

September 6, 2023

SENT VIA EMAIL AND U.S. MAIL: Mayor.RonNirenberg@sanantonio.gov

The Honorable Ron Nirenberg
Mayor
P.O. Box 839966
San Antonio, TX 78283

Re: "Baby Boxes" proposal

Dear Mayor Nirenberg and Council members:

I am writing on behalf of the FFRF Action Fund regarding concerns about a proposal to spend roughly \$438,000 to purchase "baby boxes." FFRF Action Fund is the legislative affiliate of the Freedom From Religion Foundation, a national nonprofit organization with more than 40,000 members across the country, including over 1,700 members and a local chapter in Texas. We work to protect the constitutional separation between state and church and the rights of America's growing population of nonbelievers.

It is our understanding that the San Antonio City Council (the Council) is considering devoting \$438,000 in its proposed budget for 2024 to installing 12 "baby boxes" at fire stations throughout the city.¹ We are informed that the city would be partnering with and purchasing these baby boxes from Safe Haven Baby Boxes (SHBB), an evangelical Christian organization. The organization preaches that "Christ will give you the path."² We are told that any time a baby box is installed, the local government and SHBB typically host a "Christian blessing ceremony." Further, we are informed that SHBB is connected to other overtly religious organizations, such as Right to Life. Furthermore, since being founded in 2016, this organization has had only a small number of "surrenders." Most of its focus is referring women to so-called deceptive "crisis pregnancy centers" and speaking against abortion rights at schools and universities, based on its religious perspective.

Additionally, the safe haven boxes are legally problematic.³ Is the infant being surrendered without coercion? Do birth parents realize they are terminating parental rights, and in some states could be liable to criminal prosecution? Children abandoned anonymously have no information on their origins or medical history, including drug use during the pregnancy.

¹ *San Antonio plans to take advantage of expanded Safe Haven law*, KSAT (Aug. 30, 2023), <https://www.ksat.com/news/local/2023/08/31/san-antonio-plans-to-take-advantage-of-expanded-safe-haven-law/>.

² Safe Haven Baby Boxes website ("About Us"), <https://shbb.org/about-us>.

³ *Drop box for babies: Conservatives promote a way to give up newborns anonymously*, NYT (Aug. 6, 2022) www.nytimes.com/2022/08/06/us/roe-safe-haven-laws-newborns.html.

We applaud the Council’s desire to take increased steps toward ensuring the health and safety of surrendered infants in San Antonio. However, it is constitutionally problematic and unnecessary for the Council to partner with and give funds to an evangelical religious organization in order to further this goal. And we also know that the best way to avoid the tragedy of abandoned newborns is to ensure planned parenthood, necessitating that women and other pregnant persons are able to decide for themselves whether or not to continue a pregnancy. The organization you propose to give nearly half a million in tax dollars to instead favors forcing individuals to give birth without their consent. This organization’s stance goes against the views of the majority of Texan voters, six in 10 who say they support abortion being “available in all or most cases” and only 11 percent favoring a total ban on abortion.⁴

We write to request that the Council refrain from purchasing from and thus funding SHBB and instead work with secular organizations and businesses in pursuit of bringing legal and safe infant surrender locations to San Antonio.

The government cannot subsidize religion or dispense special financial benefits to religious organizations or houses of worship. It is a fundamental principle of Establishment Clause jurisprudence that the government cannot favor religion. The Supreme Court has said, “The touchstone for our analysis is the principle that the ‘First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.’” *McCreary Cnty v. ACLU*, 545 U.S. 844, 860 (2005), (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15–16 (1947); *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985)).

The First Amendment prohibits “sponsorship, *financial support*, and active involvement of the sovereign in religious activity.” *Walz v. NY Tax Comm’n*, 397 U.S. 664, 668 (1970) (emphasis added); *see also Mitchell v. Helms*, 530 U.S. 793, 819 (2000); *Bowen v. Kendrick*, 487 U.S. 589, 621 (1988); *Roemer v. Bd. of Pub. Works*, 426 U.S. 736, 754–55 (1976). This means that the Council may not use public money to help fund an evangelical Christian organization that proselytizes as part of its mission. *See, e.g., Levitt v. Comm. for Pub. Educ. & Religious Liberty*, 412 U.S. 472, 480 (1973) (“[T]he State is constitutionally compelled to assure that the state-supported activity is not being used for religious indoctrination.”).

While in recent years government funding to religious groups for secular purposes through neutral grant programs has been upheld, it is our understanding that this funding is coming directly from the City’s budget at the request of a council member. It is also our understanding that no other organizations were considered to provide the same services. In *Wirtz v. City of S. Bend*, a federal court struck down a city’s donation of land to a religious school in exchange for public use of athletic facilities that the school planned to build on the land. 813 F.Supp.2d 1051 (N.D. Ind., 2011). The court explained that “[g]overnmental programs or actions that provide special benefits to specific religious entities are impermissible... [E]ither the state’s payments must reach religious institutions only indirectly through programs of purely private choice or religious institutions must be getting nothing more than [...] secular governmental services or

⁴ Poll: One year after SB 8, Texans express strong support for abortion rights, NPR, <https://www.npr.org/2022/09/01/1120472842/poll-one-year-after-sb-8-texans-express-strong-support-for-abortion-rights#:~:text=In%20a%20new%20survey%2C%20six,a%20total%20ban%20on%20abortion.>

supplies on the same terms and conditions as anyone else as part of a neutral program.” *Id.* at 1059 (internal citations omitted).

Further, the Council represents a diverse community that includes both nonreligious and minority religious citizens. Spending nearly half a million dollars on purchases that directly fund an evangelical Christian organization sends the message to all nonreligious and non-Christian citizens that they are outsiders and disfavored members of their community. This needlessly excludes those who are among the 37 percent of Americans who are non-Christians, including the nearly one in three adult Americans (29 percent) who are religiously unaffiliated.⁵

In order to adhere to the principle of separation between state and church, we strongly urge the Council to refrain from partnering with SHBB and any other religious organizations in the future. Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Samantha F. Lawrence". The signature is written in black ink and is positioned above the typed name.

Samantha F. Lawrence
Anne Nicol Gaylor Legal Fellow
Freedom From Religion Foundation Action Fund

⁵ Gregory A. Smith, *About Three-in-Ten U.S. Adults Are Now Religiously Unaffiliated*, Pew Research Center (Dec. 14, 2021), www.pewforum.org/2021/12/14/about-three-in-ten-u-s-adults-are-now-religiously-unaffiliated/.