

No. 19-123

In the
Supreme Court of the United States

SHARONELL FULTON, ET AL.,
Petitioners,

v.

CITY OF PHILADELPHIA, PENNSYLVANIA, ET AL.,
Respondents.

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

**BRIEF OF *AMICI CURIAE* FORMER FOSTER
CHILDREN AND FOSTER/ADOPTIVE PARENTS
AND THE CATHOLIC ASSOCIATION
FOUNDATION IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICI CURIAE*¹

THE CATHOLIC ASSOCIATION FOUNDATION (“TCA”), is a lay organization dedicated to being a faithful voice for Catholics in the public square. The Catholic church and Catholics have played a leading role in founding and running foster care and adoption placement agencies across the United States. These agencies successfully and effectively partner with state and local governments to find and place needy children in stable and loving homes.

TCA frequently promotes the work of the Church and her faithful and is a strong defender of religious freedom. In furtherance of this mission, TCA has filed *amicus* briefs in this Court, including in *NIFLA v. Becerra*, 138 S. Ct. 2361 (2018), *Espinoza v. Montana Dept. of Revenue*, No. 18-1195, and *Little Sisters of the Poor v. Pennsylvania, et al.*, Nos. 19-431, 19-454.

Amici former foster children and foster/adoptive parents served by Catholic Social Services (“CSS”) in Philadelphia, Pennsylvania and other Catholic-run foster care and adoption agencies, listed and described below, attest to the dignified placement and support that CSS and Catholic-run agencies provide to foster children and foster/adoptive parents.

Amici strongly oppose the City of Philadelphia’s decision to freeze intake referrals of foster children to CSS and to impose unconstitutional conditions on

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.

future referrals that have forced CSS to shut down its foster care program for new at-risk kids needing foster homes.

THOMAS PAUL believes he was raised by a saint.

Thomas was one of more than 100 foster children that Cecila Paul, one of the original plaintiffs in this action², received into her Philadelphia home. Thomas came to live with the Pauls when he was a newborn. His biological parents were involved, as Thomas says today, “in some bad stuff.” CSS placed him and his older brother Andrew (known as Drew), only a year his senior, into foster care with the Pauls, and the Pauls later adopted both boys.

Although the two boys later made contact with their biological parents, Thomas and Drew both consider Ms. Paul to be the only mother they ever knew. Thomas said, “I think that whoever raised you is your parent.”

Thomas met many other foster children who were placed with the Pauls. Like Thomas, many had suffered abuse or abandonment. He recalls it was hard when the kids he had gotten used to left. “I have seen so much in my life that is sad,” he said, but “joy overcomes all of the pain.”

Thomas is grateful to CSS for its unceasing support of Ms. Paul and foster children like him. He remembers feeling special when CSS sent presents at Christmas.

² Ms. Paul, who had been widowed years earlier, died during the pendency of this action. Her positive influence in Thomas’ life was specifically acknowledged by the panel. See *Sharonell Fulton, et. al v. City of Philadelphia*, 922 F.3d 140, 151 n.3 (3d Cir. 2019).

The attention “helped him to keep his mind off any of the hard times.” He adds that CSS visits and assessments always helped “get kids out of their darkness.”

Growing up in Ms. Paul’s house prepared Thomas for life. She encouraged him to “work hard, focus and do what you like.” Today, he’s 35 years old, a general contractor and the father of two young children. He credits the support he found at the Paul home for his success in life. He remembers Ms. Paul teaching him that, “No matter how hard life comes at you, keep going, keep your head up.”

As a father, he looked to Ms. Paul for advice and support in parenting. “She handled kids, those with emotional problems, so well.” He also believes that having been adopted after foster care has helped him to be a better father. It inspired Thomas to “give something to my own children that I did not get from my biological parents.”

The most important gift he received as a child was love. “Love is everything,” said Thomas. “It goes a long way if you feel special – to know that someone actually wanted you.” Being wanted by someone like Ms. Paul, someone that had “the biggest heart I know,” helped him cope with having been abandoned as a baby.

Thomas finds the possibility of CSS shutting down its foster care program – a program that has done so much for him – horrible. “I want other kids to have the opportunity that I did,” he said. “If they get shattered by situations that are not their fault, they should still have the chance to dream.”

ANDREAS AND MICHELLE WIDMER met almost 35 years ago. Michelle was finishing a year abroad in Rome when a friend introduced her to Andreas, a young Swiss Guard stationed at the Vatican. As Andreas recalls, “It was love at first sight.”

Andreas found his way to the United States, and the couple were married soon thereafter. Jobs and careers followed, but not babies. Unable to conceive, the Widmers decided instead to adopt a child. They contacted four Boston adoption agencies in what Andreas calls a “very methodical process.” At the first agency, a staff member asked, “What kind of a child would you like?”

The Widmers were shocked. “Shelly and I felt that this was cruel or vulgar,” Andreas said. “I worked for years in sales. It felt like a trade.” The Widmers then contacted the adoption program run by Catholic Charities of the Archdiocese of Boston. They signed up to attend Saturday morning meetings for couples interested in adopting.

At the first meeting, agency director Tina Morgan (“a tough Irish lady with a typical Boston accent”) had a strong message for the 15 couples gathered in the basement of a small Catholic church in Harvard Square. “If you are here to somehow fulfill yourself,” said Tina, “you shouldn’t come back.”

