

No. 19-123

---

---

IN THE  
**Supreme Court of the United States**

SHARONELL FULTON, *et al.*,

*Petitioners,*

*v.*

CITY OF PHILADELPHIA, *et al.*,

*Respondents.*

*On Petition for a Writ of Certiorari to  
the United States Court of Appeals  
for the Third Circuit*

---

---

**BRIEF OF AMICI CURIAE  
FAMILY EQUALITY AND PFLAG NATIONAL  
IN SUPPORT OF RESPONDENTS**

---

---

Katherine Keating  
*Counsel of Record*  
BRYAN CAVE LEIGHTON  
PAISNER LLP  
Three Embarcadero Center  
7th Floor  
San Francisco, California 94111  
415-675-3400  
katherine.keating@bclplaw.com

William J. Hibsher  
Elizabeth Goldberg  
Laith Hamdan  
Michael Neville  
BRYAN CAVE LEIGHTON  
PAISNER LLP  
1290 Avenue of the Americas  
New York, New York 10104  
212-541-2000  
wjhibsher@bclplaw.com  
elizabeth.goldberg@bclplaw.com  
laith.hamdan@bclplaw.com  
michael.neville@bclplaw.com

*Counsel for Amici Curiae  
Family Equality and PFLAG National  
(Additional Counsel on the Reverse)*

August 20, 2020

---

---

---

---

Shelbi D. Day  
Mary P. Rohmiller  
Denise E. Brogan-Kator  
FAMILY EQUALITY  
475 Park Avenue South, Suite 2100  
New York, New York 10016  
646-880-3005  
sday@familyequality.org  
mrohmillerr@familyequality.org  
dbrogan-kator@familyequality.org

---

---

## INTEREST OF AMICI CURIAE<sup>1</sup>

Amici curiae are not-for-profit organizations that work to promote the best interests of youth in the child welfare system by seeking equality in access to foster and adoption services for our country's diverse families, in particular those comprised of lesbian, gay, bisexual, transgender, or queer (LGBTQ) parents – including same-sex couples – and their children. This brief underscores the harm inflicted on children and families by sanctioning discrimination against same-sex couples seeking to become foster parents, as illustrated by the experiences of same-sex couples and LGBTQ adults who have fostered or adopted children, or tried to foster or adopt.

**Family Equality** (formerly Family Equality Council) is a national organization that connects, supports, and represents LGBTQ parents and their children. The organization is committed to changing attitudes and policies to ensure that all families are respected, loved, and celebrated. For over 40 years, Family Equality has been a community of parents, children, grandparents, and grandchildren, reaching across the country and raising voices toward fairness for all families. Family Equality spearheads the Every Child Deserves a Family Campaign, a national

---

<sup>1</sup> Written consent to the filing of this brief has been granted by all parties. No counsel for a party authored this brief, in whole or in part, and no person other than amici curiae, their members, and their counsel made any monetary contribution to fund the preparation or submission of this brief.

effort to end anti-LGBTQ discrimination in the child welfare system and promote the best interests of all children in the foster care and adoption system by increasing their access to loving and stable temporary and permanent homes. Family Equality submits this brief on behalf of all of the LGBTQ parents and same-sex couples with whom it has worked.

Founded in 1973, **PFLAG National (“PFLAG”)** is the first and largest organization for LGBTQ+ people, their parents and families, and allies. With over 400 chapters and nearly 250,000 members and supporters crossing multiple generations of families in major urban centers, small cities, and rural areas across America, PFLAG is committed to creating a world where diversity is celebrated and all people are respected, valued, and affirmed. As Co-Chair of the Every Child Deserves a Family Campaign, PFLAG is committed to ensuring that everyone who seeks or wishes to foster or adopt can do so without discrimination.

**TABLE OF CONTENTS**

	<b>Page</b>
INTEREST OF AMICI CURIAE.....	i
TABLE OF AUTHORITIES .....	v
SUMMARY OF ARGUMENT .....	1
ARGUMENT .....	4
I.    ALLOWING FOSTER CARE AGENCIES TO DISCRIMINATE AGAINST SAME-SEX COUPLES HARMS CHILDREN BY LIMITING THEIR OPPORTUNITIES TO BE PLACED WITH A LOVING FAMILY .....	4
A.    Discriminating Against Same-Sex Couples Harms Children by Deterring LGBTQ Adults from Serving as Foster Parents.....	7
B.    Discriminating Against Same-Sex Couples Harms Children by Preventing Would-Be Placements .....	11
C.    Discriminating Against Same-Sex Couples Harms Children By Delaying Placements and Permanency .....	17

II. WHEN DISCRIMINATION DOES NOT STAND IN THE WAY, SAME-SEX COUPLES PROVIDE SAFE AND LOVING HOMES FOR CHILDREN WHO DESPERATELY NEED THEM.....	25
III. LGBTQ FOSTER PARENTS HELP MEET THE DIVERSE AND UNIQUE NEEDS OF CHILDREN IN CARE.....	32
CONCLUSION.....	37

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>Cases</b>	
<i>Brown v. Bd. of Educ.</i> , 347 U.S. 483 (1954) .....	8
<i>Obergefell v. Hodges</i> , 135 S.Ct. 2584 (2015) .....	26
<i>Roberts v. U.S. Jaycees</i> , 468 U.S. 609 (1984) .....	8
<i>United States v. Windsor</i> , 570 U.S. 744 (2013) .....	8
<b>Other Authorities</b>	
<i>The Adoption and Foster Care Analysis and Reporting System Report</i> , U.S. DEPT. OF HEALTH & HUMAN SERVICES: CHILDREN’S BUREAU (Oct. 24, 2019) .....	4
Emily Wax-Thibodeaux, <i>‘We Are Just Destroying These Kids’: The Foster Children Growing Up Inside Detention Centers</i> , THE WASHINGTON POST (Dec. 30, 2019).....	4
<i>Expanding Resources For Waiting Children II: Eliminating Legal and Practice Barriers to Gay and Lesbian Adoption from Foster Care</i> , EVAN B. DONALDSON ADOPTION INSTITUTE (Sept. 2008).....	5

