

No. 19-123

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**In the Supreme Court of the United States**

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SHARONELL FULTON, ET AL., *Petitioners*,  
v.  
CITY OF PHILADELPHIA, ET AL., *Respondents*.

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE THIRD CIRCUIT

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**JOINT APPENDIX VOL. I**

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May 2020

Petition for Writ of Certiorari Filed July 22, 2019  
Petition for Writ of Certiorari Granted February 24, 2020

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JA 1

**UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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No. 18-2574

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SHARONELL FULTON; CECELIA PAUL;  
TONI LYNN SIMMS-BUSCH;  
CATHOLIC SOCIAL SERVICES,

Appellants

v.

CITY OF PHILADELPHIA; DEPARTMENT OF HU-  
MAN SERVICES FOR THE CITY OF PHILADEL-  
PHIA; PHILADELPHIA COMMISSION ON HUMAN  
RELATIONS

SUPPORT CENTER FOR CHILD ADVOCATES;  
PHILADELPHIA FAMILY PRIDE  
(Intervenors in D.C.)

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**RELEVANT DOCKET ENTRIES**

Date Filed	Docket Text
07/16/2018	CIVIL CASE DOCKETED. Notice filed by Appellants Catholic Social Services, Sharonell Fulton, Cecelia Paul and Toni Lynn Simms-Busch in District Court No. 2-18-cv-02075. (TMM) [Entered: 7/16/2018 02:37 PM]
* * *	
08/27/2019	ECF FILER: ELECTRONIC BRIEF with Volume I of Appendix

Date Filed	Docket Text
	attached on behalf of Appellants Catholic Social Services, Sharonell Fulton, Cecelia Paul and Toni Lynn Simms-Busch, filed. Certificate of Service dated 08/27/2018 by ECF.- [Edited 08/30/2018 by EAF - Volumes II and III requested to re-file; will be removed upon receipt] [18-2574] (MLR) [Entered: 08/27/2018 06:12 PM]
* * *	
08/31/2018	ECF FILER: ELECTRONIC JOINT APPENDIX VOLUME II on behalf of Appellants Catholic Social Services, Sharonell Fulton, Cecelia Paul and Toni Lynn Simms-Busch, filed. Certificate of service dated 08/31/2018 by ECF.- Edited 08/31/2018 by EAF - Text edited to specify volume] [18-2574] (MLR) [Entered: 08/31/2018 09:52 AM]
08/31/2018	ECF FILER: ELECTRONIC JOINT APPENDIX VOLUME III on behalf of Appellants Catholic Social Services, Sharonell Fulton, Cecelia Paul and Toni Lynn Simms-Busch, filed. Certificate of service dated 08/31/2018 by ECF.- [Edited 08/31/2018 by EAF - Text edited to specify volume] [18-2574] (MLR) [Entered: 08/31/2018

Date Filed	Docket Text
	09:57 AM]
	* * *
09/05/2018	NOTICE of Order from U.S. Supreme Court dated 08/30/2018. The application for injunctive relief presented to Justice Alito and by him referred to the Court is denied. Justice Thomas, Justice Alito, and Justice Gorsuch would grant the application. Application 18A118. (CND) [Entered: 09/05/2018 01:39 PM]
	* * *
09/27/2018	ECF FILER: ELECTRONIC BRIEF on behalf of Appellees City of Philadelphia, Philadelphia Commission on Human Relations and Philadelphia Department of Human Services, filed. Certificate of Service dated 09/27/2018 by ECF. [18-2574] (JLI) [Entered: 09/27/2018 11:15 PM]
09/27/2018	ECF FILER: ELECTRONIC INTERVENOR BRIEF on behalf of Intervenor Appellees Philadelphia Family Pride and Support Center for Child Advocates in support of Appellee, filed. Certificate of Service dated 09/27/2018 by ECF. [18-2574] (CVW) [Entered: 09/27/2018 11:18 PM]
	* * *