This was the Catholic agency’s perspective on adoption. Morgan proceeded to hand out a questionnaire soliciting each couple’s reasons for considering adoption. “If your answers are mostly about you, this agency is not for you,” said Morgan.

“We need people committed to helping the child, not hoping to realize their own dreams.”

Andreas and Michelle were impressed with the “tough as nails” approach, but not everyone was. Several couples dropped out. Morgan softened over the coming weeks as she prepared the couples for home studies and parenting. “You could see they had 200 years of doing this,” remarks Andreas, “and they knew what they were doing.”

In June 2004, Eli was born to a young Cape Verdean woman who asked the hospital nurses to contact Catholic Charities to handle the adoption. Morgan called the Widmers to see if they were willing to adopt a child outside of either spouse’s race or ethnicity. Andreas and Michelle did not hesitate. “November 18, 2004,” remarks Andreas, “is when we became a family.”

Catholic Charities and its counselors provided the Widmers with invaluable guidance before and after Eli’s adoption. Catholic Charities of Boston facilitated “open adoptions” that allowed for some level of contact between the birth parents and the adoptive child. The Widmers are certain that Eli’s biological mother heard the same story about keeping the focus on the child. Over the years, they have communicated with Eli’s biological mother and the foster family that cared for Eli before his adoption. As Andreas says, “We learned from the staff at Catholic Charities of the importance of maintaining every relationship Eli has in his life.”

Eli Widmer was one of the last children adopted through Catholic Charities in Boston. Under pressure to coordinate adoptions with same-sex couples, Boston's Cardinal Sean O'Malley had no choice but to close Catholic Charities' adoption program in 2006. Andreas and Michelle lament the agency's closure. "When adoption becomes a service subject to what is 'politically correct,'" says Andreas, "it is no longer about the children."

WINNIE PERRY thought she would be a foster mother over just one summer. But that was 40 years and almost 100 foster children ago.

Ms. Perry first learned about CSS after reading its request for foster parents in her local Philly newspaper. While not Catholic herself, Ms. Perry called the agency. Her mother cared for foster children and Ms. Perry felt moved to do the same. Of her four decades serving as a foster parent, Ms. Perry says, "It wasn't good all the time. It wasn't happy times all the time. But it was worthwhile. It was very rewarding.... I could give kids something they did not have – a stable home."

From the start, CSS supported the Perrys as foster parents. Shortly after the Perrys started as foster parents, the couple had an argument. Mr. Perry called CSS to pick up the foster children in their care. Rather than sever ties with the couple, CSS staff worked with the couple to resolve their conflict and the couple's home stayed open for needy children.

CSS staff and case workers have continued their support over the years. "I have a lot of rules in my house," says Ms. Perry. "But I would call CSS if

anything happened that I couldn't handle." They arranged for therapists to help with the children. The kids were always CSS' first priority, but CSS was always there for Ms. Perry too. "They always supported me," she says, "I never felt like I was alone."

Each child placed in the Perry home became a member of the family. Ms. Perry says, "We didn't use the term 'foster children' at home. They are our children."

While most children stayed for only a year or so, a handful still keep in touch with Ms. Perry to this day. Two are Anthony and Adrienne. Both came to the Perrys straight from the hospital, just days old. The Perrys adopted Anthony (now 35 years old) and Ms. Perry assumed legal custody of Adrienne while maintaining a close relationship with the girl's birth mother.

Ms. Perry understands the importance of a child's relationship with his or her biological parents, and she knows that, if possible, a child should return home to his or her parents or relatives. "I learned a long time ago my place. I was not first. The natural parents are first. Sometimes this hurt a lot."

Ms. Perry was often called to receive needy children in the early morning hours. That's what happened with siblings James, three, and Julia, eight months. Although she thought the children were going to stay with her for just a short time, Ms. Perry ended up adopting the children. James is now eleven and Julia is nine, and Ms. Perry keeps them in touch with their biological grandmother by arranging frequent visits.

What would happen if CSS is forced to close its doors? “It would be a terrible thing,” says Winnie Perry. “There are so many children out there who need their help. They help the children and, as much as they can, the natural parents. They help the foster parents a lot. They give us so much support.”

ADRIENNE COX came to live with her Philadelphia foster parent *amici* Winnie Perry when she was a newborn. Dealing with an abusive husband, Adrienne’s mother thought foster care would be best for her daughter. Adrienne ended up living her entire childhood with the Perrys, though they saw that she maintained a close relationship with her biological mother.

“Ms. Perry had a lot of rules,” says Adrienne, but “I learned a lot.” One of the most important lessons she was taught was that despite your past, you can do anything. Adrienne recalls that “all I had to do was my best in whatever I started.”

Adrienne not only graduated from high school and college, but earned a master’s degree, as well. Now a successful professional, Adrienne appreciates the nudge she received from Ms. Perry along the way. “My mom encouraged me to go to college,” says Adrienne, “even though I did not want to go at the time.”

Mr. Perry has since passed away, but Adrienne’s connection to him could not have been stronger. “He was my dad. He was everything to me. Many of my friends growing up did not even know that the Perrys were not my biological parents.”

Faith was important to the Perrys. “We were encouraged to do what is right and do right by others,” Adrienne recalls.

Adrienne eventually became a CSS-certified foster parent herself. Although she had to convince her initially hesitant husband, the couple fostered and later adopted their first two children. Says Adrienne, “I felt that I had to give what was given to me.”