Michael E. Lamb, *Mothers, Fathers, Families, and Circumstances: Factors Affecting Children's Adjustment*, 16 APPLIED DEV. SCI. 98 (2012) ..... 26

Shoshana K. Goldberg & Kerith J. Conron, *How Many Same-Sex Couples in the U.S. Are Raising Children?*, THE WILLIAMS INSTITUTE: UCLA SCHOOL OF LAW (July 2018) ..... 5

Teresa Wiltz, *As Need Grows, States Try to Entice New Foster Parents*, THE PEW CHARITABLE TRUSTS (Mar. 1, 2019) ..... 4

## SUMMARY OF ARGUMENT

*[The boy we spent more than four years trying to adopt is now 15. He] has not been allowed to develop life skills, and has autism – we know his chances of adoption are low. It breaks our hearts to know that ... we could have provided him a loving, stable, financially secure home with opportunities and a support network to set him up for success. Instead, he is likely to age out of foster care without a family. Discrimination [because we are a same-sex couple] robbed him of a family to rely on.*

Christopher Matos-Rogers (Atlanta, Georgia)<sup>1</sup>

*The case that weighs most on my mind is the 9-year-old boy in Michigan we inquired about in 2014. His caseworker stated that they would not consider a same-sex couple as a placement for the child. At least once a year since then, I have checked ... and even today, [six] years later, he is still in foster care and listed as available for adoption. He never got the chance to meet us, but I hope he at least knows that there is a family out there who cares and wanted to adopt him.*

Valarie St. John (Detroit, Michigan)<sup>2</sup>

---

<sup>1</sup> Christopher Matos-Rogers Statement to Family Equality (July 28, 2020). All statements cited in this brief are on file with amicus Family Equality and the undersigned counsel.

<sup>2</sup> Valarie St. John Statement to Family Equality (Dec. 12 & 13, 2019).

Like many cities and states, the City of Philadelphia contracts with agencies to provide foster care services for children in the government's care. And, like many cities and states, it prohibits all such agencies from discriminating against potential parents based on race, religion, sexual orientation, and other characteristics unrelated to the ability to care for a child. These policies help ensure that children whom the government has removed from their homes have access to every family that is ready, willing, and able to care for them. In this case, Catholic Social Services ("CSS"), a government-contracted foster care agency in Philadelphia, is claiming a constitutional right to exclude families based on its religious standards. Specifically, it is unwilling to certify same-sex couples as meeting the state's standards for becoming foster parents.

CSS argues that its policy harms no one because not all agencies discriminate and same-sex couples willing to foster can find a different agency to license them. Whether there are other agencies available varies significantly depending on where you live. But even in parts of the country where there are multiple agencies, CSS is wrong: allowing *any* discrimination in the public child welfare system against same-sex couples who wish to become foster parents can delay, deter, or entirely prevent a qualified family from providing a temporary or permanent home to a child who desperately needs it. Forcing governments to allow discrimination against same-sex couples thus harms the children those governments are charged with protecting.

Amici Family Equality and PFLAG offer the perspectives of LGBTQ adults who have tried to open their homes to children who need them but were prevented, deterred, or delayed from doing so by discrimination.<sup>3</sup> They attest to the reality that agencies' discrimination against same-sex couples delays the availability of homes to children who need them, leaves children in the system even though there is a family available to care for them, keeps siblings apart even when there is a family willing to keep them together, and deters qualified parents from fostering. Amici also share positive experiences of children's placements in LGBTQ-parent families when discrimination does not stand in the way. On behalf of these parents, their children, and children who still need homes, Family Equality and PFLAG urge the Court not to reduce the family placement options for children in foster care by giving agencies a constitutional right to discriminate against same-sex couples.

---

<sup>3</sup> All of the stories in this brief are about children in the child welfare system. In contrast, the Brief of Amici Curiae Former Foster Children and Foster/Adoptive Parents and the Catholic Association Foundation filed on June 3, 2020, includes stories involving *private* adoptions which would not be impacted by this case.

## ARGUMENT

### I. ALLOWING FOSTER CARE AGENCIES TO DISCRIMINATE AGAINST SAME-SEX COUPLES HARMS CHILDREN BY LIMITING THEIR OPPORTUNITIES TO BE PLACED WITH A LOVING FAMILY

Hundreds of thousands of children enter the child welfare system in the United States every year, with more than 400,000 children currently in foster care.<sup>4</sup> Due to the severe shortage of available foster and adoptive homes, far too many children grow up in out-of-home placements such as group homes,<sup>5</sup> and

---

<sup>4</sup> See *The Adoption and Foster Care Analysis and Reporting System Report*, U.S. DEPT. OF HEALTH & HUMAN SERVICES: CHILDREN'S BUREAU (Oct. 24, 2019) ("AFCARS Report"), available at [https://www.acf.hhs.gov/sites/default/files/cb/afcars\\_report26.pdf](https://www.acf.hhs.gov/sites/default/files/cb/afcars_report26.pdf) (last visited July 27, 2020).

<sup>5</sup> See, e.g., Emily Wax-Thibodeaux, *We Are Just Destroying These Kids: The Foster Children Growing Up Inside Detention Centers*, THE WASHINGTON POST, (Dec. 30, 2019), available at [https://www.washingtonpost.com/national/we-are-just-destroying-these-kids-the-foster-children-growing-up-inside-detention-centers/2019/12/30/97f65f3a-eea2-11e9-9c6d-436a0df4f31d\\_tory.html](https://www.washingtonpost.com/national/we-are-just-destroying-these-kids-the-foster-children-growing-up-inside-detention-centers/2019/12/30/97f65f3a-eea2-11e9-9c6d-436a0df4f31d_tory.html) (last visited July 31, 2020) ("[F]oster care systems are now so overloaded that institutionalizing children is becoming more common, and access to critical services ... is limited."); Teresa Wiltz, *As Need Grows, States Try to Entice New Foster Parents*, THE PEW CHARITABLE TRUSTS, (Mar. 1, 2019), available at <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/03/01/as-need-grows-states-try-to-entice-new-foster-parents> (last visited July 31, 2020) ("[T]here are more children who need foster care, and not enough families to provide it.").

approximately 20,000 young people “age out” of foster care each year, entering adulthood without an adoptive home.<sup>6</sup> *See* Brief of FosterClub and Former Foster Youth as Amici Curiae in Support of Respondents (Aug. 20, 2020) (“FosterClub Brief”).

