights laws and will implement all applicable non-discrimination regulation. Unless otherwise made inapplicable by law, the program operator agrees to comply with…Title VII…USDA non-discrimination regulations…to the effect that no person shall be discriminated against on the basis of…sex" [including gender identity and sexual orientation] …." (hereinafter "Sex Rules"). Because of Church's biblical beliefs regarding human sexuality, it was unable to agree to comply with the government Sex Rules when it submitted its application for the 2022-2023 year.

Jessie Rosales, Chief of the Child and Adult Care Food Program at the California Department of Social Services (CDSS) submitted a letter to the Church dated October 20, 2022 with the subject: NOTICE OF DENIAL OF APPLICATION AND DETERMINATION OF SERIOUS DEFICIENCY (hereinafter "CDSS Notice"). The CDSS Notice explained that the Church's application for participation in the CACFP was denied because the Church refused to agree to comply with the Sex Rules.

Rosales' demanding and threatening letter states, "While the Legislature strongly supports religious freedom, it has also explicitly stated that religious freedom should not be a justification for discrimination. To that end, the Legislature enacted California Government Code

sections 11135 and 11139.8, which prohibit discrimination based on sexual orientation and gender identity in any program or activity that is operated or administered by the State, is funded by the State, or receives State financial assistance."

The CDSS Notice proceeds to note two specific "violations." First, that the Church's application requested a modification of the PSA's non-discrimination clause related to sexual orientation and gender identity. Second, that the Church "requires all employees to read and abide by a staff handbook that specifically disallows "lesbians, gay, bisexual, and transgender lifestyles. Rosales concludes, "These actions show intent to discriminate against individuals based on sexual orientation and gender identity in violation of State law." The CDSS Notice concluded that the Churches employment practices "violate Title VII of the Civil Rights Act of 1964 and "constitute one or more serious deficiencies in its operation of CACFP under 7 CFR section 226.6(c)(2)(ii)."

The CDSS Notice opined that the Church, in order to continue receiving state funding, could take corrective action within 15 days of receipt of the CDSS notice by signing the PSA agreeing to comply with the Sex Rules without modification; attest to compliance with all State and Federal laws implicating the Sex Rules; stop requiring Church employees to sign or abide by its handbook or any other policy not in compliance with the Sex Rules; and provide an updated copy of the Church handbook to CDSS.

However, if the Church refused to comply with these demands, Rosales ominously threatened that failure to comply will result in the termination of the Church's operation of the CACFP, disqualification of the Church from future CACFP participation and placement on the National Disqualification List. Furthermore, Dayspring notes that CDSS has locked it out of access to the CNITS website.

II. Legal Analysis

Simply put, the government may not impose its politically correct sexual orthodoxy on religious institutions, especially churches, even when state funds are involved. The CDSS Sex Rules have, in fact, been made inapplicable by law, specifically the First Amendment to the U.S. Constitution.

> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."

West Virginia State Board of Education v. Barnette, 319 U.S. 624, 642 (1943)

The CDSS's Notice seeks to impose unconstitutional conditions on the Church which are in blatant violation of the First Amendment to the U.S. Constitution and well-established statutory law. First, the Free Exercise Clause prohibits the State from denying a generally available public benefit to the Church based on the the organization's religious beliefs and status. Second, the State violates the Church's Freedom of Speech, by attempting not coercively compel the alteration of its employee handbook. Furthermore, the State completely ignores the judicially recognized "ministerial exception" as well as the two statutory exemptions provided to religious organizations under Title VII of the Civil Rights Acts of 1964 ("Title VII"). Therefore, for the following reasons, we hereby demand that the CDSS immediately cease and desist violating the Church's constitutional rights and immediately restore the CACFP funding.

A. Free Exercise Clause expressly prohibits California from denying a generally available public benefits from a religious organization based on its religious beliefs or status.

The Free Exercise Clause of the First Amendment protects against "indirect coercion or penalties on the free exercise of religion, not just outright prohibitions." *Lyng v. Northwest Indian Cemetery Protective Assn*., 485 U.S. 439, 450 (1988). The Supreme Court has repeatedly held that a state violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits. *See Sherbert v. Verner*, 374 U.S. 398, 404, (1963) ("It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege."); *see also*

Everson v. Board of Ed. of Ewing, 330 U.S. 1, 16, (1947) (a State "cannot exclude" individuals "because of their faith, or lack of it, from receiving the benefits of public welfare legislation").

