25-0678-cv

United States Court of Appeals

for the

Second Circuit

BRIAN WUOTI, KAITLYN WUOTI, MICHAEL GANTT, REBECCA GANTT,

Plaintiffs-Appellants,

– v. –

CHRISTOPHER WINTERS, in his official capacity as Commissioner of Vermont Department of Children and Families, ARYKA RADKE, in her official capacity as Deputy Commissioner of the Family Services Division, STACEY EDMUNDS, in her official capactiy as Director of Residential Licensing & Special Investigations,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT (BURLINGTON)

BRIEF OF *AMICI CURIAE* THE CONSCIENCE PROJECT AND CURRENT AND PROSPECTIVE FOSTER AND ADOPTIVE PARENTS IN SUPPORT OF PLAINTIFFS-APPELLANTS

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INTEREST OF *AMICI CURIAE* [1]

THE CONSCIENCE PROJECT advances freedom of conscience and the right to practice one's faith free from interference by the government through public education that includes insightful commentary and legal analysis as well as in filing amicus briefs in key religious freedom and free speech cases.

***AMICI* PROSPECTIVE AND CURRENT FOSTER AND ADOPTIVE PARENTS**, listed and described below, attest to the crucial role of faith in their decision to welcome children in need into their homes and in strengthening them through difficult times.

SUMMARY OF ARGUMENT

There is a foster care and adoption crisis in America. In response, state policies should focus on promoting and encouraging competent prospective parents to open the doors of their homes to children in need. Instead, Vermont has chosen to categorically exclude prospective foster and adoptive parents based on sincerely held religious beliefs. Such discrimination is particularly egregious given that among some of the most dedicated foster and adoptive parents are people of faith.

[1] *Amici* state that no counsel for a party authored this brief in whole or in part and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief. All statements made by *amici* foster and adoptive parents are on file with counsel for *amici curiae*.

Religious belief inspires many of them to foster and adopt and also helps address parenting challenges. Vermont rejects these families using ideologically driven hypotheticals. To exclude families of faith like appellant parents from fostering or adoption adds to the injury already suffered by needy children and is odious to the guarantees of our Constitution.

ARGUMENT

I. *Amici* Prospective and Current Foster and Adoptive Parents are Committed to their Christian Faith and to Loving Children in Need

Decenda and Frank Cram were "blindsided" when Vermont state officials denied their application to become foster parents because of the Crams' "belief system."[2] The couple, both devout Christians, hoped to — in Frank's words — offer needy children "a home, unconditional love, understanding … the whole nine yards." They wouldn't bend to ideological intolerance, so their Thetford, Vermont home remains empty.

The Crams have been married for about fifteen years. Frank recently retired from working at a local homeless shelter and food bank, and Decenda just began a job as a bank teller. Decenda has four adult children from a prior marriage, which

[2] A copy of the June 22, 2021, letter from officials with the State of Vermont Department for Children and Families (DCF), Family Services Division to the Crams is on file with counsel.

ended because of domestic abuse. Although she and Frank do not have any children of their own, Decenda says Frank has been a very supportive and loving stepfather.

Decenda was born into an abusive and neglectful family. She entered foster care when she was six years old. Her first foster parents were devout Christians and eventually adopted Decenda. "I think ever since then," she says, "I just thought someday I wanted to give back. If things would work out, I wanted to give a home, a safe place to a child, whether it be a foster child or possibly even adopt somebody if it was a really good match. But I definitely wanted to return the favor in some way."

Frank says Decenda has "one big heart." When Decenda proposed the couple pursue fostering, Frank didn't hesitate. "What she went through and stuff like that, and how strong she is and how beautifully she raised her children to be totally independent," he says. Frank also credits Christian neighbors for helping him turn around his own life. "If it wasn't for a Christian family where I was in my life back when I was out in Arizona, I probably would've been getting in more and more trouble and wouldn't know where I would've been," he adds.

In October of 2020 the Crams applied to be foster parents. Decenda recalls that "we made it clear that we were Christians, and we actually asked if that was

going to pose a problem with foster parenting. And we were reassured by a higher up in DCF: 'We don't discriminate against anyone for any reason.'"

Although the Crams had not completed the licensing process, Decenda and Frank were called to take in a pair of sibling girls, ages fourteen and nine, in early December of 2020. Decenda recalls they had less than two hours to get everything ready to welcome their "new daughters" home. "They came just with what they were wearing. They had nothing," says Decenda. Fortunately, Decenda had befriended the owner of a nearby thrift store that was still open, and the girls were able to get a few outfits to wear to school.