Same-sex couples represent a large pool of interested and qualified foster and adoptive families. In fact, same-sex couples are ***seven times*** more likely than different-sex couples to foster or adopt.<sup>7</sup> Further, gay men and lesbians historically have been “very willing to adopt children with special needs and, as a demographic group, may be more willing to do so than heterosexuals.”<sup>8</sup> As one same-sex couple who served as therapeutic foster parents for “hard-to-place youngsters” noted: “More than one kid has told us

---

<sup>6</sup> AFCARS Report, *supra* n.4.

<sup>7</sup> Shoshana K. Goldberg & Kerith J. Conron, *How Many Same-Sex Couples in the U.S. Are Raising Children?*, THE WILLIAMS INSTITUTE: UCLA SCHOOL OF LAW (July 2018), available at <https://williamsinstitute.law.ucla.edu/publications/same-sex-parents-us/> (2.9% of same-sex couples vs. 0.4% of different-sex couples raise foster children; 21.4% of same-sex couples vs. 3.0% of different-sex couples have an adopted child).

<sup>8</sup> Expanding Resources For Waiting Children II: Eliminating Legal and Practice Barriers to Gay and Lesbian Adoption from Foster Care, EVAN B. DONALDSON ADOPTION INSTITUTE at 12 (Sept. 2008) (“Donaldson Report”), available at <https://docplayer.net/63117222-Policy-practice-perspective.html> (last visited Jul. 27, 2020).

that they do not know where they would be today if they had not met us.”<sup>9</sup>

CSS ignores the impact of discrimination on children in foster care. It claims there is no harm to children or families because same-sex couples can go to other agencies that will accept them. The reality – as parents and would-be foster and adoptive parents explain throughout this brief – is that discrimination prevents children from being placed with or adopted by parents who are willing and able to care for them. It has delayed placements, leaving warm bedrooms empty while children languished in less supportive care. It has driven potential foster parents out of the system altogether, resulting in fewer available homes for children. And in some cases, it has resulted in children being left with no home at all. The rule of law CSS seeks here will harm countless more children in these same ways.

---

<sup>9</sup> Ronald Bernard-Rivera Statement to Family Equality (June 25 & 26, 2020).

**A. Discriminating Against Same-Sex Couples Harms Children by Deterring LGBTQ Adults from Serving as Foster Parents**

*It takes an incredible amount of courage to ask someone to judge whether you have a suitable home for a child. If a family calls an agency and is told the agency will not serve them because of who they are—even if they are directed to other agencies that might work with them—that could well mean that the first call that family makes is also the last call.*

Katie Page Sander (Detroit, Michigan), Executive Director, Hands Across the Water child placing agency and 23-year veteran in child welfare field<sup>10</sup>

CSS acknowledges that this country faces a desperate shortage of foster parents. Petitioners' Brief, pp. 11-12 (May 27, 2020). Yet the result it seeks from this Court would exacerbate the problem by driving capable parents from the ranks of those opening their homes to some of the nation's most vulnerable children. CSS' assumption that same-sex couples will keep knocking on agency doors until they find one that does not reject them ignores the impact of discrimination.

Discrimination is painful and, as the first-hand accounts below demonstrate, it can have a chilling effect on same-sex couples' willingness and ability to move forward with plans to foster or adopt. As this

---

<sup>10</sup> Katie Page Sander Statement to Family Equality (June 25 & 29, 2020).

Court has recognized, discrimination “generates a feeling of inferiority as to [individuals’] status in the community that may affect their hearts and minds in a way unlikely ever to be undone.” *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954). It “deprives persons of their individual dignity,” *Roberts v. U.S. Jaycees*, 468 U.S. 609, 625 (1984), and harms families. *United States v. Windsor*, 570 U.S. 744, 772 (2013) (discrimination against same-sex couples has a harmful impact on the couples and their children). When same-sex couples face discrimination by child welfare agencies, the harm is exacerbated by the history of discrimination against LGBTQ people in all aspects of life.

As the experiences recounted below illustrate, CSS’ asserted constitutional right to reject same-sex foster parents would deter qualified foster and adoptive parents, depriving children in care of the much-needed homes those parents would offer.

For example, Samantha Hutcherson Bannon and her wife, an emergency medicine doctor, were raising two daughters when they decided to explore fostering a refugee child. They learned that Bethany Christian Services (BCS) was the agency in their area (near Philadelphia) that worked with refugee children, and they attended a BCS information event. However, when Samantha “shared with the staff that we are a two-mom family ... the 3 staff members present were clearly uncomfortable with this

information.”<sup>11</sup> One of them advised that BCS had “never worked with a same-sex family before” and offered “information about organizations in the area that worked with families like ours to become foster parents.”

Samantha explained that they were “specifically interested in fostering a refugee child and, as [the staff person] knew, there were limited organizations that handled these placements.” The agency, however, was unwilling to accept them and, given how “insulting and embarrassing” the discrimination was, they “decided not to pursue any further inquiries.”

April and Ginger Aaron-Brush of Alabama have a daughter and, “after careful thought, ... decided to share [their] hearts and [their] home with another child by being foster parents.”<sup>12</sup> But they hit a wall of resistance, and the sting of discrimination, combined with the lack of other options, prevented them from doing so.