She credits the way she parents her own children to the Perry’s example. For many foster children, learning to love is hard. According to Adrienne, it happens only if “the foster child is considered her foster parents’ child.” “I go out of my way to make sure that my love for each of my children is clear to them,” Adrienne says. “A child’s ability to love is important. It opens up the door for the child to receive anything else they need.”

She considers the shutdown of CSS’s foster program an injustice. In her opinion, CSS did more than arrange a safe place for a needy child to live. “CSS gave me a family,” says Adrienne. “Everyone needs a family.”

BEN AND GAIA ROVAGNATI emigrated to the United States from Italy shortly after they were married in 2004.

A few years into marriage, doctors told the couple they could not have children. Shortly after receiving the news, they flew back to Italy from Chicago to visit family and friends. During their visit, Ben and Gaia spent the day with Cometa -- a group of Italian families with foster and adopted children. “The whole day we were filled with awe and gratitude,” Gaia says. Shortly

after their return to the United States, the Rovagnatis met an American couple who had just adopted their second child. These back-to-back encounters left a lasting impression on Ben and Gaia. “The openness, the hope, and the joy they communicated,” remarks Ben, “was simply exceptional.”

The Rovagnatis decided to embark on what Gaia calls their “adoption adventure.” They contacted several adoption agencies in their hometown of Chicago. Most agencies, explains Ben, “advertise being able to quickly deliver you a child.” Catholic Charities was different. Ben recalls that they were “clearly looking for the good of birthparents, their children, and adoptive families.” At that time, Catholic Charities of Chicago coordinated adoption placement with its maternity center. “The possibility of adoption was not a mechanical transaction for the agency,” says Ben. “They weren’t going to just do what we wanted, but what was best for the child and the birth parents.”

Two years after first contacting Catholic Charities, the Rovagnatis welcomed a daughter into their home. The girl’s biological mother, a young African-American teen, was overwhelmed by the demands of raising a newborn. Relatives encouraged her to contact Catholic Charities. She decided adoption was best for her three-month-old baby. Today, nine years after the adoption was finalized, Catholic Charities continues to help the Rovagnatis send letters and photos to their child’s birth mother. Ben and Gaia felt such joy after adopting their daughter that they immediately sought to adopt another child.

A 2011 Illinois law requires all foster care and adoption agencies agree to place children in same-sex households. Unable to comply and violate church teachings, Catholic Charities of Illinois stopped placing children altogether. They introduced the Rovagnatis to an out-of-state adoption agency. After a three-year wait, Ben and Gaia adopted their second daughter shortly after she was born. Catholic Charities continued to support the family with post-adoption visits.

Both Rovagnati girls are African-American. Ben and Gaia are aware that there will be challenges for their girls. Catholic Charities of Chicago continues to provide good counsel and a community for the Rovagnati family. Every year their family attends gatherings hosted by the agency for families and social workers. “The agency is forever,” Ben says. “It is not just for the moment of placement.”

“Adopting a child is not like going to the supermarket,” Ben remarks. “Catholic Charities was not just *sponsoring* something, but instead focused on the human experience of hospitality and generosity found in adoption.”

KAREN QUINN has been a CSS-certified foster mother in Philadelphia for 30 years. She has lost count of how many foster children she and her husband have cared for over three decades, but thinks the number is “well over 30.” Of these children, Karen and her husband have adopted five, and are legal guardians to one other.

Karen started caring for foster children after reading a request in her parish bulletin for long-term foster care providers for a needy child, Jamie. Jamie was four at the time, and the Quinns adopted her at age seven.

The next two children who came to her home were Debby, two, and Gus, eight. The two siblings stayed with the Quinns for 13 months. Karen remembers picking the young children up at the CSS office: “Gus was a skinny little boy, and Debby had a very sad face. Her eyes were not alive when we got her.” After just a few months in the Quinn home, however, Karen noticed that Debby’s eyes “lit up.” She says that seeing the positive effect of a stable foster home on Debby is why she kept doing it for so long.

Karen credits CSS for its unwavering commitment to supporting her as a foster parent. When placing a child in her home, CSS “gave every bit of information they had about the child. Often they were more responsive than the DHS social worker assigned.” “Any question you had that you couldn’t solve yourself,” Karen says, “you could ask the people at CSS.”

CSS’ contact with Karen and her foster children went far beyond monthly home visits. Most of the kids came with very little clothing especially if they were a newborns. But CSS would always ask Karen what she needed and either help supply additional clothing or provide an allowance. If Karen missed CSS-sponsored Christmas parties, the agency never forgot to send a gift for both the foster child and Karen’s now-adopted children.

DHS regulations for foster care have changed over the past 30 years, but CSS case workers always made sure that Karen knew of the changes and was in compliance. Karen also notes that because of CSS' extended network of programs, both foster children and biological parents get referrals for care and services that other agencies can't provide. For example, when one of Karen's foster children needed special care and behavioral support, CSS coordinated therapy without delay.

Karen and her husband are committed to helping all of their foster children maintain healthy relationships with siblings, parents, and other relatives. One foster son, Gabriel, came to Karen's home when he was only nine months old. Karen learned that Gabriel had two siblings living in foster care in Ocean City, New Jersey, where Karen's family visited on summer vacations. Karen coordinated a visit with the foster parent in Ocean City, enabling the siblings to spend time with their baby brother.