Date Filed	Docket Text
10/05/2018	ECF FILER: ELECTRONIC REPLY BRIEF on behalf of Appellants Catholic Social Services, Sharonell Fulton, Cecelia Paul and Toni Lynn Simms-Busch, filed. Certificate of Service dated 10/05/2018 by ECF. [18-2574] (MLR) [Entered: 10/05/2018 05:45 PM]
* * *	
11/20/2018	ECF FILER: Transcript of oral argument on 11/06/2018 prepared at the direction of the Court. [18-2574] (JLI) [Entered: 11/20/2018 11:18 AM]
* * *	
04/22/2019	PRECEDENTIAL OPINION Coram: AMBRO, SCIRICA and RENDELL, Circuit Judges. Total Pages: 50. Judge: AMBRO Authoring. (TMM) [Entered: 04/22/2019 08:41 AM]
04/22/2019	JUDGMENT, Affirmed. Costs taxed against Appellants. (TMM) [Entered: 04/22/2019 08:42 AM]
* * *	
07/25/2019	NOTICE from U.S. Supreme Court. Petition for Writ of Certiorari filed by Sharonell Fulton on 07/22/2019. Supreme Court Case No. 19-123. (TMK) [Entered: 07/26/2019 03:26 PM]
* * *	

JA 5

Date Filed	Docket Text
02/24/2020	NOTICE of U.S. Supreme Court disposition at No. 19-123. Petition for Writ of Certiorari filed by Sharonell Fulton granted on 02/24/2020. (CRG) [Entered: 02/24/2020 03:09 PM]

JA 6  
**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT  
OF PENNSYLVANIA**

\_\_\_\_\_  
No. 18-2075  
\_\_\_\_\_

SHARONELL FULTON, et al.,  
*Plaintiffs,*

v.

CITY OF PHILADELPHIA, et al.,  
*Defendants.*

\_\_\_\_\_  
**RELEVANT DOCKET ENTRIES**

Date Filed	#	Docket Text
05/17/2018	1	COMPLAINT against CITY OF PHILADELPHIA, DEPARTMENT OF HUMAN SERVICES FOR THE CITY OF PHILADELPHIA, PHILADELPHIA COMMISSION ON HUMAN RELATIONS ( Filing fee \$ 400 receipt number 178509.), filed by TONI LYNN SIMMS-BUSCH, SHARONELL FULTON, CECILIA PAUL, CATHOLIC SOCIAL SERVICES. (Attachments: # 1 Case Management Track Form, # 2 Civil Cover Sheet, # 3 Designation Form, # 4 Exhibit, # 5 Exhibit, # 6

Date Filed	#	Docket Text
		Exhibit, # 7 Exhibit, # 8 Exhibit, # 9 Exhibit, # 10 Exhibit, # 11 Exhibit)(jwl, ) (Entered: 05/17/2018)
* * *		
06/07/2018	13	Amended MOTION for Temporary Restraining Order, Amended MOTION for Preliminary Injunction filed by CATHOLIC SOCIAL SERVICES, SHARONELL FULTON, CECELIA PAUL, TONI LYNN SIMMS-BUSCH. Memorandum, Declaration, Certificate of Service. (Attachments: # 1 Text of Proposed Order, # 2 Memorandum, # 3 Exhibit 1 part 1, Amato Declaration, # 4 Exhibit 1 part 2, # 5 Exhibit 1 part 3, # 6 Exhibit 1 part 4, # 7 Exhibit 1 part 5, # 8 Exhibit 1 part 6, # 9 Exhibit 1 part 7, # 10 Exhibit 2, # 11 Exhibit 3, # 12 Exhibit 4, # 13 Exhibit 5, # 14 Exhibit 6)(RIENZI, MARK) (Entered: 06/07/2018)
* * *		