First, they contacted two faith-based agencies, each of which turned them away “almost immediately.” Next, they tried working through a local state agency, which offered information reluctantly and did not answer the couple’s questions,

---

<sup>11</sup> Samantha Hutcherson Bannon Statement to Family Equality (Aug. 28, 2018 & Dec. 18, 2019).

<sup>12</sup> April & Ginger Aaron-Brush Statement to Family Equality (Sept. 2018 & Dec. 16, 2019).

leaving them feeling “scorned and deterred.” As April explains:

We started asking around, and learned that many LGBT people who seek to foster or adopt have the same experience and that there is only one person at the agency who will work with LGBT people and same-sex couples and it is the luck of the draw to get that person. Apparently, we did not get that person, because despite our best efforts and being very persistent, we found ourselves at a dead end with no path forward.

April and Ginger never became foster parents. “We wanted to provide a safe and loving home to a child, and there was no foreseeable option for doing so in our area. So, we finally gave up. It is heartbreaking.”

Similarly, Valarie St. John and her wife, who adopted a son through a kinship placement, stopped trying to adopt other children from the child welfare system after years of rejected attempts:

[W]e no longer have the emotional energy to continue to endure discrimination and submit futile inquiries. It has hurt too much to watch children remain in foster care when we very much wished to be their parents.

We are also not willing to let our son see his parents be discriminated against.<sup>13</sup>

**B. Discriminating Against Same-Sex Couples Harms Children by Preventing Would-Be Placements**

*The three brothers [we sought to adopt] have remained apart. It's heartbreaking – three brothers could have stayed together in one family and discrimination got in the way.*

Clint McCormack (Northville, Michigan)<sup>14</sup>

For some children, the consequence of discrimination against prospective parents is remaining in foster care when there is a family willing to adopt them. For others, it can be missing an opportunity for siblings to be kept together or reunited. All the while, same-sex couples who wanted to welcome them into their families were sidelined solely on the grounds of their sexual orientation.

Valarie St. John and her wife were licensed as foster parents in Ohio and spent years trying to adopt children through agencies in various states. They “made numerous inquiries through AdoptUSKids,” which lists children across the country who are in foster care and eligible for adoption. Many of their inquiries “were rejected, in writing, from

---

<sup>13</sup> St. John, *supra* n.2.

<sup>14</sup> Clint McCormack Statement to Family Equality (June 29 & July 8, 2020).

caseworkers, because they were ‘not considering same-sex couples.’”<sup>15</sup>

“One social worker in North Carolina directly stated that they would not place children with a same-sex couple, so we stopped inquiring about children in that state.” When they asked about a group of four brothers in Nebraska who were awaiting adoption, they were told the boys “had already found a suitable family.” But two years later, the children were featured in an article from the agency as still being available for adoption. “I followed up to ask if their ‘suitable family’ had fallen through, and if my wife and I could now be considered, but never received a response.”

Valarie and her wife later tried to adopt a nine-year-old boy in Michigan but were told the agency would not consider a same-sex couple. “At least once a year since then, I have checked ... and even today, [six] years later, he is still in foster care and listed as available for adoption.”

Similarly, a 10-year-old Puerto Rican child remains in foster care after four years of discrimination prevented Christopher Matos-Rogers and his husband from adopting him. Christopher’s husband is Puerto Rican, and “[a]s a bilingual [and] interracial home, we felt our family could be a strong match to provide the child not only with support and

---

<sup>15</sup> St. John, *supra* n.2.

love, but with connection to his culture and language of origin.”

We inquired to the child’s caseworkers ... and were met with disinterest. Undeterred, we followed up with our caseworker ... and had her reach out to the child’s caseworker. The child’s caseworker responded once, stating we were not a match, and would never respond to another request from our caseworker.

Christopher and his husband were matched with and adopted a sibling group but “would occasionally check [the boy’s] adoption status on the Georgia adoption website.” As he was still available for adoption, they inquired about him several more times over the next few years, only to be ignored. After three years of inquiring about him, they reached out to the State Director of Placements, who confirmed the boy was still waiting to be adopted. Christopher and his husband “jumped at the chance.”

We received his child life history, and that is where we saw it – [his] permanency plan, written by Bethany Christian Services in 2015, recommended that he be placed with either a single mom or a heterosexual couple. That’s why, for all these years, he was denied placement with our family. [He] could have begun his life

with us in 2016, but ... discrimination stopped that from happening.

Unfortunately, they were unable to transition the boy into their home due to additional resistance and bias from the foster parent. “With 4+ years of roadblocks,” Christopher and his husband “sadly accepted the reality that it just was not going to happen,” and the boy is likely to age out of the system.<sup>16</sup>

Jackie Bruckman and Sharlene Rednour’s social worker introduced them to a twelve-year-old boy who had been separated from his three older siblings and had been in foster care for eight years. He was a hard to place preteen, who was eligible for adoption and needed a home. Jackie explained:

We met for ice cream and hung out in a park. We got along fantastically—we let the social worker know that we were happy to meet again. ...

After the meeting he told the social worker he liked us and would love to meet again. ... Older adoptions at or near teenage years are rare, especially for [young] black men. We learned that he had an older brother who was ... in a group home, and after they told us all

---

<sup>16</sup> Matos-Rogers, *supra* n.1.

about him we said we were open to taking them both.<sup>17</sup>

But neither boy was placed in their home. “[W]hen the county worker in charge of the young man’s case learned that we were a same-sex couple, she immediately stopped the placement.” Instead of being placed in Jackie and Sharlene’s safe and loving home with his brother as a foster-to-adopt placement, both children remained in the system.

We have often wondered about him and his brother too. They would be in their 20’s now. ... It is heartbreaking to think that they were denied their opportunity to be reunited and [given their ages] likely spent their teenage years in the system and eventually aged out when we were willing to bring them into our family and adopt them both.