What would happen if CSS' foster program is shut down forever? "I would like to continue to do this, but I don't want to do it without the support of Catholic Social Services," Karen says. "I am just not too happy with the other agencies out there. They play by their own book of rules.... My gift is to take care of these kids – give them a better start when they come to me and send them back as strong as they can be."

JAMIE HILL, now 34 years old, was placed into foster care with *amici* Karen Quinn when she was four. "I know very little about the reasons for being placed into foster care," she recalls today. "I know that there

was some abuse and that a significant head injury led me to being taken from my home.”

But Jamie has clear recollection of her life at the Quinns: “lots of one-on-one time playing cards or memory games,” and “lots of great memories.”

Like many foster children, Jamie struggled as a child. The early years of abuse had taken their toll. “Being a foster kid was hard. For 20 years it was really tough. There were a lot of hard times for me,” she says. “Growing up in the Quinn’s home I always knew that I was loved, but it took me a long time to accept that.”

The Quinns ultimately adopted Jamie. When she talks about the Quinns, Jamie calls them “Mom and Dad.” Ms. Quinn was particularly attentive to Jamie: “When my mother saw that I was good at something, she tried to expose me to anything that would help me develop that talent.”

As the oldest child in the Quinn home, Jamie grew up “thinking that it was cool to have the home open for foster children.” But she also saw first-hand the damage that unhealthy homes had inflicted on the new children placed with the Quinns. “You can tell right off the bat what kind of home a child came from,” she says. “Lots of [these] kids were not held.” That changed once they arrived at the Quinns. They were held and “spoiled” with affection. “Any child that comes into my parents’ home is receiving a good home,” Jamie says. “My parents were very accepting of everyone.”

Thanks to the Quinns’ support, Jamie graduated from both high school and college, and completed training as a physician’s assistant.

When Jamie married in 2014, Mr. Quinn, a deacon in their church, suggested he officiate the wedding. But Jamie insisted that he walk her down the aisle. “It took a lot for me to get a dad,” she says, “and I wanted him to be a dad that day.”

That day, three of her adopted sisters were among Jamie’s bridesmaids. Today, Jamie and her husband have two children of their own.

Jamie keeps in touch with one of her biological sisters. Maintaining this relationship has not been easy for the two sisters. “Her life did not turn out like mine,” Jamie says. “Sometimes I feel that she is jealous of me because I got the better home, because I got out younger than she did.”

Jamie’s reaction upon learning that CSS might close its program: “We are better than this. It is not like this issue suddenly came up. This has been part of what the Catholic Church has taught forever. I was really shocked that the government could force a religious organization to do something against what they believe in.”

Jamie thinks that “a foster home is the difference between life and death” for some kids. Jamie knows that she herself was on a bad path because of the trauma she suffered as a child. Her placement at the Quinn home was a crossroads. “If you have a good foster home – one where a parent treats you like their child -- you can make it. Without one, you can fall through the cracks.”

“CSS needs to keep open,” says Jamie. “It saved my life.”

AMANDA KAPENGA's doctor had advised her and her husband Dan to avoid having any more children after their younger daughter was diagnosed with a low blood platelet count. Amanda, a former preschool teacher, loves kids. So does Dan. They always wanted a larger family and, therefore, decided to adopt. A friend recommended that Amanda contact Catholic Charities of West Michigan, an agency known for offering dual foster-adoption licenses. Although Catholic Charities is located 35 miles from the Kapenga's, Amanda says she "felt that God was telling me that Catholic Charities was where we should go."

That was nine years ago. Since then, the Kapengas have fostered 13 children through Catholic Charities. Today, they're working with the agency to adopt the two young children they are currently fostering. "Our perspective changed completely after fostering our first child," Amanda says. "We discovered a love for foster care."

Neither Amanda nor Dan is Catholic. That does not matter to Catholic Charities, since the organization considers its foster and adoption programs as ministries to serve people of *all* faiths. Amanda and Dan's Christian faith is important to them, however, and they are thankful to work with a faith-based agency like Catholic Charities.

"I love how when we talk about our faith during a home visit or licensing renewal it is very much appreciated," says Amanda. Her faith has kept her fostering Michigan's needy children all these years, since the work, as she points out, is not always easy or pretty.

Almost all of the children Amanda and Dan have fostered have returned to their homes of origin. Catholic Charities encourages this whenever possible, and works with foster parents to embrace this goal as well. “I never felt like the caseworkers were not on our side even while they were also supportive of the bio-family,” Amanda recalls.

In short, the well-being of the foster children is always the primary concern of Catholic Charities of West Michigan. It runs a “visit house” so foster children can attend supervised visits with their biological parents in a home-like setting. Caseworkers have helped Amanda and other foster parents so that biological parents can attend pediatrician appointments when possible. Amanda, for her part, has never wanted the biological parents of their foster children to miss out on important milestones in their children’s lives. She has helped her foster children make Mother’s or Father’s Day presents for their biological parents. She sends parents photographs of their children with the hope of strengthening the parental bond. And Amanda keeps in touch with many of her foster children after they are reunited with their families.

Sometimes, however, reunifying a foster child with his or her biological parents is impossible. Amanda and Dan are currently fostering siblings (a three-year-old girl and 15-month-old boy) whose drug- and alcohol-addicted parents have relinquished their parental rights. Amanda is nothing but grateful to the biological parents. “Maybe they did so much that was wrong,” she says, “but they did one great thing – they chose life.”

