



December 4, 2023

**BY ELECTRONIC SUBMISSION**

Department of Health and Human Services

**RE: Request for Public Comment Concerning Proposed Regulations Regarding Unaccompanied Children Program Foundational Rule, 88 Fed. Reg. 68908 (October 4, 2023), RIN 0970-AC93, Docket ID 2023-21168.**

Dear Sir or Madam:

The Ethics & Religious Liberty Commission (ERLC) of the Southern Baptist Convention (SBC) respectfully submits the following comments regarding our concerns with the proposed “Unaccompanied Children Program Foundational Rule.”

The ERLC is the public policy entity of the SBC, which has nearly 14 million members in over 50,000 churches in the United States. We are charged by the SBC with addressing ethical and moral concerns affecting issues such as the sanctity of human life, religious liberty, marriage and family, and human dignity.

In evaluating this proposed rule, the ERLC has an overarching desire to ensure that unaccompanied children are protected from exploitation and abuse, in keeping with ORR’s duties. In a resolution passed this summer at the Southern Baptist Convention’s annual meeting, messengers urged “our government to take swift and bold action to protect and prevent the exploitation of unaccompanied immigrant children arriving to the United States.”<sup>1</sup> In doing so, our churches and members affirmed that a key tenet of our faith includes caring for the vulnerable, including unaccompanied children who arrive at our borders.

To that end, this proposed rule does much good in establishing stronger standards to ensure that these vulnerable children are not exploited and receive proper care. This proposed rule helpfully codifies many standards and practices established in the *Flores* settlement, individualizes assessment in placements to prioritize the best interest of the child, improves standards for placements that will assist in preventing trafficking, and increases legal representation for these unaccompanied children.

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<sup>1</sup> “On Wisely Engaging Immigration.” SBC.net. Accessed November 29, 2023.  
<https://www.sbc.net/resource-library/resolutions/on-wisely-engaging-immigration/>



However, this rule goes beyond ensuring appropriate care is provided to unaccompanied children and contains components that will harm many people serving these children, violate conscience and religious liberty rights, and ultimately hurt the minors who have already experienced deep trauma.

**The use of federal funding to facilitate abortion-related travel and ensure access to abortion for unaccompanied children is in contradiction to existing appropriations provisions, undermines the intent of Congress when passing spending bills, and violates the consciences of ORR staffers and American taxpayers.**

In current appropriations text governing the administration of the Office of Refugee Resettlement (ORR), the Department of Health and Human Services (HHS) is prohibited, through the Hyde Amendment, from using federal funds to provide abortions. In fact, even this proposed regulation acknowledges that the Hyde Amendment is in effect, stating:

*ORR would continue to permit such access in a manner consistent with limitations on the use of Federal funds for abortions which are regularly included in HHS' annual appropriations, commonly referred to as the "Hyde Amendment." (114) Consistent with current policy, ORR will facilitate such access regardless of whether the Federal Government may pay for the abortion under the Hyde Amendment.*

Yet, ORR incorrectly bases their ability to fund abortion-related travel for these unaccompanied children by arguing that funding travel to obtain abortions is a separate issue from directly funding abortions. As the ERLC has advocated time and again, abortion-related travel is inherently included as a prohibited measure under the Hyde Amendment since doing so subsidizes the abortion industry with federal funding. There is no meaningful argument the ORR can make to separate abortion from abortion-related travel, and this type of argument has not proven successful in circumventing other federal appropriations restrictions.

Additionally, the inclusion of abortion and abortion-related travel is treated as a mechanism by which ORR can ensure "the interests of the unaccompanied child are considered in decisions and actions relating to their care and custody." However ORR has failed to acknowledge the burden this places on ORR staff members and foster care providers to determine what constitutes a legal action and what does not. The consciences of these staff members and foster care providers should not be needlessly implicated by requiring active participation in pro-abortion policies.

It seems likely the proposed abortion-related travel would take place without the presence or consent of legal guardians, a violation of many existing state laws. Such acts would only increase the involvement



of ORR staff and risk further harm to their consciences.

ORR claims the proposed rule ensures “the safety and well-being of unaccompanied children,” and yet their directives to fund abortion travel in no way accomplishes this goal. Instead, ORR completely disregards the “safety and well-being” of the preborn child and fails to give the child the same care and regard ORR clearly holds for the value of a child’s life outside the womb. ORR must be consistent and extend the same compassionate care for the preborn child in their custody.

**The proposed regulation seeks to fund and enable harmful “gender transitions” for unaccompanied children, further exploiting vulnerable children and violating fundamental parental rights.**

In the 2023 “Resolution On Opposing ‘Gender Transitions,’” Southern Baptists stated the necessity to “extend the love of Christ, who can save anyone who would call on His name, as well as compassionate care and tender mercy to those experiencing identity or body-related distress and/or are currently undergoing or have undergone ‘gender transition’ interventions.”<sup>2</sup> Later in the same resolution, Southern Baptists stated the reality that such transitions are not solely “spiritually destructive,” but also have a lasting negative impact on fertility and other bodily functions. Other long-term consequences of these procedures and prescriptions remain unknown.

ORR has stated in this proposed regulation:

*“...ORR must not prevent unaccompanied children in ORR care from accessing healthcare services, which **may include medical services requiring heightened ORR involvement**...and must make reasonable efforts to facilitate access to those services **if requested by the unaccompanied child**. This includes providing transport across state lines and associated ancillary services if necessary to access appropriate medical services....”*

However, ORR does not define, nor provide concrete examples of, what constitutes such “medical services requiring heightened ORR involvement.” Given the inclusion of authority for ORR to transport such minors “across state lines” and for such treatment to be “requested by the unaccompanied child,” it is clear the intent of this regulation is to circumvent state law to facilitate lasting and harmful “gender transition” medical and surgical interventions for already-vulnerable children.