It was equally heartbreaking for their social worker, Heidi Haddad, who was prevented from making decisions in the children’s best interest due to discrimination of those in charge at the county. She stated:

This family, with a proven history of providing a stable and devoted home, was ready and willing to offer love and permanency to 12- and 15-year-old

---

<sup>17</sup> Jackie Bruckman & Sharlene Rednour Statement to Family Equality (June 29 & Aug. 4, 2020).

brothers. Two teenaged black boys, with three knocks against them simply because of their age, race and sex, were on the cusp of changing the course of their lives forever. Then, in the face of discrimination, I watched as the usual protocols and protections of these young men fell away. ... This kind of bias put the entire system at odds with the very philosophy upon which it was founded.<sup>18</sup>

Discrimination also prevented Clint McCormack and his husband from reuniting three brothers. They began by fostering a boy who had already been in three foster homes: “He was a high needs child who was bouncing off the walls and nonverbal, and he was on 15 different medications. ... Under our care he was taken off all but two of his medications. He became brighter and more alert the longer he was in our home.”<sup>19</sup>

Clint and his husband offered to adopt both the child and his brother, who remained in a different foster home. “[B]ut the other foster family didn’t want the children to have gay parents[, and t]he agency allowed the boys to remain separated.” Then, Clint learned that the boys’ birth mother had another child and offered to foster-to-adopt the infant. The state-contracted, faith-based agency

---

<sup>18</sup> Heidi Haddad Statement to Family Equality (July 8 & 20, 2020).

<sup>19</sup> McCormack, *supra* n.14.

refused their request, and the brothers remained apart.

**C. Discriminating Against Same-Sex Couples Harms Children By Delaying Placements and Permanency**

*There is a shortage of available homes for children in the foster care system and allowing agencies to turn me and other LGBT prospective parents away simply because of our sexual orientation only makes it harder for these kids to be placed with a family. I know my son would have been institutionalized and aged out of the system with no supports without me, and I don't want to see others suffer that fate when a loving home is waiting to take them in.*

Walter Illes (New Port Richey, Florida)<sup>20</sup>

According to Katie Page Sander, the executive director of a child placement agency in Michigan:

In my twenty-three years of experience in child welfare ..., we have never achieved the goal of having adequate resources for children in need of foster care placement. It is not uncommon for days and weeks to pass while a child moves from temporary placement to temporary placement before a family is found, often a great distance from their

---

<sup>20</sup> Walter Illes Statement to Family Equality (July 7 & 8, 2020).

friends, school and family or split from their siblings.<sup>21</sup>

Against this backdrop of critical need, policies that delay placing children in qualified and available homes based solely on the sexual orientation of the parents who want to care for them must be prohibited.

For Lara Mayhew and Jennifer Zilka of St. Louis, discrimination delayed fostering for a year. Committed to serving children in the foster system, Lara and Jennifer first became court-appointed special advocates (CASAs) and then sought to become foster parents. The state agency they first contacted was “over-taxed” and unable to work with them, so they contacted a faith-based state-subcontracted agency that turned them down “because [they] were lesbians.” They share:

Our journey continued with one hurdle after another, which contributed to a delay in our ability to provide a safe and loving home to a child in need. We sat for an adoption interview with a team comprised of caseworkers of another local agency and ... were specifically passed over for adoption and eliminated

---

<sup>21</sup> Page Sander, *supra* n.10.

because we were not a “traditional family.”<sup>22</sup>

A full year after offering to foster, a child was finally placed in Lara and Jennifer’s home, and they adopted him a year later. “Our son is now 4 years old and thriving.” Their insight into the acute need for homes in St. Louis made the delay especially appalling to Lara and Jennifer, who explain, “As certified CASAs, I cannot express how disconcerting it is to know how many children are in the system in need of good homes, only to find out that this fact is of no consideration when reviewing LGBTQ families.”

Lara and Jennifer are keenly aware that in addition to needlessly depriving children of a home, a year of discrimination would deter many would-be foster parents: “Our experience was very frustrating and were this anyone else [without extensive involvement in the foster care system], we probably would have given up.”

Dr. Tony Lamair Burks II of Atlanta, Georgia, lives with “uncertainty and concern that discrimination will cause further delays” in the adoption of his and his same-sex partner’s daughter, which is still pending. She was placed with them in July 2018, just before she turned five. They “were told the adoption process would take six to nine months,”

---

<sup>22</sup> Lara Mayhew & Jennifer Zilka Statement to Family Equality (Sept. 10 & 13, 2018).

but after nine months “really nothing much happened.” After more delays, they learned:

[O]ur application was sitting on the desk of someone outside the agency who was in charge of processing adoption applications. The person was blocking our application and confessed that his faith would not allow him to help two men adopt a child. ... To this person, it did not matter that she was a child who was matched with us, who was safe, happy, and loved in our home, who was eligible for adoption, and in a state with over 12,000 children and youth in care needing homes.<sup>23</sup>

Their agency advocated for them, and now their application is moving forward. However, uncertainty remains, and they are “concern[ed] that discrimination will cause further delays,” leaving their child without the legal protections of adoption:

The delays and roadblocks were completely unnecessary ... [W]e cannot breathe with ease until the adoption is finalized and she is our daughter in the eyes of the law. She has been our daughter in our hearts since the day we met her ... yet, she remains [in

---

<sup>23</sup> Dr. Tony Lamair Burks II Statement to Family Equality (July 7 & 8, 2020).

the child welfare system] because of discrimination.

Since 2013, Mary Olive-Allison and her wife have fostered thirteen children, including one child they adopted. The adoption was delayed for more than two years, leaving the child in legal limbo without the protections of a parent-child relationship. “The longer it took, the more we were able to see that [anti-LGBTQ] discrimination and prejudice were the driving factor for the delays.”<sup>24</sup> Though they continue to foster, the discrimination has caused them to consider quitting:

We’re currently caring for 3 kids, including a baby, and the hardest part of all of it is worrying about the only agency that we can use trying to take our foster children away or not let us adopt them after being their only caregivers just because we are lesbians. That shouldn’t be the hardest part of taking care of kids! We want to foster and continue to open our home and hearts to children when they need it but the longer this [discrimination] goes on, the harder that seems.