Amanda and Dan consider Catholic Charities to be “part of the family.” Amanda is a volunteer mentor for other foster mothers working with the agency. She is concerned that state officials have threatened to cut ties with Catholic Charities of West Michigan if the agency does not agree to place children in same-sex households. “I can’t even imagine switching agencies,” says this veteran foster mom.

WAYNE THOMAS was the answer to three-year-old Brittany’s prayer over 25 years ago.

Brittany, the grandchild of petitioner Sharonell Fulton, prayed for someone to play with as she watched the playground at the Our Lady of Victory Catholic School across from the Fulton house in West Philadelphia. At the same time, Wayne and his brother Sean were living in a dilapidated house with a drug-addicted uncle and aunt who fought viciously. During one fight, the boys’ uncle mistakenly threw boiling water on the boys. Wayne thinks a neighbor called the police after hearing the cries, and an ambulance soon rushed the young boys to the hospital.

Upon their discharge, CSS placed Wayne and Sean with Ms. Fulton. Wayne stayed with Brittany and her younger siblings in the Fulton home until he was 19 years old. Wayne and his brother consider Brittany and Ms. Fulton’s other two grandchildren their siblings. And Wayne calls Ms. Fulton “Meme.” “Meme did not treat us any different than her own,” says Wayne. “What was theirs was ours.”

Now 34, Wayne was one of his biological mother’s twelve children. She struggled with drug addiction and

was incarcerated during much of Wayne's early childhood. "Meme was like a mother to me," says Wayne. Although Wayne's father also battled addiction to drugs, he was a more constant presence in Wayne's life, thanks to Meme and CSS. They arranged for the boys' visits with their father and other siblings, half-siblings and extended relatives. After Wayne's parents were clean, they would visit more frequently and even join in birthday celebrations at Meme's house.

Meme never sought to adopt the boys. "She believed that since we had parents, she was there to help in any way she could to keep us connected to them," Wayne says. "But at the same time, she would not let anything bad ever happen to us." Even though Wayne's parents were able to get back on their feet eventually, Wayne and Sean felt that Ms. Fulton's home was their home. Wayne says, "I was happy with Meme."

He credits Meme and CSS for his success in life. As a sixth grader, Wayne represented his school at the World Youth Day in Germany in 2005, an honor Meme talks about to this day. After graduating from middle school, Wayne went on to study at Mercy Career and Technical School, a private, Catholic vocational high school. Wayne accepted a job as an HVAC technician and worked with the same company for the past 15 years. "I look at my life and the lives of my other siblings who did not go to foster care," he says. "I think that my life is better because of what foster care gave me."

Meme opened her home to other foster children over the years. Wayne remembers that Meme and Wayne would plant a tree whenever a new foster child came to

live with them. “She said that the tree represented new growth, new opportunities,” recalls Wayne. “Now when I visit Meme’s home, I see those trees. I think about my life – still growing, still thriving.”

What will happen if CSS never reopens its foster care program? “Everything I went through that involved them gave me so much hope,” Wayne says. CSS staff “bring a positive respect to upcoming children that need their help. And mothers who want to foster will lose a great agency.”

SUMMARY OF ARGUMENT

For decades, CSS has been a trusted and reliable partner to the City of Philadelphia in placing needy children in loving and stable homes. Catholic-run foster care and adoption programs like CSS offer unique support to foster and adoptive children and their families. These agencies focus on the needs of the child rather than just the desires of the prospective parents. Catholic-run agencies support, whenever possible, a child’s return to his or her family of origin or an alternative, permanent, “forever” home.

The City’s demand for ideological conformity in support of same-sex marriages motivated its exclusion of CSS and is not cured because a “neutral” anti-discrimination policy is involved. Nor does this Court’s directive for legal recognition of same-sex marriage justify banishing from the public square people with a religious belief in the traditional definition of marriage. On the contrary, the free exercise and free speech protections of the First Amendment demand reinstating CSS as a foster care provider and

exempting the agency from the obligation to certify same-sex married couples.

ARGUMENT

I. THE FOSTER CARE AND ADOPTION CRISIS IN AMERICA DEMANDS AN “ALL-HANDS-ON-DECK” APPROACH

Over 400,000 children and youth are living in foster care in the United States today.³ Many children have recently come into the nation’s foster care system as a result of parental drug addiction, particularly addiction to opioids.⁴ Cases of neglect or abuse linked to the health of parents and the economic and psychological strains caused by the coronavirus pandemic will only increase the number of children in need of fostering.⁵

³ U.S. Dep’t of Health and Human Services, Administration for Children and Families, “The AFCARS Report,” <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport26.pdf> (During FY 2018, 437,283 children were in foster care.)

⁴ U.S. Department of Health and Human Services, Administration for Children and Families, “Children’s Bureau Express,” Nov. 2016, Vol. 17, No. 8., <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=181§ionid=1&articleid=4855>; Jeremy Kohomban, Jennifer Rodriguez, and Ron Haskins, “The Foster Care System was Unprepared for the Last Drug Epidemic. Let’s not Repeat History,” Brookings (Jan. 31, 2018), <https://www.brookings.edu/blog/up-front/2018/01/31/the-foster-care-system-was-unprepared-for-the-last-drug-epidemic-lets-not-repeat-history/>

⁵ See e.g., Sherry Lachman, “With Coronavirus, Americas Foster Care System is at Tipping Point,” Boston Globe (Apr. 21, 2020), <https://www.bostonglobe.com/2020/04/21/opinion/with-coronavirus-americas-foster-care-system-is-tipping-point/>; Gracie Bonds Staples, “Why surge in foster care placement will follow COVID

Skilled and nurturing foster parents can make the difference between a child struggling or flourishing.⁶ Now more than ever, foster families need competent and experienced agencies.