Date Filed	#	Docket Text
06/12/2018	20	RESPONSE in Opposition re 13 Amended MOTION for Temporary Restraining Order Amended MOTION for Preliminary Injunction , 10 MOTION for Temporary Restraining Order and MOTION for Preliminary Injunction filed by CITY OF PHILADELPHIA, DEPARTMENT OF HUMAN SERVICES FOR THE CITY OF PHILADELPHIA, PHILADELPHIA COMMISSION ON HUMAN RELATIONS. (Attachments: # 1 Exhibit Ex.1 - Declaration of K. Ali, # 2 Exhibit Ex. 1-A, # 3 Exhibit Ex. 1-B, # 4 Exhibit Ex. 1-C, # 5 Exhibit Ex. 1-D, # 6 Exhibit Ex. 2 - Declaration of C. Figueroa, # 7 Exhibit Ex. 3 - Declaration of B. Field, # 8 Exhibit Ex. 3-A, # 9 Exhibit Ex. 3-B, # 10 Text of Proposed Order Proposed Order)(FIELD, BENJAMIN) (Entered: 06/12/2018)

Date Filed	#	Docket Text
06/13/2018	21	Memorandum of law in opposition to plffs' motion for temporary restraining order and preliminary injunction, Certificate of Service, filed by DEFTS CITY OF PHILADELPHIA, DEPARTMENT OF HUMAN SERVICES FOR THE CITY OF PHILADELPHIA, PHILADELPHIA COMMISSION ON HUMAN RELATIONS. (FILED UNDER SEAL) (kw, ) (Additional attachment(s) added on 6/14/2018: # 1 sealed document) (tjd,). (Entered: 06/13/2018)
* * *		
06/15/2018	27	Memorandum of Law in Support re 14 MOTION to Intervene filed by PHILADELPHIA FAMILY PRIDE, SUPPORT CENTER FOR CHILD ADVOCATES. Certificate of Service. (Attachments: # 1 Proposed Answer, # 2 Declaration of Frank P. Cervone, # 3 Declaration of Stephanie Haynes)(TACK-HOOPER, MOLLY) Modified on 6/25/2018 (tjd). (Entered: 06/15/2018)

Date Filed	#	Docket Text
* * *		
06/22/2018	36	NOTICE by CITY OF PHILADELPHIA, DEPARTMENT OF HUMAN SERVICES FOR THE CITY OF PHILADELPHIA, PHILADELPHIA COMMISSION ON HUMAN RELATIONS Regarding New Evidence at Hearing (FIELD, BENJAMIN) (Entered: 06/22/2018)
* * *		
06/25/2018	40	Letter to Judge Tucker dated June 25, 2018 by CATHOLIC SOCIAL SERVICES, SHARONELL FULTON, CECILIA PAUL, TONI LYNN SIMMS-BUSCH re 36 Notice (Other) in response to City's 6/22 letter (RIENZI, MARK) Modified on 6/26/2018 (tjd). (Entered: 06/25/2018)
* * *		
07/13/2018	52	MEMORANDUM FILED. SIGNED BY HONORABLE PETRESE B. TUCKER ON 07/13/2018. 07/13/2018 ENTERED AND COPIES MAILED AND E-MAILED.(dt) (Entered: 07/13/2018)

Date Filed	#	Docket Text
07/3/2018	53	ORDER OF 7/13/18 THAT PLAINTIFF'S INJUNCTION MOTION IS DENIED. IT IS FURTHER ORDERED THAT DEFENDANTS CITY OF PHILADELPHIA, DEPARTMENT OF HUMAN SERVICES FOR THE CITY OF PHILADELPHIA, AND PHILADELPHIA COMMISSION ON HUMAN RELATIONS SHALL FILE AN ANSWER OR OTHERWISE RESPOND TO PLAINTIFFS' COMPLAINT (DOC. 1) NO LATER THAN TWENTY-ONE (21) DAYS FROM THE DATE OF THIS ORDER. SIGNED BY JUDGE PETRESE B. TUCKER. 7/13/18 ENTERED AND COPIES MAILED AND E-MAILED. (DT) (Entered: 07/13/2018)
* * *		