When David Dickson and his husband Robert became licensed foster parents in Georgia, they “were told on several occasions that [they] were not

---

<sup>24</sup> Mary Olive-Allison Statement to Family Equality (Sept. 11, 2018 & June 2, 2020).

receiving calls for placement because [they] were a ‘nontraditional family.’”<sup>25</sup> They explain: “We had three empty bedrooms to accept kids in need but we were continuously overlooked.” David and Robert eventually had four children placed with them, all of whom are thriving. But they wonder whether there were other children who needed homes while those bedrooms remained empty. “Seeing our four kids now growing into such loving and caring people reminds me that every child in the foster care system deserves a chance, a home, and to be loved unconditionally.”

As a special education teacher in Florida, Walter Illes “had worked with kids for 15 years, so [he] knew [he] could provide a great home.”<sup>26</sup> Wanting to help kids in need, he “went to the only agency in [his] county that [he] knew of at the time.” Walter became certified as a foster parent, but the agency never contacted him with any placements. He later learned that “the first agency never even wrote up [his] home study.”

Nevertheless, through his own efforts, Walter learned of a boy who needed a home:

He was 12 years old, had been in the foster care system since he was a baby, and could not be placed in a home with a female for safety reasons. I knew that,

---

<sup>25</sup> David & Robert Dickson Statement to Family Equality (June 14, 2020).

<sup>26</sup> Illes, *supra* n.20.

without me, his chances of being adopted and finding a permanent family were close to zero, and I knew that I could provide that love and stability for him. So, I reached out to my agency again, and again, and again ... without a response.

It took Walter *two years* to find an agency that would help, and the child was finally placed in his home. The boy had been severely abused while in the child welfare system: “I was his 17th placement. ... After many years of therapy, he grew into a fine young man that I was proud to call my son.” Tragically, Walter’s son died in 2017, leaving Walter haunted by the knowledge that his son “could have had a home with [him] two years earlier had it not been for the needless delays.”

Kristy and Dana Dumont were moved to become foster parents because Dana – a Michigan state employee – received e-mails from the state Department of Health and Human Services about the large number of children who needed loving homes. “So, we moved into a bigger house in a better school district, ready to start a family.” As they explain:

We specifically wanted to work with an agency close to our home, because we knew from our own research that being foster parents requires a lot of classes, visits, and time. Since we both have full

time jobs, we wanted to make sure we'd be able to balance everything.

It was also important to us to pick an agency nearby because these children's lives have already been so disrupted, and they might have family or support systems nearby so we wanted them to be close to their home as well, instead of causing further disruption by making them move too far away.<sup>27</sup>

But the only two viable agencies close to the Dumonts' home at the time (2016-2017) turned them away, refusing to place children with same-sex couples. The Dumonts were shocked: "How can the state justify keeping a child in state care simply because [the agencies] wanted to turn away LGBT parents – what happens to all of those kids, waiting for a family?"

The Dumonts were able to "bring two wonderful sisters, ages 11 and 6, into [their] home in December 2019. Before that, [the girls] had been moved around to three different homes in just six months." The Dumonts "have been fostering them for seven months now and are so happy to provide them with the stable, loving home they deserve." But, as they point out: "We can't help but think of ... all the other children who don't get the chance to find foster

---

<sup>27</sup> Kristy & Dana Dumont Statement to Family Equality (July 7 & 8, 2020).

and adoptive homes because of discrimination.” Like most children in Michigan’s foster care system, the placement goal for the two sisters currently being fostered by the Dumonts is to ultimately be reunited with their birth parents. The Dumonts plan to continue fostering and adopting from the Michigan child welfare system to provide a home to children in need.

\* \* \*

As these examples illustrate, the harm of allowing agencies to discriminate is very real: families are deterred, delayed, or prevented from fostering, keeping children from a desperately needed home for days, months, or years, if not forever.

## **II. WHEN DISCRIMINATION DOES NOT STAND IN THE WAY, SAME-SEX COUPLES PROVIDE SAFE AND LOVING HOMES FOR CHILDREN WHO DESPERATELY NEED THEM**

*We became therapeutic foster providers, which was a crash course in parenthood. In the 3 years as foster dads, we welcomed 13 kids into our home, each with different stories and each with specific needs. Some stayed a few days, others for a few months, and a couple for more than a year. ... We met our son as foster parents. He came to us hurting; feeling abandoned and rejected. He was very angry with the life he’d been torn from. It took some time to build trust and cooperation. ... Our greatest moment was*

*the day we got to reveal that we were going to be his parents.*

Paul Rummell & Ben West (Wilsonville, Oregon)<sup>28</sup>

*I still after eight years think about what all our kids went through at such a young age and it breaks my heart. I have seen and heard so many tragic stories during our time in the foster care system and to think there are some that want to deny loving people from helping these kids in need is a tragedy in itself.*

David and Robert Dickson (Rancho Santa Margarita, California)<sup>29</sup>

There is no doubt that same-sex couples provide loving, nurturing homes to foster children in need. Decades of social science research shows that LGBTQ parents are no different than heterosexual parents in terms of their ability to raise happy, healthy, and well-adjusted children. *See, e.g.*, Michael E. Lamb, Mothers, Fathers, Families, and Circumstances: Factors Affecting Children's Adjustment, 16 APPLIED DEV. SCI. 98, 104 (2012); *Obergefell v. Hodges*, 135 S.Ct. 2584, 2600 (2015) (“[A]ll parties agree, many same-sex couples provide loving and nurturing homes to their children, whether biological or adopted.”).

---

<sup>28</sup> Paul Rummell & Ben West Statement to Family Equality (Aug. 2018).

<sup>29</sup> Dickson, *supra* n.25.

Matthew Ramsey's sons arrived at his home as "3 and 4-year-old bundles of energy, coupled with some elements of trauma."<sup>30</sup> Seventeen months later, Matthew and his husband "adopted [their] boys and officially became a forever family. The boys are about to start fourth and fifth grades, and [Matthew has] had front row seats in watching them grow and flourish." Matthew has a message for "all those agencies who would discriminate: There's no such thing as too much love. Stop getting in the way."