As in most cities across the country, children in need of foster care in Philadelphia outnumber the homes available and prepared to foster them. In March 2018, the City put out an urgent call for an additional 300 foster families to respond to this need.⁷ At the same time, and despite decades of successfully partnering with CSS, city officials told CSS that they would stop referring children to them unless CSS agreed to endorse same-sex married couples as foster parents. *Fulton*, 922 F.3d at 149. The City's threat came despite the fact that not one same-sex couple had ever approached CSS seeking to become foster parents.

pandemic," The Atlanta Journal Constitution (Apr. 7, 2020), <https://www.ajc.com/lifestyles/why-surge-foster-care-placement-will-follow-covid-pandemic/NKtnijOQwZpfsL8XypJsrL/>; Jennifer Vickers, "COVID-19 Impacting Kids In Need: Foster Care Are Especially at Risk," Dave Thomas Adoption Foundation (April 20, 2020), <https://www.davethomasfoundation.org/opinion-children-in-foster-care-are-especially-at-risk/>; Fred Wulczyn, "Looking Ahead: The Nation's Child Welfare Systems after Coronavirus, Chronicle of Social Change (Mar. 30, 2020), <https://chronicleofsocialchange.org/child-welfare-2/looking-ahead-the-nations-child-welfare-systems-after-coronavirus/41738>

⁶ See e.g., American Academy of Pediatrics, "Helping Foster and Adoptive Families Cope with Trauma," at page 2, <https://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/healthy-foster-care-america/Documents/Guide.pdf>

⁷ See also, Julia Terruso, "Philly Puts Out 'Urgent' Call – 300 Families Need for Fostering," Philadelphia Inquirer (Mar. 8, 2018); <https://perma.cc/C7UH-GGWZ>.

Id. at 148. CSS explained that it is committed to operating in ways that are fully consistent with all Catholic teaching, particularly regarding the nature of marriage. CSS suggested referring any same-sex couple that may come to the agency in the future seeking to become foster parents to another agency. Petitioners' Brief on the Merits at 9. Agencies routinely do this for a variety of reasons. *Id.* at 28 ("evidence shows that agencies make referrals 'all the time.'").

Despite its fruitful partnership with CSS and despite the agency's collaborative spirit, Philadelphia officials rejected CSS' proposal and unleashed a firestorm, condemning CSS' sincerely-held religious beliefs on marriage. In what can only be understood as retaliation, the City froze CSS intake of children in need of fostering and has since refused to renew CSS' annual foster care contract.

The staggering number of children in need of safe and stable foster homes demands an "all-hands-on-deck" approach. Instead, the City places a premium on ideological conformity and obstinately refuses to accommodate conscientious religious objectors.

II. EXEMPTING CSS FROM THE OBLIGATION TO CERTIFY SAME-SEX MARRIED COUPLES IS CONSISTENT WITH THE GOALS OF FOSTER CARE

A. CSS HAS BEEN A LONG-TIME, TRUSTED PARTNER IN RESPONDING TO THE NEEDS OF CHILDREN IN PHILADELPHIA

The Catholic Church in Philadelphia has a long-standing tradition of caring for children in need. *See Fulton*, 922 F.3d at 147. Beginning in the early 1900s, the Catholic Children’s Bureau was established and staffed by Missionary Sisters of the Blessed Trinity, early Catholic pioneers in social work in the United States. *Id.* In the 1950s, the City began partnering with the Church and other private agencies to facilitate foster care placements.⁸ CSS succeeds because of its institutional experience and unwavering commitment to the good of foster children and their families. The court of appeals recognized CSS’ role as a trusted and effective agency, noting “the long and constructive relationship between the parties.” *Fulton*, 922 F.3d at 147 n. 1.

Amici Thomas Paul thinks of “all of the opportunities” he had growing up thanks to being placed by CSS in Ms. Paul’s foster home.

Amici foster mother Karen Quinn says that CSS went “above and beyond” meeting the material needs of

⁸ Today, CSS can *only* place children in foster homes if it has a contract with the City to do so. *See* Petitioners’ Brief on the Merits at 5-6.

children placed in her home. Her kids received the help they needed right away and “without being placed on a waiting list.”

Amici foster mother Winnie Perry similarly notes that CSS staff were there for “anything I couldn’t handle.”

Amici Adrienne Cox credits CSS with offering something “unique.” She believes that has something to do with their expectations of their foster parents that made her experience different from what was experienced by other former foster children she has known. That’s why, when Adrienne and her husband chose to become foster parents, they chose CSS to help them become foster parents. Adrienne’s connection is so strong that she refers to CSS as “my agency.”

Amici Wayne Thomas similarly says that his siblings who were not placed in CSS-certified foster homes had much different childhoods than his: “They were left alone. They worried about what they would have to eat.” But life at his foster mother Meme’s house was different for Wayne and his brother Sean.