The Supreme Court recently applied these principles in the context of two state efforts to withhold otherwise available public benefits from religious organizations. In *Trinity Lutheran Church of Columbia, Inc. v. Comer*, the court considered a Missouri program that offered grants to qualifying nonprofit organizations to provide installed cushioning playground surfaces made from recycled rubber tires, but expressly denied such grants to any applicant owned or controlled by a church or other religious entity. 582 U. S. ——, 137 S.Ct. 2012 (2017). The Trinity Lutheran Church Child Learning Center applied for a grant to resurface its gravel playground, but the Department denied funding on the grounds that the Center was religiously affiliated. *Id.*

In *Trinity Lutheran*, the Court reaffirmed the established legal principle that "[t]he Free Exercise Clause *did* guard against the government's imposition of "special disabilities on the basis of religious views or religious status." *Id*. at 2021 (citing *Lyng,* 494 U.S., at 877, 110 S.Ct. 1595.).[2] Furthermore, the court deemed it "unremarkable in light of our prior decisions" to conclude that the Free Exercise Clause did not permit Missouri to "expressly discriminate[ ] against otherwise eligible recipients by disqualifying them from a public benefit solely because of their religious character." *Id*. Similarly to as noted in *Trinity Lutheran*, California is here attempting to interfere with an internal church decision that affects the faith and mission of the

[2] "This is not to say that any application of a valid and neutral law of general applicability is necessarily constitutional under the Free Exercise Clause. Recently, in *Hosanna–Tabor Evangelical Lutheran Church and School v. EEOC,* 565 U.S. 171, 132 S.Ct. 694, 181 L.Ed.2d 650 (2012), this Court held that the Religion Clauses required a ministerial exception to the neutral prohibition on employment retaliation contained in the Americans with Disabilities Act. Distinguishing *Smith,* we explained that while that case concerned government regulation of physical acts, "[t]he present case, in contrast, concerns government interference with an internal church decision that affects the faith and mission of the church itself." 565 U.S., at 190, 132 S.Ct. 694." *Id*. f.n. 3.

church itself—its deeply held religious views on human sexuality as applied to its personnel decisions. *Id*. f.n. 3. While it was true that Trinity Lutheran remained "free to continue operating as a church," it could enjoy that freedom only at the cost of "absolute exclusion from the benefits of a public program for which the Center [was] otherwise fully qualified." *Id*. at 2022 (citing *McDaniel v. Paty*, 435 U.S. 618, 626 (1978) (plurality opinion)). Such discrimination is "odious to [the] Constitution" and cannot not stand. *Trinity Lutheran*, 137 S.Ct. at 2025.

In *Espinoza v. Montana Dep't of Revenue*, 207 L. 140 S.Ct. 2246 (2020), the U.S. Supreme Court addressed a Montana program that prohibited the use of state scholarship funds to support sectarian schools. The court again held that the Free Exercise Clause forbade the State's action. *Id.* The application of the Montana Constitution's no-aid to religion provision required strict scrutiny because it "bar[red] religious schools from public benefits… because of the religious character of the schools." *Id*. at 2255. "A State need not subsidize private education, [b]ut once a State decides to do so, it cannot disqualify some private schools because they are religious." *Id.* at 2261.

Here, the "unremarkable" principles applied in *Trinity Lutheran* and *Espinoza* suffice to resolve this case. California offers its schools a benefit: nutrition assistance payments to help feed students. Just like the wide range of nonprofit organizations eligible to receive playground resurfacing grants in *Trinity Lutheran*, a wide range of private and public schools are eligible to receive California's nutrition assistance payments here. And like the daycare center in *Trinity Lutheran*, Dayspring Christian Learning Center and the Church of Compassion are disqualified from this generally available benefit precisely because of CDSS' imposition of "special disabilities on the basis of religious views or religious status," specifically in this case, the

Church's Christian orthodox religious views and practices regarding marriage, gender, and sexuality. *Trinity Lutheran*, 137 S.Ct. at 2021. By "condition[ing] the availability of benefits" in this manner, California's nutrition assistance program—like the program in *Trinity Lutheran*—"effectively penalizes the free exercise" of religion. *Id*.; *California Parents for the Equalization of Educ. Materials v. Torlakson*, 973 F.3d 1010, 1019 (9th Cir. 2020) (implementing the reasoning of *Trinity Lutheran* to state that "the exclusion of religious institutions from beneficial programs amount[s] to a financial penalty."). Furthermore, CDSS mandates to the Church "concerns government interference with an internal church decision that affects the faith and mission of the church itself," here fundamental religious beliefs and religious hiring practices involving human sexuality. *Trinity Lutheran*, 137 S.Ct. 2012, 2021, f.n. 3 (quoting *Hosanna–Tabor Evangelical Lutheran Church and School v. EEOC,* 565 U.S. 171, 132 S.Ct. 694, 181 L.Ed.2d 650 (2012)).