Richard and Aaron Hooks Wayman, who have fostered nine children (six of whom they adopted) in Minnesota and Maryland, feel "very lucky to find welcoming, inclusive, and accommodating child welfare systems" in those states.<sup>31</sup> They found the approach of each of the foster care licensure training courses "to welcome us into their community, offer us specific and relevant training ... and encourage us in our journey to become foster parents was simply wonderful," helping them go "from hesitation and worry to being excited about our role as advocates and care takers for our children."

After nearly 20 years of being a foster and adoptive parent, Richard says, "I can't imagine my life without my children and know that they feel safe, loved, and happy to be a part of our family." It is

---

<sup>30</sup> Matthew Ramsey Statement to Family Equality (Aug. 20, 2018).

<sup>31</sup> Richard & Aaron Hooks Wayman Statement to Family Equality (Dec. 17, 2019).

difficult for him to accept that discrimination keeps children like his from parents like him: “With so many children stuck in foster care, group homes, or health institutions waiting for a forever and permanent home, it breaks my heart to think of all the missed opportunities that result when states place unreasonable blockages to foster care licensure or adoption for some families.”

Sharlene Rednour and Jackie Bruckman know first-hand that welcoming all qualified prospective families “is crucial for children to find safe and loving homes that they can thrive in.” Sharlene explains:

If we [had not] seen our agency at a LGBTQ event we might not have signed up. I cannot even imagine it but our first two children ... were placed with us as “hard to place” children meaning that if we didn’t adopt them, they probably would not have been adopted. They would now be 14- and 15-year-old Black [teenagers] in the foster care system..., and [t]he statistics are such ... that the outcomes may not have been great.<sup>32</sup>

In Sharlene and Jackie’s home, the boys have “grown up to be the love and light of our lives, they are great students, popular with their friends and teachers, star athletes and respectful community members.”

---

<sup>32</sup> Bruckman & Rednour, *supra* n.17.

Sharlene and Jackie also adopted a now-thriving 27-year-old who, at age 15, was fewer than three years away from aging out of the system. They explain, “He needed a lot of love and often says that he needed 2 moms to get enough mothering.”

Rob and Reese Scheer have adopted five children.<sup>33</sup> Though they initially planned on only one child, they were asked to foster a sibling pair. Rob, himself a former foster youth, “knew what he had lost entering the system separated from his brothers and sisters,” and the Scheers “would not allow that to happen to any children in [their] care.” Three months later, two more brothers needed a home. “We were delighted to welcome them, too.” Ultimately, they adopted all four children.

Last year, discrimination nearly prevented the Scheers from adopting their fifth child, an 18-year-old who had been in and out of foster care since age five and was on the verge of aging out:

Due to our extensive prior advocacy and experience in the foster care system, we had the right connections within the system to circumvent this obstacle and move forward with the adoption. Had we not had existing relationships with child welfare officials and experience navigating the system, the discrimination

---

<sup>33</sup> Rob & Reece Scheer Statement to Family Equality (June 18 & 25, 2020).

we faced might have prevented us from providing a permanent, loving family for our son.

Like too many others who age out, he likely would have ended up homeless. Instead, he has two loving parents, four siblings, has graduated high school with a 3.6 GPA and is headed to college in the fall.

Like the Scheers, Clay Van Batenburg and his husband encountered discrimination when adopting their sons, but, as a licensed clinical social worker, Clay “was well aware that California law prohibits such discrimination.” Armed with these protections, he was able to nip the issues in the bud.<sup>34</sup> But he knows that “had we lived in a state that did not have nondiscrimination laws in place to protect us and our sons from anti-LGBTQ discrimination, the discrimination we faced may have prevented us from becoming a family.”

Jamie and Bo Nabozny recount their journey of adopting a sibling group of four:

The boys were 7 and 9 years old. ... They wanted two people who would love them unconditionally. We were ready and able to do exactly that. It was a wonderful match, and we thought that

---

<sup>34</sup> Clay Van Batenburg Statement to Family Equality (June 5 & 17, 2020).

our family was complete but little did we know it was not.

Eventually we were asked to adopt [their older] ... brothers, who were 11 and 13 years old. It only took about two minutes for us to say “yes.” And now we have 4 amazing sons and our family is complete. Without the support and acceptance of our agency – or if we had encountered discriminatory barriers that deterred or prevented us from adopting – our [children’s] story may have ended differently or we may have chosen not to pursue adoption at all.<sup>35</sup>

---

<sup>35</sup> Jamie and Bo Nabozny Statement to Family Equality (Aug. 2018).

### III. LGBTQ FOSTER PARENTS HELP MEET THE DIVERSE AND UNIQUE NEEDS OF CHILDREN IN CARE

*When we started fostering, any youth that had self-disclosed that they were LGBTQ or questioning had a safety plan and a behavioral flag attached to their file. It left many of the older youth in group home[s]. ... We were often sought after to provide placement for these youth but as only one couple we couldn't take everyone.*

Amanda and Deena Cruce (Gainesville, Florida), who in eight years have adopted six children and fostered over 50 youth<sup>36</sup>

In addition to the need for as many qualified families as possible, the interests of children are best served when the pool of foster parents reflects the diversity of the children in care and is broad enough to meet their individual needs. Based on her 23 years working in the child welfare field, Katie Page Sander explains:

A child relies on the agency in charge of their care to find an appropriate family to best meet their unique needs while they are separated from their families, which requires a diverse pool of families. ... Allowing an agency to narrowly decide who is worthy to parent, not

---

<sup>36</sup> Amanda and Deena Cruce Statement to Family Equality (June 5, 2020).

based on any assessment of safety, capacity or resources, ignores our primary responsibility as child welfare agencies, to meet the needs of ALL CHILDREN in our care.<sup>37</sup>

Allowing faith-based agencies to discriminate against families who do not meet their religious standards undermines the best interests of children in care. As the accounts below illustrate, for some children, LGBTQ families are the best fit.