B. CATHOLIC-RUN AGENCIES LIKE CSS GREATLY BENEFIT CHILDREN AND THEIR FOSTER/ADOPTIVE PARENTS

Many aspiring foster and adoptive parents choose Catholic-run agencies to help them navigate the process of fostering or adopting their child. Some foster or adoptive parents are religious themselves and want to work with an agency holding their same values. Children and foster and adoptive parents benefit from

the child-centered focus of Catholic-run foster and adoption agencies.

Amici Thomas Paul is thankful for CSS' role in arranging for the parochial school education he enjoyed as a child. Fond memories of his time at that grade school returned to Thomas during a recent contract he performed resurfacing the concrete sidewalks surrounding the school.

Amici Winnie Perry, although not Catholic herself, never considered working with an agency other than CSS. Perry and CSS have been partners for the past 40 years. One of Ms. Perry's foster daughters, *amici* Adrienne Cox, credits Ms. Perry's desire to run a Christian home with this long-lasting collaboration.

Amici Karen Quinn first became a foster mother after reading in a Sunday bulletin about the need for foster homes for children. Ms. Quinn considers her Catholic faith the inspiration for her commitment to foster parent for 30 years, and she wants to continue to care for at-risk children as a CSS-certified foster parent.

Amici Jamie Hill similarly observes that her mother's decision to foster was a "calling from God."

Amici Andreas and Michelle Widmer credit Catholic Charities of Boston for faithfully applying the Catholic Church's understanding of "the integral development of the human person."

Amici Ben and Gaia Rovagnati note that Catholic Charities of Chicago embraced Catholic teaching by

always seeking the good of the child, the birthparents, and adoptive families.

CSS connected *amici* Wayne Thomas and his foster mother petitioner Sharonell Fulton to the many educational opportunities offered by the Catholic Church in Philadelphia. While in middle school, Wayne traveled to Germany as his school's representative at World Youth Day. Wayne "met so many people from all over the world" and counts many of the people he met on that trip as his friends today. Thanks to vocational training at Mercy Catholic High School, Wayne learned skills he still uses in his career as a HVAC technician.

C. CATHOLIC-RUN AGENCIES LIKE CSS SUPPORT PERMANENT HOMES FOR NEEDY CHILDREN

Catholic-run foster and adoption agencies work with foster and adoptive parents, birth parents, and extended relatives toward finding a child's best option for a permanent home.

CSS helped provide *amici* Thomas Paul and his brother Sean a loving and stable home with the Pauls. Thomas is proud to be an adopted child in the Paul family.

Long-time CSS-certified foster parent and *amici* Karen Quinn embraced the goal of connecting foster children with relatives. She reached out to an out-of-state foster family so that her foster son Gabriel could visit with his biological siblings during a family trip. Quinn and her husband also adopted several of their foster children when the best permanent home for the child was the Quinn home.

Amici Winnie Perry encouraged the birth mother of her foster child *amici* Adrienne Cox to keep ties with Adrienne and arranges visits with the grandmother of her now-adopted children James and Julia.

Amici Amanda Kapenga and her husband Dan are thankful that Catholic Charities of West Michigan has a center where their foster children can visit with biological parents. Additionally, Amanda appreciates working with an agency that has dual foster and adoption programs as she and Dan desire to adopt their two current foster children.

Amici Andreas and Michelle Widmer considered several adoption agencies after deciding to adopt a child. They don't regret choosing Catholic Charities of Boston. Almost 16 years after Catholic Charities facilitated Eli's adoption, the Widmers are thankful to the agency's staff for explaining the realities of adoption and encouraging them from the beginning to focus on the needs of their child.

Catholic Charities of Chicago taught *amici* Ben and Gaia Rovagnati that adoption is not a transaction but rather an opportunity to care for a child and become a family.

CSS and foster mother petitioner Sharonell Fulton encouraged *amici* Wayne Thomas to maintain a relationship with his biological parents and siblings. Wayne enjoyed CSS-supervised visits while his parents were recovering from addiction. And when Wayne's parents stayed clean, Meme included them in family celebrations at her home.

D. CSS DOES NOT INTERFERE WITH THE INTERESTS OF SAME-SEX COUPLES

CSS, a ministry of the Archdiocese of Philadelphia, operates consistent with Catholic teaching. Its adherence to Church teaching is not rooted in animus against same-sex attracted people. Further, it does not bar same-sex couples from serving as foster parents. Philadelphia remains free to place children with same-sex foster parents. Twenty-nine of the thirty agencies working with the City are willing to certify same-sex couples as foster parents. *Fulton*, 922 F.3d at 147, 149 n.2. A decision in favor of CSS does not prevent the City from continuing to use its public outreach to promote foster parenting among same-sex households, nor would it interfere with the efforts of advocacy groups like Intervenor-Respondents. In short, the City need not coerce CSS into publicly promoting the City's views or demand as a condition for placing needy children that CSS alter its sincerely-held religious beliefs.

E. ACCOMMODATING CSS' SINCERELY-HELD BELIEFS HAS FAR-REACHING BENEFITS FOR NEEDY AND VULNERABLE CHILDREN

The Philadelphia story is not unique. Catholic foster care and adoption agencies in Washington, D.C., Boston, San Francisco, the State of Illinois, and Buffalo, New York have closed in the face of similar

ideological pressures.⁹ Government officials from the State of Michigan have entered into a settlement agreement requiring all private adoption and foster care agencies to work with same-sex couples, despite a state law specifically offering accommodations for faith-based agencies.¹⁰ Two separate lawsuits have been filed to prevent state officials from taking adverse action against Catholic-run foster care and adoption agencies.¹¹

Amici Andreas and Michelle Widmer were among the last couples to adopt through Catholic Charities of Boston before the agency was forced to close. Andreas credits the agency for preparing them to parent their son Eli. “Catholic Charities,” says Andreas, “had built-in the reality of adoption.”