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<sup>2</sup> “On Opposing “Gender Transitions.” SBC.net. Accessed November 29, 2023.  
<https://www.sbc.net/resource-library/resolutions/on-opposing-gender-transitions/>



In doing so, ORR will be once more violating the consciences of American taxpayers, ORR staff, and foster care providers who would be required to transport unaccompanied children for these life-altering, destructive purposes.

**The proposed regulation discriminates against religious ORR staff members, faith-based, foster care providers, and parents by forcing them to choose between their deeply held convictions and their desire to live out their faith by caring for some of the most vulnerable children in our society.**

In a proposed rule the ERLC submitted [comments](#) for exactly one week ago, HHS intends to implement a similar measure related to foster care, citing “safe and appropriate care” as a reason to discriminate against religious and faith-based foster care organizations. This same language is referred to in this proposed rule as cause to determine the placement of an unaccompanied child by accounting for their gender identity and LGBTQ self-identified status, seeking to once more discriminate against religious and faith-based providers. While individualized placements will generally improve care for unaccompanied children, there is no legitimate reason for a child’s self-identified LGBTQ status to be considered in that placement or weaponized against faith-based providers and individuals.

Southern Baptists have long prioritized a robust theology of support for vulnerable children outside of parental care, repeatedly stating in resolutions a desire to continue to participate in our nation’s foster care system. In 2022, Southern Baptists resolved “to continue and increase their efforts to serve and support ... foster-care and adoptive families, doing invaluable and often under-recognized work in the care of women and children at every stage of life.”<sup>3</sup>

Our deeply held religious conviction to serve and protect vulnerable children has led thousands of Southern Baptists to foster children, launch foster care organizations, and create ministries in their congregations to support the physical and financial needs of foster families. Additionally, congregations across the country have hosted training for foster families to ensure they are trauma-informed and have all the knowledge and resources they need to be “safe and appropriate” placements for children in crisis.

As Southern Baptists, it is these very beliefs that lead us to serve some of the most vulnerable members of our society and that make these families a “safe and proper” placement for these children in need.

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<sup>3</sup> “On Anticipation of a Historic Moment in the Pro-Life Movement.” SBC.net. Accessed November 27, 2023. <https://www.sbc.net/resource-library/resolutions/on-anticipation-of-a-historic-moment-in-the-pro-life-movement/>.



The ORR argues in this very proposed rule that part of the department's responsibility includes preventing the exploitation of minors. In fact, HHS is explicitly required under federal law to:

*“ensure, to the greatest extent practicable and consistent with section 292 of the Immigration and Nationality Act (8 U.S.C. 1362), that all unaccompanied alien children who are or have been in the custody of the Secretary or the Secretary of Homeland Security, and who are not described in subsection (a)(2)(A), have counsel to represent them in legal proceedings or matters and **protect them from mistreatment, exploitation, and trafficking.**”*

ORR will have greatly failed in and abdicated this responsibility to protect an unaccompanied child from “mistreatment, exploitation, and trafficking” if it denies placement for unaccompanied minor children through religious and faith-based organizations on the basis they are not able to provide “safe and appropriate care.” The deeply-held beliefs regarding a biblical sexual ethic HHS has sought to undermine by these proposed rules are what make such foster care providers best equipped to care for these children. By prohibiting these children from receiving the care they desperately need, ORR is not only failing to meet its responsibility to truly help these children, but is promoting an ideology that further exploits and harms them.

**The proposed rule does not offer sufficient guidance for how this proposed rule will intersect with religious liberty protections under current law.**

The ERLC applauds the ORR's protection of the religious liberty rights of the unaccompanied child. In the proposed rule, ORR states:

*“ORR believes the cultural, religious, and spiritual needs of unaccompanied children should be provided for while in ORR care...ORR would require that standard programs, whenever possible, provide access to religious services of an unaccompanied child's choice, celebrating culture-specific events and holidays, being culturally aware in daily activities as well as food menus, choice of clothing, and hygiene routines, and covering various cultures in educational services.”*

However, these protections do not similarly extend to include the religious liberty and conscience protections of care providers, ORR staff members, or other implicated parties under this proposed rule. Pertaining to the rights of care providers, ORR later states:



*“...with respect to the obligations of care provider facilities, ORR notes that it operates the Unaccompanied Child program in compliance with the requirements of the Religious Freedom Restoration Act and other applicable Federal conscience protections, as well as all other applicable Federal civil rights laws and applicable HHS regulations.”*

Noting that ORR operates the UC Program in compliance with the Religious Freedom Restoration Act (RFRA) is not synonymous with actually operating the program in compliance with the RFRA. This proposed guidance is woefully inadequate for protecting the religious liberty of ORR staff and the foster families with which an unaccompanied child may be placed, referring the rights of care providers to “applicable HHS regulations.” Given that other HHS regulations have infringed upon the rights of such providers, the precedent leads us to believe that this vague reference to RFRA is insufficient to ensure the religious liberty rights are adequately protected here.

The ERLC appreciates the work of the ORR in ensuring there are legal, safe pathways to help vulnerable children who arrive in our nation and are deserving of protection and care. However, the concerns we have raised indicate a failure of the ORR to properly care for unaccompanied children and protect the religious liberty and conscience protections of those serving them. As a result, we strongly encourage the ORR to reconsider and revise this proposed rule.

Thank you for the opportunity to comment.

Respectfully submitted,

Frederick Brent Leatherwood  
President  
Ethics & Religious Liberty Commission  
of the Southern Baptist Convention