Morgan and Lyndsay Hayes recount how their daughter had first been placed with a different-sex couple.<sup>38</sup> When that placement failed, case workers determined that, because of past trauma she had experienced, “she needed a home without males, which made her difficult to place.” Their daughter’s case worker “was thrilled when a same-sex [female] couple was matched with” her. “Through therapeutic parenting and a lot of trial and error, we have become a strong family together and now that our daughter has a stable, loving home, she has been able to build healthy relationships with multiple safe male friends and family.”

Similarly, the 12-year-old boy that Walter Illes fostered and ultimately adopted, *see supra* at 22, “could not be placed in a home with a female for

---

<sup>37</sup> Page Sander, *supra* n.10.

<sup>38</sup> Morgan & Lyndsay Hayes Statement to Family Equality (June 11, 2020).

safety reasons,” which had diminished the boy’s likelihood of finding a long-term placement or permanent family.<sup>39</sup>

And Ronald and Miguel Bernard-Rivera fostered a 12-year-old boy who had been removed from his previous home after incidents involving “touch[ing] girls and women inappropriately.”<sup>40</sup> His social worker determined he should not be placed in a home with women or girls.

Since we were a gay [male] couple, he was able to be in our household without putting anyone in danger. The social worker made an emergency placement with us. The only other option he had would have been to put him into a juvenile detention facility since any group homes with beds also had girls or female staff. We worked with him on understanding personal boundaries and treating others respectfully.

Similarly, Stacey and Laura Freeman of Maryland fostered siblings who, “due to extreme trauma,” benefited from a home without males. The Freemans are heartened that their county “places

---

<sup>39</sup> Illes, *supra* n.20.

<sup>40</sup> Bernard-Rivera, *supra* n.9.

children in homes which best benefit the child,” using “diverse families[,] inclusive of LGBTQ people.”<sup>41</sup>

Same-sex couples can also provide uniquely supportive homes for LGBTQ youth, who are disproportionately represented in the foster care system.<sup>42</sup> In Katie Page Sander’s experience, many LGBTQ youth “specifically ask for a family that is supportive of their sexual orientation and gender identity” and some “specifically ask[] to be placed with a family who is part of the LGBTQ community.”<sup>43</sup>

Sharlene Rednour and Jackie Bruckman recall receiving a call about a teenager from their placement worker, telling them that “it was breaking her heart to ‘put him into another homophobic home.’”<sup>44</sup> Sharlene and Jackie met him that evening and immediately agreed to take him in. “[He] was 15 years old. ... We were his 13<sup>th</sup> foster home.”

Sharlene and Jackie understood how damaging it had been for the teenager “to hide who he was, or he might be kicked out,” even facing physical threats. Others, even a case worker who was “a straight ally

---

<sup>41</sup> Stacy & Laura Freeman Statement to Family Equality (Feb. 27, June 24 & 26, 2020).

<sup>42</sup> Former foster youth speak for themselves in the FosterClub Brief, *supra* p. 5.

<sup>43</sup> Page Sander, *supra* n.10.

<sup>44</sup> Bruckman & Rednour, *supra* n.17.

who truly cared for him,” had failed to see that the reason the boy constantly missed the school bus in the morning was “[b]ecause it was filled with other teenagers who bullied him.” Once in their home, he “was thrilled to have a gay family and could finally relax and let his shoulders down a little.”

Keli’i Krueger’s wife met their son when, as a mental health worker in Brevard, North Carolina, she was helping him move from a group home to an adoptive home.<sup>45</sup> After a few visits, the potential adoptive family “realized that he was gay [and] abruptly stopped the adoption process,” sending him back to his group home. Keli’i and her wife became licensed foster parents, and within a few months, the boy moved in with them. Three years later, they adopted him. “We parented a boy that was unwanted by many. It was a challenge in many ways, but I am so glad to be his mother.”

As Keli’i explains: “LGBTQ kids need parents who will love, support, and advocate for them.... [T]he suicide rate for LGBTQ kids is alarmingly high. Kids in foster care are already facing so many challenges, it is crucial that they are placed with open and affirming families.”

---

<sup>45</sup> Keli’i Krueger Statement to Family Equality (June 29 & 30, 2020).

## CONCLUSION

CSS asks this Court to recognize a constitutional right for taxpayer-funded foster care agencies to turn away qualified same-sex couples based on agencies' religious objections to such families. To serve the hundreds of thousands of children in the foster care system, we need more foster and adoptive parents. And to give these children the best opportunity to thrive, we need that pool to be more – not less – diverse.

Discrimination against same-sex foster and adoptive parents has delayed placements, keeping children in less supportive environments longer than necessary; it has prevented children from being placed with or adopted by parents who wanted to care for them; and it has driven desperately needed foster and adoptive parents out of the system altogether. The Court must not allow the religious beliefs of taxpayer-funded foster care agencies to outweigh the best interests of the children our governments are expressly charged with protecting.

For all of these reasons, the Court should affirm the judgment below.

Dated: August 20, 2020

Respectfully submitted,

s/Katherine Keating  
Katherine Keating  
*Counsel of Record*  
BRYAN CAVE LEIGHTON PAISNER LLP  
Three Embarcadero Center  
7th Floor  
San Francisco, California 94111  
415-675-6400

William J. Hibsher  
Elizabeth Goldberg  
Laith Hamdan  
Michael Neville  
BRYAN CAVE LEIGHTON PAISNER LLP  
1290 Avenue of the Americas  
New York, New York 10104  
212-541-2000

Shelbi D. Day  
Mary P. Rohmiller  
Denise E. Brogan-Kator  
FAMILY EQUALITY  
475 Park Avenue South, Suite 2100  
New York, New York 10016  
646-880-3005

*Counsel for Amici Curiae*  
*Family Equality and*  
*PFLAG National*