The girls stayed with the Crams for a month and a half before one of the girls' relatives assumed custody. We "worked out very well as a team in taking care of them," says Frank. Decenda agrees, saying, "Frank and I worked beautifully as a parenting team." Their initial DCF worker and the relative that the girls moved in with when they left us "all commended us for doing such a good job with the girls."

Given their success caring for the two sisters, the Crams thought they would be licensed as foster parents. They were surprised, however, when the licensing process turned hostile. Decenda recalls a different official at DCF telling her during a phone interview that "Vermont has recently taken a stance." This "stance" is that no foster families can be considered unless they are willing to fully support

and embrace the LGBTQ community. That official continued, saying, "So you mentioned that when I talked to you before, you honestly told me that you didn't think you'd be the best match for an LGBTQ child." Decenda responded, "Right. But I also knew there were lots of families in Vermont who would be," adding that she knew they tried to match children to homes where they and the parents would thrive.

Decenda also recalled that during that interview being asked how she would react "if you had a two-year-old foster child that you then adopted, and then at the age of twelve, she kissed her girlfriend in front of you?" Decenda responded, "I didn't want my twelve-year-old daughter kissing her boyfriend in front of me." And then she added, "I don't know. We would just deal with it as it comes. I still love the child. We'd be invested enough, and that we're not going to disown a child that we adopted and had lived with us for ten years. I mean, that's our child."

Despite the clear desire and ability to provide a safe and loving home for children in need, the Crams were denied a license to foster. According to the denial letter sent to the Crams in June of 2021 by Vermont's Department for Children and Families, the Crams' "fundamental belief" of "God's plan for all of us," would "not meet the emotional or developmental needs of children." The letter also asserted that "if children in their home are raised with the same beliefs it could perpetuate further discrimination of the LGBTQ community." The department

concluded the Crams could "not demonstrate an ability to provide a supportive and affirming home for foster children and/or youth and therefore do not meet the expectations of licensed foster parents in Vermont."

"I think first it was shock. It felt like I'd lost a child," laments Decenda regarding her reaction to the rejection by the state. "It really, it broke my heart," Frank adds. "It's like, here we are. We're willing to give our home and our time and effort to help these children."

The Crams say they would be willing to foster "in an instant" if given the opportunity. They both are committed to "loving the child for who that person is." Frank says, "We want them to grow and have the opportunities that we were given by God's grace. God has helped me through all my troubles and stuff like that. That's why I feel I'm ready to foster again and try. And my wife who has been a foster child has the biggest heart of gold you could ever see, and we would just give nothing but unconditional love to these children and help them and guide them through all the tough times that are going on."

When asked what they would want the panel to consider, Frank says, "I'd ask the judges to really look inside their hearts and look at their childhoods and backgrounds and their upbringing to where they're at. If we could get more and more families that care, we would have less problems on the street." Decenda has an even more pointed concern: "I was a foster child with a Christian or Christian

family, that really has added a lot of support to my life…. Why are you ousting out a whole population of families who could help?"

The Crams are still reeling from the disappointment of having been denied the chance to foster. But they haven't lost hope. As Frank says, "all things can work out by God's grace."

Nancy Harmon knows how important a safe and loving home is. Having herself grown up in an abusive home, she fled to foster care as a teenager. Nancy grew up in Le Center, Minnesota, where she and her husband Jay met when she was just a teen. Married now for 34 years, the Harmons still live in Minnesota. They have four biological children.

Nancy grew up in what she calls a dysfunctional home. "Both my parents were alcoholics. And my mom was emotionally and verbally abusive, and also mentally ill." Nancy put herself into foster care at the age of 13: She lived with her English teacher for a while before moving to live with her father. "I always say that my English teacher who fostered me saved my life. And I always said, 'Someday I'm going to be like her,' and that's one of the reasons why we chose to do foster care."

Although her father wasn't abusive, he was not "present" in Nancy's life. "Like most kids that come from dysfunctional families, I was looking for love," she remarks. Nancy and Jay began dating when Nancy was 15 and shortly

thereafter the two were expecting a child. They married young — Nancy was only 17 — and have been together ever since. Together, the couple have three biological sons and a daughter.