In *Espinoza,* the court considered a state benefit program under which public funds flowed to support tuition payments at private schools and which specifically carved out private religious schools from those eligible to receive such funds. *Espinoza*, 207 L. 140 S.Ct. 2246. While the exact parameters of the benefit programs in *Espinoza* and the present case differ slightly, their effect is the same: to "disqualify some private schools" from funding "because they are religious" or adhere to biblically based views regarding sexuality. *Id.* at 2261. As held in *Espinoza*, a program that operates in that manner must be subjected to "the strictest scrutiny." *Id.* at 2257. To satisfy strict scrutiny, government action "must advance interests of the highest order and must be narrowly tailored in pursuit of those interests." *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546, (1993). "A law that targets religious conduct for distinctive treatment ... will survive strict scrutiny only in rare cases." *Id.*

This case is not one of them. An interest in upholding antidiscrimination laws "cannot qualify as compelling in the face of the infringement of free exercise." *Espinoza*, 591 140 S.Ct. at 2260 (quoting *Trinity Lutheran*, 137 S.Ct. at 2024). There is nothing neutral about California's program. Under the nutrition program's new standards, the State grants funding to certain private schools – so long as the schools do not adhere to orthodox religiously based beliefs and practices regarding gender and sexuality, which are not in perfect alignment with the State's new sexual orthodoxy as embodied in its new Sex Rules. That is per se discrimination against religion. A State's antidiscrimination interest does not justify "enactments that exclude some members of the community from an otherwise generally available public benefit because of their religious exercise." *Carson as next friend of O. C. v. Makin*, 142 S.Ct. 1987, 1996–98 (2022). Accordingly, the State of California cannot deny Church and Dayspring nutrition assistance funding, for which the they haves otherwise been eligible, for over 20 years, based upon their religious beliefs.

B. CDSS Seeks to control the content of the Church's religious speech in violation of the First Amendment

It is a basic First Amendment principle that "freedom of speech prohibits the government from telling people what they must say." *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 61, (2006). Content-based regulations "target speech based on its communicative content." *National Institute of Family Life v. Becerra*, 138 S. Ct. 2361, 2371 (2018) (quoting *Reed v. Town of Gilbert,* 576 U.S. ——, ——, 135 S. Ct. 2218, 2226, 192 L.Ed.2d 236 (2015)). As a general matter, such laws "are presumptively unconstitutional and

may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Id.*

Here, the CDSS mandate that the Church immediately bring all of its policies and procedures, including its written handbook, in alignment with the State's new sexual orthodoxy represents a transparent attempt by the government to tell the Church what to say (and what to believe). In fact, the CDSS aggressively seeks to regulate the Church's religious speech based on its communicative content (i.e. affirming sexual orientation and gender identity). And similarly, to California misguided attempt to regulate the content of the speech of pro-life pregnancy centers in *NIFLA v. Becerra*, the CDSS' attempt to coerce the content of the Church's speech is will not survive strict scrutiny because it is not narrowly tailored to serve a compelling government interest.

Furthermore, the Government '"may not deny a benefit to a person on a basis that infringes his constitutionally protected ... freedom of speech even if he has no entitlement to that benefit.'" *Forum for Academic and Institutional Rights*, 547 U.S. at 59 (quoting *United States v. Am. Libr. Ass'n, Inc.*, 539 U.S. 194, 210 (2003)). A funding condition can result in an unconstitutional burden on free speech rights. *See Forum for Academic and Institutional Rights*, 547 U.S. at 59 (the First Amendment supplies a limit on the "ability to place conditions on the receipt of funds"); *Legal Services Corporation v. Velazquez*, 531 U.S. 533, 547 (2001) (A state "cannot recast a condition on funding as a mere definition of its program in every case, lest the First Amendment be reduced to a simple semantic exercise.").

Relying on these principles, the Supreme Court held in *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, that requiring organizations to expressly oppose prostitution in order to receive government funding compelled as a condition of government funding the affirmation of a belief that by its nature could not be confined within the scope of the government program and thus violated First Amendment free speech protections. *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205 (2013).