Date Filed	#	Docket Text
07/13/2018	55	NOTICE OF APPEAL as to 53 Order (Memorandum and/or Opinion), by CATHOLIC SOCIAL SERVICES, SHARONELL FULTON, CECILIA PAUL, TONI LYNN SIMMSBUSCH. Filing fee \$ 505, receipt number 0313-12924159. Copies to Judge, Clerk USCA, and Appeals Clerk. (RIENZI, MARK) Modified on 7/17/2018 (tjd). (Entered: 07/13/2018)
* * *		
08/01/2018	68	ORDER THAT PROPOSED INTERVENORS' MOTION FOR RECONSIDERATION OF THE COURT'S ORDER STAYING THE MOTION FOR LEAVE TO INTERVENE OR, IN THE ALTERNATIVE, THAT THE COURT AMEND ITS ORDER TO INCLUDE AN INDICATIVE RULING PURSUANT TO F.R.C.P. 62.1 IS GRANTED, ETC. SIGNED BY HONORABLE PETRESE B. TUCKER ON 8/1/18.8/2/18 ENTERED AND COPIES E-MAILED.(kw, ) (Entered: 08/02/2018)

JA 13

Date Filed	#	Docket Text
* * *		

**Transcript of Hearing on  
Temporary Restraining Order**

[Page 1]

United States District Court  
Eastern District of Pennsylvania

Sharonell Fulton, et al.

vs.

City of Philadelphia,  
et al.

Civil Docket for Case  
No. 18-2075

---

Philadelphia, PA

June 18, 2018

Before Honorable Judge Petrese B. Tucker

**TEMPORARY RESTRAINING ORDER**

Day 1

Appearances:

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Becket Fund for Religious Liberty

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For the Defendants:

City of Philadelphia Law Department

By: Eleanor N. Ewing, Esq.

Benjamin H. Field, Esq.

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JA 15

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[Page 2]

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Coleman & Goggin  
By Diana P. Cortes, Esq.  
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[Page 3]

The Court: Good afternoon.

All Counsel: Good afternoon, Your Honor.

The Court: You may be seated. This matter is here for argument on a Temporary Restraining Order filed by Catholic Services among other Plaintiffs against the City of Philadelphia. There is a Petition to Intervene that was filed. Have there been any discussions between the parties on that Motion and the parties in the restraining order as to whether there is an Agreement, not an Agreement, as to the Motion to Intervene?

Ms. Windham: Your Honor, we have not had any discussions regarding the Motion to Intervene.

The Court: Would discussions be fruitful?

Ms. Windham: Your Honor, we would be prepared to file a brief. We just received their Intervention Motion,

their Brief on Intervention Motion last Friday. Plaintiffs would be happy to file a Response to that in the regular time that is allotted. I can address that very briefly today, but I believe that it would probably be most fruitful to just permit the normal briefing on the Motion to Intervene.

The Court: Okay. Any addition to add to that?

[Page 4]

Ms. Cortes: No, Your Honor. The only thing that I would add is that we do not have any objection to the Motion to Intervene.

The Court: Okay. At this point the Court will accept the Briefing as an Amicus so that we can proceed with the issue at hand.

If the parties would like to make an opening statement, I will first hear from counsel for Catholic Services.

Ms. Windham: Thank you, Your Honor.

Lori Windham for Plaintiffs: If I may, I don't know if Your Honor has a particular schedule set for the hearing this afternoon. We would like to propose 15 minutes per side for opening statements, an hour for the Plaintiffs' witnesses, an hour for Defendants' witnesses if they choose to call any, and then ten minutes preside for closing statements.

The Court: Well, we will play it by ear.

Ms. Windham: Certainly.

The Court: But we will keep those suggestions in mind.

Ms. Windham: Thank you, Your Honor.

The Court: You may proceed with Opening Statement.

Ms. Windham: Thank you.