After their second son was born, the Harmons began to foster children. "We got our first call to foster my niece, my brother's daughter. And then another call to foster my sister's grandkids." Over the past 25 years, the Harmons have fostered around 50 children.

Nancy's commitment to fostering has been nourished by her Christian faith. "When I came to faith in Christ, I wanted to give back," she says. "There are so many other kids, teenagers that have gone through what I've gone through that are looking for love and that need a healthy family, they're out there. How can we make a difference in those kids' lives?"

The Harmons are careful to invite their foster children to join them in church activities, not to impose it on them. "It's not something we make them do," says Nancy. "I feel like modeling our lifestyle speaks volumes and who we are as people speaks volumes." One of the biblical verses she quotes is Matthew 25:40: "Truly I tell you, whatever you did for one of the least of these brothers and sisters of mine, you did for me.'" And so, she explains, "ultimately, as we serve these kids in our hearts, we just feel like that's the way that we serve God."

In December 2021, three sisters, aged 9,10, and 11, moved into the Harmons' home as foster children. As soon as she arrived and started unpacking her clothes, Nancy recalls that the 11-year-old girl announced: "My pronouns are they/them. I'm bisexual, emo, gothic, pagan, witch." And she then looked at Nancy and asked, "Will you adopt me?"

Nancy recalls that she and her biological daughter, aged 14 at the time, looked at each other with wide eyes. “We just said, 'Wow.' We didn't really know how to react to that. And we just continued unpacking her clothes with her.”

It's important to note that the three sisters suffered abuse at home prior to coming to the Harmons and were not given any education during the COVID-19 pandemic. Nancy recalls that one of the biggest challenges in fostering the girls was that “they had lived in a home where they felt that they were not loved, and they would go to a place in their mind to cope .... We had to help them discern what is real and what is fictional. And so, we met with a lot of mental health professionals, we still do today, in helping them walk through that.”

The county hired an adoption agency to facilitate the adoption of the three sisters, and the Harmons were contacted to see if they were willing to adopt them. “At first, we just weren't sure because there were so many needs,” says Nancy. “The minimum number of appointments I take the girls to is 36 a month.” Nancy and Jay weren’t sure they could do it without financial support from the

government. They prayed about it, agreed they were willing to adopt the sisters, and informed the county.

A few weeks later, Nancy opened an email accidentally sent to her from the adoption agency to the county. It asked when the Harmons would be told they were not the "best option to adopt the girls." Nancy was shocked. She immediately called the case manager from the county, who apologized for the inadvertently sent email. A county representative explained that after several meetings with the staff and the adoption agency they decided the Harmons were not the best option to adopt the girls — "because of our religious beliefs," says Nancy. She adds: "Not once did they ask us what our beliefs are. They made an assumption."

Over a Zoom call with the Harmons and their biological daughter, representatives of the county and the adoption agency were adamant that their main priority was "to protect the oldest daughter and her sexual identity." Nancy's biological daughter spoke up during the call and asked: "What about the younger two girls? We've bonded with these kids and you're more concerned about the oldest one's LGBTQ sexual identity? What about the bond we've created? What about splitting up siblings?" A representative from the county asked the Harmons if they would be able to foster the girls "until we can find an appropriate placement for them that will support the oldest girl's beliefs?"

Nancy was incredulous. “No, we can't,” she replied. “That doesn't make any sense. You want us to continue to foster, what, three, six, nine months, and that's OK, but it's not OK for us to keep them permanently? In these months, what's going to happen with our family? We're going to become even closer, bond even more with them, and then you're going to take them from our home?” Nancy and Jay felt they had no alternative but to give the county notice that they would no longer foster the girls. “We were devastated,” says Nancy.

When the eldest girl found out that the Harmons could not adopt them, she was also devastated. “She was just sobbing. And she said to me, ‘I'm so sorry. It's all my fault,’” recalls Nancy. The child then shared that once, when she was angry with Nancy, she described the Harmons’ faith in a “negative way” with a caseworker for the county. The child described this as “a huge mistake.”

A few weeks later, the Harmons were told that the county had decided to separate the girls, sending the eldest sister to live “in a home with somebody that's going to support her beliefs.” Noting that the Harmons have “bonded with the other two girls,” the county asked whether they would be willing to adopt the two girls.