⁹ See United States Conference of Catholic Bishops, “Discrimination against Catholic Adoption Services,” <http://www.usccb.org/issues-and-action/religious-liberty/discrimination-against-catholic-adoption-services.cfm> (last visited June 1, 2020); “After 95 years, NY rules end Catholic adoption and foster services in Buffalo,” Catholic News Agency (Aug. 27, 2018), <https://www.catholicnewsagency.com/news/after-95-years-ny-rules-end-catholic-adoption-and-foster-services-in-buffalo-60894>

¹⁰ See *Dumont v. Gordon*, No. 2:17-cv-13080-PDB-EAS (E.D. Mich. 2019) (Stipulation of Voluntary Dismissal with Prejudice), <https://s3.amazonaws.com/becketnewsite/Dumont-Stipulated-Dismissal-and-Settlement-Agreement.pdf>

¹¹ See, e.g., *Buck v. Gordon*, No. 1:19-CV- 286, 2019 WL 4686425, at *7 n.9 (W.D. Mich. Sept. 26, 2019) (granting preliminary injunction to preserve status quo); *Catholic Charities of Western Michigan v. Michigan Dept. of Health and Human Services*, No. 19-000072-MM (Michigan Court of Claims) (Complaint), <http://www.adfmedia.org/files/CatholicCharitiesWestMichiganComplaint.pdf>

Amici Amanda Kapenga and her husband Dan have partnered with Catholic Charities of Western Michigan for almost a decade to foster needy children in their community. The couple hopes their home can be the “forever home” for the two young children they are currently fostering. Catholic Charities is coordinating their adoption. This fruitful and long-term relationship may be cut short if the state refuses to renew the agency’s license to coordinate adoptions.

Amici Ben and Gaia Rovagnati are open to adopting another child. They wish Catholic Charities of Illinois were still operating as a placing agency to support them.

Clear guidance from this Court will help resolve pending actions and avoid future closures.

III. AN EXEMPTION FOR CSS IS REQUIRED UNDER THE FIRST AMENDMENT AND CONSISTENT WITH THIS COURT’S DECISION IN *OBERGEFELL*

There is a troubling trend of state and local governments disregarding the protections offered by the First Amendment.¹² The City’s refusal to renew CSS’ annual foster care placement agreement is another variation on this theme. Its practice of allowing for exceptions from its anti-discrimination policy, antagonism toward CSS’ sincerely-held religious beliefs, suspect application of anti-discrimination

¹² See e.g., *NIFLA v. Becerra*, 138 S. Ct. 2361 (2018); *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm.*, 138 S. Ct. 1719 (2018); and *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2022 (2017).

policies, and its after-the-fact rationalizations overshadow any genuine interest that all Philadelphians respond to the foster care crisis.¹³ This Court must not allow the City to weaponize a “neutral” anti-discrimination policy in order to exclude CSS from its foster care program.¹⁴

When this Court, in *Obergefell v. Hodges*, decided in favor of government recognition of the legal character of marriage between two people of the same sex, it specifically acknowledged that religious objection to its expansive legal definition of marriage deserved constitutional protection.

[I]t must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned. The First Amendment ensures that religious organizations and persons are given *proper protection* as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered.” 135 S. Ct. 2584, 2607 (2015) (emphasis added).

¹³ As this Court observed in *Masterpiece Cakeshop*, reviewing courts should consider historical background to assess government neutrality. 138 S. Ct. at 1731; *see also Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 540 (1993).

¹⁴ This Court should revisit *Employment Div. v. Smith*, 494 U.S. 872 (1990) and replace it with a clear standard more protective of free exercise.

The City’s demand that private foster care placement agencies provide written endorsements for same-sex married couples should include an exemption for religious objectors like CSS. Such an accommodation is the “proper protection” of free exercise and free speech rights under the First Amendment.¹⁵

CONCLUSION

Severing ties with Catholic-run foster care and adoption programs, under the guise of enforcing “neutral” anti-discrimination laws, is the equivalent of hanging a “Catholics Need Not Apply” sign outside of every state and local health and human services department. Such a precedent is odious to the Constitution’s guarantees of free speech and the free exercise of religion. Such a precedent should not stand.

For the sake of the many children in need in Philadelphia and across the country, *amici* respectfully request this Court to reverse the decision below.

¹⁵ See also, John Corvino, Ryan T. Anderson & Sherif Girgis, *Debating Religious Liberty and Discrimination*, 112 (2017) (Scholars Ryan T. Anderson and Sherif Girgis state that the “material and social effects of the legal recognition of same-sex marriages can be achieved without curbing private parties’ freedoms of religion, conscience, or association.”); Luke Goodrich, *Free to Believe: The Battle over Religious Liberty in America*, 109 (2019) (accommodating religious objection to same-sex marriage in government contracting “isn’t just about protecting [objectors] rights; it’s about protecting the most vulnerable members of society.”).

Respectfully Submitted,

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