[Page 5]

For over half a century, Catholic Social Services has served at-risk children in Philadelphia through its foster care work, finding them loving homes when they have no place else to go. But now the City is seeking to end that half century of service, and to do so for reasons that violate both Pennsylvania law and the Frist Amendment. We are here on a Motion for a Temporary Restraining Order or a Preliminary Injunction because the City's unlawful actions are causing serious, urgent and ongoing harms.

Several problems require urgent relief, and I will name two just to start. First, there are children in the system who need homes today. Catholic has places available right now, 26 of them. We believe there will be 35 openings by the end of June. But the City is refusing to place children those homes just because those families work with Catholic. Those children could live with loving foster parents like Mrs. Paul, whom you will hear from today. But the City won't let that happen.

Second, the city has said that it will make limited exceptions to its referral stoppage, essentially when a really difficult situation arises and the right information gets to the right people at the right time. But even that can end up taking weeks, [Page 6] which we have seen in the case of Doe Foster Child Number One. Placement took weeks that normally could have happened within a matter of hours. So real children and real foster parents are being hurt by the City's actions every day that those actions continue.

The city has imposed these penalties on foster families and on Catholic because it claims that it can, indeed that it must, penalize the Plaintiffs because Catholic cannot make written certifications that contradict its religious beliefs. But the Supreme Court, the 3rd Circuit and this Court have been clear that even when governments are exercising discretion, governments must not do so in a way that burdens religious exercise, retaliates or compels speech. And that's especially true where the City does not have a compelling interest behind its actions. And it does not have one here, since in that half century of service, not one person has complained against Catholic for providing foster care services consistently with its religious beliefs.

In its response, the City is asking this Court to presume that two things are true, two things that it has not even argued much less demonstrated. First, it's asking this Court to presume that Catholic's written certifications for home studies are a public [Page 7] accommodation. That's something they have never been understood to be, that's something that the city has not even attempted to establish that they are.

Number two, the City is also asking this Court to rule that actions by private religious charities are really City actions. That's contrary to both law and to the plain terms written into the City's contract. Thus the City's defenses fall apart. And what is left is a government targeting, retaliating and burdening religious exercise in violation of the law. Without urgent action by this Court, Catholic will soon be unable to continue its decades long religious exercise of serving foster children consistently with its faith. Without urgent action from this Court, foster parents like Ms. Fulton and Ms. Simms-Busch will lose the critical support

services that they rely on to serve their foster children. Without urgent action from this Court loving foster homes like Mrs. Paul's will continue to sit empty during a foster care crisis.

The Plaintiffs meet the criteria for emergency injunctive relief. First, the Plaintiffs have demonstrated a reasonable probability of success on the merits. Unless the Court has a particular claim that it would like me to turn to first, I will address each one in turn.

[Page 8]

First, Plaintiffs are likely to prevail on their claim under the Pennsylvania Religious Freedom Protection act or RESPITE. Under RESPITE, a Plaintiff needs to show that they are engaged in religious exercise and that religious exercise is substantially burdened. Once a Plaintiff has made that showing, and Plaintiffs have here, then the burden shifts to the Defendants to show that they have a compelling interest in their actions. And that they have used the least restrictive means available to further that interest.

We have explained these claims at length in the briefing. And so I want to touch briefly on the City's counter arguments. First, the City claims that the Plaintiffs are not engaged in religious exercise here. I think the best proof that they are is their long history. The Archdiocese of Philadelphia has been providing services for at-risk children for over a century. Catholic Social Services has been involved in this particular form of service to children, foster care service and placements, for a half century.

The Declaration of Bishop McIntyre details the importance of this fundamental religious exercise to Catholic Social Services and to its Catholic faith. This



Court also recognized in the case of Chosen 300 Ministries in the City of Philadelphia that acts of [Page 9] charity are often central to Christian worship. In that case, this Court ruled in favor of a religious ministry dedicated to feeding the homeless, and not just feeding the homeless generally, but doing it in a very particular way, feeding them downtown on the parkway at the place where they are. Catholic Social Services has a fundamental religious exercise of serving foster children in a matter consistent with Catholic faith. The same is also true for the individual foster families, and you will hear a little bit more about that from them today.