Similarly, CDSS attempts to force recipients of funding in the Child and Adult Food Care Program explicitly to agree and comply with all civil rights laws, including provisions directly affirming sexual orientation and gender identity—which has nothing to do with feeding children. Thus, the California improperly seeks to "leverage funding to regulate [religious] speech outside

the contours of the program itself." *Id.* at 214–15. CACFP explicitly and only concerns with itself with feeding students and the elderly. Nevertheless, the state has only recently conditioned participation in CACFP on the affirmation of the government's beliefs regarding sexual orientation and gender identity. This condition, by its very nature, affects protected religious speech outside the scope of the state funded program in violation of the First Amendment. *Id.* Well-established constitutional protections for religious speech require California to stay in its lane here and do not permit the State to coercively force its new sexual ideology on churches and other religious institutions via funding mechanisms.

C. California cannot impose unconstitutional conditions on the Church to force it to forfeit its First Amendment rights

The unconstitutional condition's doctrine "vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up." *San Diego County Water* Authority v. Metropolitan Water Dist. of Southern California (2017) 12 Cal.App.5th 1124, 1159; citing *Koontz v. St. Johns River Water Management Dist.* (2013) 570 U.S. 595, 604. Under the unconstitutional condition's doctrine, "the government may not deny a benefit to a person because he exercises a constitutional right." *Koontz v. St. Johns River Water Management Dist.* (2013) 133 S.Ct. 2586, 2594 (internal quotation and citation omitted). The doctrine "limits the government's ability to exact waivers of rights as a condition of benefits, even when those benefits are fully discretionary." *See United States v. Scott* (9th Cir. 2006) 450 F.3d 863, 866; *Keyishian v. Board of Regents of Univ. of State of N.Y.* (1967) 385 U.S. 589 (teaching position conditioned upon non-membership in "subversive" organizations was unconstitutional condition); *O'Hare Truck Service, Inc. v. City of Northlake* (1996) 518 U.S. 712, 721 (government may not coerce political support by conditioning continuance of tow truck contract on support for mayor's reelection campaign).

Here, the State brazenly demands that, within 15 days, the Church must, in order to continue to receive CACFP benefits, sign the PSA agreeing to comply with the new Sex Rules without modification; attest to compliance with all State and Federal laws implicating the Sex Rules; stop requiring Church employees to sign or abide by its handbook or any other policy not in compliance with the Sex Rules, and; provide an updated copy of the Church handbook to CDSS. In other words, to continue to receive the benefits widely, available to secular

organizations, the Church must yield to the State's coercive demands and forfeit, waive and surrender its constitutional right to the Free Exercise of Religion and Freedom of Speech. But California may not deny a benefit to a Church because it exercises its constitutional rights—which is precisely what is occurring here. In so doing, CDSS attempts to coercively impose unconstitutional conditions on the Church. This must not stand.

D. The Church has three separate exemptions from the prohibitions of discrimination "because of sex" under Title VII.

Title VII of the Civil Rights Act of 1964 prohibits discrimination because of "sex." 42 U.S.C. § 2000e-2(a)(1) (2012). In *Bostock v. Clayton County*, the Supreme Court extended the term "sex" to include sexual orientation and gender identity, meaning that Title VII now protects employees from discrimination based on their LGBTQ+ status. *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020). However, churches and religious organizations have well-established three exemptions from the terms of Title VII, including the ministerial exception and two statutory exemptions within Title VII, which the State cannot force the Church to surrender through an "Assurance of Civil Rights Compliance."

Regarding the ministerial exception, the Supreme Court has unequivocally concluded that there is a "ministerial exception grounded in the religion clauses of the First Amendment." *Id.*; *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 190 (2012). Under the ministerial exception, churches and religious institutions have discretion over whom they employ as "ministers," unconstrained by the federal or state civil rights law that would generally govern the employer-employee relationship. *Id.*

The ministerial exception doctrine is based on the notion that a church's appointment of its clergy is an inherently religious function because clergy are such an integral part of a church's functioning as a religious institution. *Roman Catholic Archbishop of Los Angeles v. Superior Court*, 131 Cal. App. 4th 417, 433 (2005). Therefore, "secular courts will not attempt

to right wrongs related to the hiring, firing, discipline or administration of clergy…The preservation of the free exercise of religion is deemed so important a principle as to overshadow the inequities which may result from its liberal application. In our society, jealous as it is of separation of church and state, one who enters the clergy forfeits the protection of the civil authorities in terms of job rights." *Higgins v. Maher*, 210 Cal. App. 3d 1168, 1175 (1989).