During all this, Nancy and Jay met with the girls’ therapist. He recommended that it was in the best interest that the girls stayed together, that they should not be separated — and the county changed its position, instead

recommending the Harmons adopt all three girls. In the midst of this change, a representative from the county contacted Nancy and asked her: "Has anybody ever asked you what you believe and how you would raise her with her beliefs?" Nancy replied that no one had ever asked. In other words, the earlier decision to remove the oldest girl on the basis of the Harmons' religious beliefs was taken without any knowledge of those beliefs, other than some angry comments, later retracted, made by the oldest girl.

In the fall of 2023, the county did an about-face, approving the adoption of the girls by the Harmons. When Nancy told the girls, "They were all excited. They all had smiles on their faces. They were jumping up and down." And as for the eldest, Nancy says that once the decision was made "all of the negative behaviors left, the anxiety left. Her mental health case manager is thinking about just closing her case, that she doesn't need it anymore." Even her friends have remarked, "Oh, she's had a glow-up." All three were formally adopted in December of 2023.

During the period of fostering, Nancy reached out to the girls' biological grandmother. She lives in a different state and is someone whom they spoke about often. Although the grandmother is unable to care for them personally, the Harmons have been able to strengthen her ties with the girls. Their own biological daughter has also formed a strong bond with her, having no living grandparents of her own.

When Nancy was asked what the court should know when considering a case where a prospective foster parent was denied the chance to foster based on religious beliefs, she responded: "I would ask a question. Do you really know the children and their needs? Do you know their stories? Have you walked their paths? Do you know why they are the way that they are?" She worries that the authorities in the Bates case have been guided by the ideology associated with pronouns and gender identity. As she puts it: "There's way more to these kids than that. To not allow someone to adopt someone on the basis of a pronoun is doing the children an injustice."

Rebecca (Becky) W. hoped to continue fostering children when she moved to Vermont five years ago. She and her former husband fostered approximately twenty children during a span of fifteen years when they lived in the state of New York. As Becky explains, "I decided that I would like to do foster care again because I just have such a heart for children. I love children, and I just really wanted to do it."

Now living in East Arlington, Vermont, Becky is well aware of the critical shortage of qualified foster families. Becky reached out to local officials, submitted the requisite paperwork to become a foster parent, and completed online training. The first contacts she had with officials were positive, and Becky's certification seemed all but certain. During that time, even though she was not certified, Becky

responded to an emergency request to accompany a young girl who had been hospitalized for mental health reasons.

Things changed, however, at her last home inspection. Becky recalls that a different state official arrived. He looked around Becky's apartment and remarked, "You've got your smoke detectors, carbon monoxide detectors, fire extinguishers; you have enough space…. Everything looks safe here." As the pair struck up conversation, Becky explained her background, having been raised a Christian and still committed to her Christian faith. The home inspector's countenance changed. He started asking curious questions and posing hypotheticals. "Okay, so what if you get a child or a teenager here who wants to display a gay pride flag in his or her room? How do you feel about that?" Becky recalls him asking. Becky responded, "They want to hang a gay pride flag. That's fine."

The inspector continued to question Becky. She recalls him asking: "What if they wanted to be called a name other than the one they were given?" She answered casually, "Whatever. I'm called Becky. That's not my given name." Becky drew the line, however, when the inspector asked about using pronouns that don't correspond to biological sex, explaining "it's just not true." She adds that while she considered agreeing to it, "I didn't feel the Lord leading me to do that, so I didn't pursue it."

While Becky was uncomfortable during the inspection because she could "see where things were going," she was "still surprised when he contacted me and said that I'd been denied." Curiously, the inspector suggested that Becky withdraw her application instead of receiving a formal denial, adding "It's the same amount of paperwork either way for me." Becky later followed up with the inspector, asking, "Well, what if I just get licensed to just take zero to two-year olds? What if I just take babies and toddlers?" The inspector was unwilling to budge. "So at the moment," recalls Becky, "I was just like, 'All right, okay, I guess I'll just withdraw it then.'"

"I am not a perfect person or a perfect parent," says Becky, "but I know that I can provide a loving, nurturing home for a child. So I was mad that I was denied that opportunity because I know that I could positively impact some life."

Becky's Christian faith plays a strong role in her desire to be a foster parent. She also is convinced that she was discriminated against because of her faith, saying, "That's not really something that I have felt before. I mean, I think we've all maybe had friends or even strangers pick on us because of our faith, but I don't feel like I've ever been discriminated against before because of it. So that was the first for me, and I was like, 'Wow, okay, this is Vermont.'"

Becky hopes the panel will consider that "there is a need for loving parents in the state of Vermont to become foster parents, and denying that privilege to

someone based on their faith is a travesty to both the people who are wanting to care for a child and the children's lives that they could be positively affecting."

If Vermont changed its policy of categorically excluding people of faith unwilling to agree to ideological demands, Becky would "definitely apply to foster again." She adds that she is also considering moving to a state "I think is a little more Christian friendly" and if she moves, will look into doing foster care there.

II. The Foster Care and Adoption Crisis in America Demands an "All-Hands-on-Deck" Approach.

Close to 400,000 children and youth with a median age of seven are living in foster care in the United States today and are waiting for a "forever home."[3] Almost a tenth of children in foster care in our country live in either group home or institutional placements.[4] According to the American Enterprise Institute, states and counties "are rapidly closing residential treatment and congregate care capacity while struggling to recruit and retain foster homes capable of serving higher-needs foster children." As a result, foster children across the country are

[3] U.S. Department of Health and Human Services, Administration for Children and Families (The "AFCARS Report"), https://www.acf.hhs.gov/sites/default/files/documents/cb/afcars-report-29.pdf.

[4] Claire Withycombe, *Fact check: Are Fewer Children in Foster Care Now Than When Oregon Gov. Kate Brown Took Office?*, Salem Statesman Journal, Feb. 17, 2022, https://www.statesmanjournal.com/story/news/politics/2022/02/17/oregon-governor-kate-brown-fact-check-state-address-foster-kids/6758379001/.

"increasingly being housed in a range of temporary settings, including county and state offices, hospitals, hotels, and shelters."[5]

The Christian Alliance for Orphans, a global network of churches seeking to grow and guide effective response for foster care and adoption, catalogues up-to-date information on the state of foster care in America including foster care demographics and characteristics as well as the impact of foster care on children.[6] The group notes that "Every community is unique, and the reasons for family separation are complex. It's important not to underestimate the emotional trauma and enduring developmental harm that neglect can cause."[7] According to a 2019 study by child psychologists, placement instability can "increase risk of behavior problems, contributing to additional moves, limiting the child's ability to form a secure attachment with an adult, and decreasing chances of both reunification and adoption. In addition, placement instability potentially increases the risk of poor

[5] Sean Hughes, *Why Foster Children are Sleeping in Offices and What We Can Do About It*, American Enterprise Institute Report, Apr. 2023, https://www.aei.org/wp-content/uploads/2023/04/Why-Foster-Children-Are-Sleeping-in-Offices-and-What-We-Can-Do-About-It.pdf?x91208.

[6] Christian Alliance for Orphans, U.S. Foster Care Statistics, https://cafo.org/foster-care-statistics/ (last updated Aug. 15, 2024).

[7] Id.

executive functioning and academic achievement, poor physical health and incarceration in adulthood."[8]

Vermont is not immune from the crisis afflicting foster care in America. Despite being a state with a small population, a recent report indicates there were 907 children in state custody in Vermont on September 30, 2024.[9] Of those children, 449 were under the age of nine.[10] The report also notes that "the number of licensed foster homes (including kinship care) has declined since 2020 and has fallen below the number of children in custody for the past three years, with 795 foster homes."[11] One state official remarked that "there are some cases where children are placed temporarily in the police department or the emergency room until they can find an appropriate place."[12] Well aware of the lack of adequate

[8] Sonya J. Leathers, Jill E. Spielfogel, Jennifer Geiger, James Barnett, Beth L. Vande Voort, *Placement Disruption in Foster Care: Children's Behavior, Foster Parent Support, and Parenting Experiences*, Child Abuse Neglect, May 2019, https://pubmed.ncbi.nlm.nih.gov/30889437/.

[9] Building Bright Futures, *The State of Vermont's Children: 2024 Year in Review* at 15 (2024 Year in Review) (2025) at 11, https://www.buildingbrightfutures.org/wp-content/uploads/2025/03/The-State-of-Vermonts-Children-2024-Year-in-Review.pdf.

[10] Id.

[11] Id. at 12.