The ministerial exception is not limited strictly to churches, per se, but extends to "church-related institutions which have a substantial religious character," including church-affiliated schools. *Schmoll v. Chapman University*, 70 Cal. App. 4th 1434, 1436-39 (1999). Neither is the ministerial exception limited only to members of the clergy, but may include teachers and staff at religious schools, so long as they are performing "religious functions". *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2063-64 (2020) (holding that teachers at Catholic school were covered by the ministerial exception where the school's mission was religious in nature and the teachers and staff engaged in religious activities with the students); *Henry v. Red Hill Evangelical Lutheran Church of Tustin*, 201 Cal. App. 4th 1041 (holding that teacher was a "spiritual leader" for purposes of the ministerial exception to enforcement of Title VII).

Regarding Title VII's statutory exemptions, Title VII also expressly contains two religious exemptions in §702(a) and §703(e)(2), which shield religious institutions from liability under Title VII. The first provision, § 702(a), exempts "a religious corporation, association, educational institution, or society" from employment discrimination claims, including hiring and firing claims, based on religion, regardless of whether or not the employee's duties are religious. 42 U.S.C. § 2000e-1 (2012).

§ 703(e)(2) protects the right of religious educational institutions to "hire and employ employees of a particular religion." *Id.* An educational institution qualifies if it is "in whole or in substantial part, owned, supported, controlled, or managed by a particular religion" or if the curriculum is "directed toward the propagation of a particular religion." *Id.* Congress passed § 703(e)(2) as a subsequent amendment to Title VII out of concern that § 702(a) would not include educational institutions aligned with a particular religion, but not fully owned or supported by that religion. *LeBoon v. Lancaster Jewish Cmty. Ctr.*, 503 F.3d 217, 236-37 (3rd Cir. 2007). While § 702(a) requires a close nexus between the entity and religion, § 703(e)(2) requires a lesser degree of association. *Id.* at 237.

Notably, the ministerial exception and statutory exemptions to Title VII are affirmative defenses to claims of employment discrimination. However, these exceptions animate the principle that the State may not compel churches and religious organizations to violate their religious beliefs in the course of hiring and employment practices. Nor can the State mandate that a religious organization surrender or waive the legal protections judicially and statutorily afforded to them to receive a generally available public benefit.

Here, the Church and Dayspring clearly qualify for all three available Title VII exemptions from the State's Sex Rules. The judicially recognized ministerial exception applies here because both Church and Dayspring staff perform religious functions by inculcating religious instruction to the students and because Dayspring is a church-related institution which has a substantial religious character. The statutory "religious institution" exemption applies because both the Church and Dayspring are, without question, religious institutions. Finally, the "religious educational" exception applies here because Dayspring is a religious school which is directly connected to the Church. Beyond blatantly violating its constitutional rights, as

discussed above, signing, affirming and complying with the PSA's State Sex Rules would effectively force the Church and Dayspring to surrender or waive the legal protections judicially and statutorily afforded to them in order to receive a generally available public benefit.

III. Conclusion

The CDSS has presented a draconian Hobson's choice to the Church in the form of ultimatum – either completely surrender its sincerely religious belief and practices regarding human sexuality by unconditionally agreeing to complying with the new PSA's State Sex Rules in order to continue receiving generally available funds to feed needy children, or maintain the Church's deeply and sincerely held religious beliefs regarding human sexuality and forfeit state funding—as a penalty. Fortunately, the U.S. Constitution stands squarely is CDSS's way, protecting the Church from such naked tyranny. The Church cannot thusly be egregiously coerced by the state to compromise and sell its proverbial soul in order to continue to receive state funds to students in their community, including low-income children. California may not abuse sexual orientation and gender identity ideological orthodoxy as a cover discriminate against religious institutions.

Be advised that if this dispute is not promptly resolved with the result that CDSS continues to fund the Church and Dayspring in due course under CACFP, our clients have authorized us to file a federal civil rights lawsuit seeking declaratory and injunctive relief, attorney's fees and any other available legal remedies. Also, please immediately restore Dayspring's access to the CNIT's website. Thank you for your prompt attention to this matter and your professional courtesy and cooperation in this regard.

Sincerely,

Dean R. Broyles, Esq.
President & Chief Counsel
The National Center for Law & Policy

cc. Church of Compassion
Advocates for Faith & Freedom