[12] Melissa Cooney, *Vermont in need of more foster parents*, WCAX, May 30, 2023, https://perma.cc/S4BR-NJUX.

foster homes in the state, Vermont's Department of Children and Family website admits: "We always need more foster families in Vermont."[13]

In its 2024 Annual Report, the Vermont Office of Child, Youth and Family Advocate, an office within the Vermont state government that operates independent of the DCF and the Agency of Human Services, made several crucial findings.[14] Significantly, the authors note that "family-like environments provide normalcy to young people." When a child who has come into state custody and kin placements are not available, the authors explain, "the next best option is often a non-kin family foster home."[15] Due, in part, to the decline in available foster homes, the state has relied on residential programs and the practice of "staffing" — housing a foster child in a hotel, sheriff's office or other unlicensed location — to the detriment of Vermont youth.[16]

Naomi Shaefer Riley, an expert on child welfare and foster care, argues that agencies and family courts are "much more concerned with adults' needs" than

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[13] Vermont Agency of Human Services, Department for Children and Families, https://dcf.vermont.gov/fsd/foster.

[14] 2024 Annual Report, Vermont Office of Child, Youth and Family Advocate, https://childadvocate.vermont.gov/sites/ocyf/files/documents/OCYFA%202024%20Annual%20Report%20FINAL.pdf.

[15] Id. at 13.

[16] Id. at 13-16.

with those of children, adding that "under such circumstances, shouldn't the foster care system take an all-hands-on-deck approach?"[17]

Amici Decenda Cram can't understand why, in light of the need for more foster homes in Vermont, the state persists in "ousting out a whole population of families who could help."

Amici Nancy Harmon agrees, adding that "to not allow someone to adopt someone because they're not going to refer to them as a pronoun, I just feel like it's doing the children an injustice."

Amici Becky W. was surprised that her refusal to use incorrect pronouns would disqualify her from fostering, knowing that Vermont is "so desperately looking for caregivers," especially in the area where she resides.

III. Many Couples Have Been Inspired to Become Foster or Adoptive Parents by Their Religious Faith.

Faith is a powerful motivation for people to serve as foster or adoptive parents. Research suggests that Christians are three times more likely to consider fostering than other Americans and twice as likely to adopt.[18] According to

[17] Naomi Shaefer Riley, *Fixing Our Child Welfare System to Help America's Most Vulnerable Kids*, Independent Women's Forum Policy Report, Dec. 2022, https://www.aei.org/wp-content/uploads/2022/12/policy-focus-fixing-our-child-welfare-system-to-help-americas-most-vulnerable-kids.pdf?x91208.

[18] The Barna Group, *Five Things You Need to Know about Adoption*, Nov, 4, 2013, https://www.barna.com/research/5-things-you-need-to-know-about-adoption/.

researchers at the University of Tennessee, foster parents "who became aware [of the need for foster parents] through churches or other religious organizations fostered for more years than did the average respondent."

Faith also helps many families navigate the challenges of foster care. Foster parents report that "faith/church support" was one of the top three factors in successful fostering. And where foster families are connected with religious organizations, they foster an average of 2.6 years longer than those who do not.[19]

A growing number of churches and faith-inspired institutions have "revolutionized the way foster and adoptive parents are recruited," writes Shaefer Riley. [20] For example, "pastors have told their congregants that there are children in their ZIP code who need homes tonight." Many of these institutions have also focused on training foster parents by providing additional education for foster parents**,** including extra classes on how to handle children who have experienced severe trauma as well as creating a support system for foster families by enlisting

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[19] Mary Ellen Cox, Cheryl Buehler, and John G. Orme, *Recruitment and Foster Family Service*, Journal of Sociology & Social Welfare, 29: 3, 2002, https://doi.org/10.15453/0191-5096.2832.

[20] Naomi Schaefer Riley, *How Churches Can Make a Difference in the Lives of Children Who Need Foster Care*, Deseret News, Oct. 31, 2023, https://www.deseret.com/2023/10/31/23938647/foster-care-churches-training-black-families-gallup-poll.

other families to "help with respite care, deliver meals or simply pray for families doing foster care."

Amici Decenda Cram credits the Christian family that first fostered her and later adopted her for giving her the love and security that her biological parents failed to offer. Her husband Frank similarly credits a Christian family that mentored him as a young man, remarking that "I probably would've been getting in more and more trouble and wouldn't know where I would've been." Both hope to "return the favor" to children in need.

Amici Nancy Harmon, with over 25 years as a foster and adoptive mother, notes that "ultimately, as we serve these kids in our hearts, we just feel like that's the way that we serve God."

Amici Becky W., with over 15 yeas of fostering experience, says that her Christian faith plays a "strong part in wanting to be a foster parent" *and* in her refusal to speak or act inconsistent with her beliefs.

IV. Participation in Child Welfare Services Should Not be Governed by Specious Hypotheticals that Violate Religious Belief or Compelled Speech.

Vermont's demand for "assurances" is nothing other than an ideological snare set to identify and exclude anyone—especially those with religious convictions—unwilling to embrace gender ideology and is odious to the

Constitution's guarantees of religious exercise and free speech. We are dealing, therefore, with two separate violations of the First Amendment.

A. Violation of Religious Freedom

Vermont is not alone in targeting child welfare services like foster care and adoption with specious demands for ideological conformity. The state of Oregon similarly denied a Christian mother the opportunity to foster and adopt any child—no matter their age or beliefs—because she would not violate her religious beliefs to promote Oregon's radical gender ideology. The Ninth Circuit Court of Appeals is currently reviewing the matter.[21]

Let's also not forget that the City of Philadelphia was rebuked recently by the Supreme Court when it insisted that Catholic Social Services' foster care placement agency abandon church teaching on the nature of marriage by agreeing to certifying same-sex couples.[22] The Court's unanimous opinion was written by Chief Justice Roberts. Roberts traced the longstanding tradition of the Catholic Church in serving underprivileged children in the U.S., as well as the Supreme Court's prior cases dealing with government burdens on the free exercise of

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[21] *Bates v. Pakseresht*, 2023 U.S. Dist. LEXIS 203533 (D. Or. 2023), *appeal docketed*, No. 23-4169 (9th Cir. Dec. 13, 2023).

[22] *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021).

religion. Since the city had a system of individual exemptions available at the sole discretion of the city's commissioner of the Department of Health and Human Services, its actions were subject to the "most rigorous of scrutiny."[23] This meant that the Court must concern itself not with whether the city has "a compelling interest in enforcing its non-discrimination policies generally, but with whether it had such an interest in denying an exception to CSS." Thus narrowed, the city's asserted interests were "insufficient."[24]

On April 30, 2024, the Biden administration's Department of Health and Human Services (HHS) finalized a rule demanding that states must ensure LGBTQI+ children in foster care have access to providers that have particular training and are willing to provide particular protections for LGBTQI+ children. This final rule refers to such providers as "Designated Placements."[25] Unlike Vermont, the Biden rule does not require *all* families to agree to tailor their care, recognizing that doing so "may not be relevant or necessary for non-LGBTQI+ children."[26] The rule also recognizes that families of faith play a "vital role" in our

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[23] Id. at 1181.

[24] Id.

[25] *Designated Placement Requirements Under Titles IV-E and IV-B for LGBTQI+ Children*, 89 Fed. Reg. 34,818 (April 30, 2024)(codified at 45 CFR Part 1355), https://www.govinfo.gov/content/pkg/FR-2024-04-30/pdf/2024-08982.pdf.

[26] Id. at 34,819, 34,840.

nation's child welfare system[27] and that a given family's "views about sex and gender" can't be disqualifying and do not suggest the family could not be "safe and appropriate."[28] Appellant families have cited the Biden rule as a "less-restrictive" alternative than Vermont's categorical policy that excludes religious families with traditional viewpoints.[29]

In March of 2025, a district court in Texas granted Texas Attorney General Ken Paxton's request for an order staying the rule.[30] The court found that the rule violates the Administrative Procedure Act by defining a new category of foster children—"LGBTQI+ children"—which it defines as "children with lesbian, gay, bisexual, transgender, queer, or questioning, and intersex status or identity" and then requiring that states "affirm and promote these children's 'LGBTQI+ status or identity' in novel ways that potentially conflict with state law—or else lose federal

[27] Id. at 34,840.

[28] Id. at 34,826-27, 34-840.

[29] Appellants Opening Brief at 46, 52.

[30] *State of Texas v. United States Department of Health and Human Services*, Case No. 6:24-cv-348-JDK (E.D. Tex. 2025), https://www.texasattorneygeneral.gov/sites/default/files/images/press/Foster%20Care%20Memo%20and%20Order.pdf.

funding for their foster care systems."[31] The Trump administration has not appealed this order.[32]

The assumption that children will be harmed if raised by religious Americans with traditional beliefs on the nature of human sexual identity is a deplorable expression of religious bigotry. Such prejudicial stereotyping ignores the charitable ethic that drives many religious foster and adoptive parents. Additionally, research fails to suggest that foster children have worse outcomes when raised in traditional religious homes, but instead points to positive effects on the health of LGBTQ youth.[33]

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[31] Id.

[32] Unlike the prior administration, which weaponized the federal government to advance gender ideology, the Trump administration has reaffirmed the truth of biological reality. See Exec. Order No. 14168, 90 Fed. Reg. 8615 (Jan. 30, 2025) ("Defending Women from Gender Ideology and Extremism and Restoring Biological Truth to the Federal Government," pledging to "defend women's rights and freedom of conscience by using clear and accurate language ad policies that recognize women are biologically female, and men are biologically male."), https://www.govinfo.gov/content/pkg/FR-2025-01-30/pdf/2025-02090.pdf.

[33] Bryon Johnson, Stephen Cranney, Shaykh Mohammed, Amin Kholwadia, Abdullah bin Hamid Ali, Ahmed Soboh, Mark Regnerus, Fr. Paul Sullins, Eric Patterson, Thomas F. Farr and Catherine R. Pakaluk, *Religious Foster Care Plays a Vital Role for Our Most Vulnerable Children*, Deseret News, Jun. 18, 2021, https://www.deseret.com/opinion/2021/6/18/22540149/religious-foster-care-plays-a-vital-role-supreme-court-fulton-catholic-social-services.

Vermont, in justifying its exclusionary policies and practices, makes a brazenly bigoted claim: that Christians and other families of faith serving as foster or adoptive families will perpetuate discrimination against the LGBTQ community. Such baseless assertions should offend this court and must not be entertained.

B. Unconstitutional Compelled Speech

Vermont insists that appellant families follow its script. Compelled speech of this sort is in clear violation of the First Amendment's free speech guarantee.

In *303 Creative LLC v. Elenis*, the Supreme Court affirmed longstanding precedent against government-compelled speech.[34] Justice Neil Gorsuch, writing for the Court's majority, denounced the state of Colorado's attempt to use a broadly defined state anti-discrimination law to force a local businesswoman to create wedding websites for same-sex weddings against her religious belief in traditional marriage as between a man and a woman. "Laws along these lines have done much to secure the civil rights of all Americans," wrote Gorsuch.[35] "But in this particular case Colorado does not just seek to ensure the sale of goods and services on equal

[34] 143 U.S. 2298 (2023).

[35] Id. at 2307.

terms. It seeks to use the law to compel an individual to create speech she does not believe."[36]

Justice Gorsuch argued that "this Court's First Amendment precedents teach otherwise."[37] To illustrate his point, he listed a litany of cases including the Court's 1943 decision that West Virginia's attempt to force school children to salute the flag was unconstitutional,[38] a 1995 decision upholding the right of the organizers of Boston's St. Patrick's Day parade to exclude a group of gay, lesbian and bisexual individuals from their event,[39] and a 2000 opinion upholding the Boy Scouts' leadership restrictions for scoutmasters.[40]

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[36] Id. at 2308.

[37] Id. at 2313.

[38] Id. at 2311 ("[i]f there is any fixed star in our constitutional constellation, it is the principle that the government may not interfere with an uninhibited marketplace of ideas," citing *West Virginia Bd. of Ed.* v. *Barnette*, 319 U.S. 624, 642, 63 S. Ct. 1178, 87 L. Ed. 1628 (1943)).

[39] Id. at 2311 ("The veterans' choice of what to say (and not say) might have been unpopular, but they had a First Amendment right to present their message undiluted by views they did not share," citing *Hurley* v. *Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557, 115 S. Ct. 2338, 132 L. Ed. 2d 487 (1995)).

[40] Id. at 2310 ("The framers designed the Free Speech Clause of the First Amendment to protect the "freedom to think as you will and to speak as you think," citing *Boy Scouts of America* v. *Dale*, 530 U.S. 640, 660-61 (2000)).

As the Supreme Court has repeatedly confirmed, the Constitution's free speech guarantee isn't just a prohibition against censorship. It also prohibits the government from forcing anyone to speak against his will. This longstanding principle against compelled speech is particularly important for Americans, such as Appellants, who hold views on the nature of human sexuality that are rejected by newly fashionable ideologies.

CONCLUSION

For the sake of children hoping for a safe and loving home and in order to remedy Vermont's unconstitutional restrictions on foster care and adoption, *amici* respectfully request this Court to reverse the decision below.

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