Second, there are four different statutory criteria for what constitutes a substantial burden under RES-PITE. The Plaintiffs have met all four of those. It's only necessary to meet one in order to prove a substantial burden. But all four are met here.

The City's response is twofold. First, the City says that no substantial burden exists because Catholic entered into a contract with the City and therefore cannot have a substantial burden. This argument rests on the fallacy that Catholic is a public accommodation under the terms of the contract. And I want to point the Court to Contract Provision 15.1. This is the nondiscrimination provision. That is at ECF Document 13-5 at page 18. The City says, and in [Page 10] performing—or the contract says, and in performing this contract, providers shall not discriminate or permit discrimination against any individual because of race, color, religion or national origin, period.

Then there's a second sentence, nor shall the provider discriminate or permit discrimination against individ-

uals in employment, housing and real property practices and/or public accommodation practices. It then goes on to define both discrimination and apply it to a number of additional protected classes, including sexual orientation. And so by plain terms of the contract, it only prohibits actions that the City would term discrimination against sexual orientation if they occur in the context of a public accommodation. Written certifications for home studies are not a public accommodation.

First, Catholic Social Services is not a place of public accommodation within the meaning of the City's ordinance. It is a private religious entity. And in a prior case the Pennsylvania Commonwealth Court determined that a religious school run by the Archdiocese of Philadelphia was not a public accommodation under state law.

The same is true here, Catholic Social Services is not a public accommodation like a hotel or a [Page 11] restaurant or a train station. Second, written certifications for home studies are not a good or service that is generally made available to the public. They are not something you can walk in the door, pay your money and say, hey, I have paid the price, give me that thing. They are governed by state law, and state law is clear that a number of subjective and discretionary criteria go into making that determination. I am going to be looking at 55 Pennsylvania Code, Section 3700.64. These are state regulations governing the certifications for the home study process.

The factors that foster care agencies must consider include stable, mental and emotional adjustment, including in some cases a psychological evaluation. Supportive community ties, existing family relationships,

attitudes and expectations, ability of the applicant to work in partnership with an FSCA, a foster care agency. And so the determinations involved in home studies and in the written certifications are by nature discretionary determinations governed by detailed state regulations. They are not public accommodations that are made available to the general public. You don't have to go through an evaluation of supportive community ties in order to rent a hotel room. You don't [Page 12] have to prove you have stable, mental and emotional adjustment in order to buy a bus ticket. They don't ask you about your existing family relationships and attitudes and expectations towards children when you go to buy a train ticket. This is not a public accommodation within the meaning of the contract.

And so the City's defense on this point falls apart. Catholic Social Services is substantially burdened within the meaning of state law. The individual foster families are substantially burdened as well. And the City must prove that it has a compelling government interest in what has been done here. And that it has used the least restrictive means available to further that interest.

First, it's important to note that when there is a compelling government interest, the question is not, is this interest compelling in the broad sense. The question is, is the interest compelling in this particular case.

In the 9-0 Supreme Court decision of *Church of Lukumi Babalu Aye v. City of Hialeah*, the Supreme Court said that public health was not a compelling government interest because the city had failed to pursue it evenhandedly. In the 9-0 Supreme Court decision of *Holt v. Hobbs*, the Supreme Court said

[Page 13] prison security was not a compelling government interest because the City had failed to bear its burden of proof that what Mr. Hobbs was doing was actually endangering prison security.

The City here says that it has a compelling interest in its fair practices ordinance, but it has not shown that that compelling interest applies in this particular case, and it had a difficult time doing that because there has not been a single complaint against Catholic for following their religious practices.

The statute also requires the city to prove that the compelling—that the actions actually further the compelling interest. That's something else the city can't do, especially when it comes to the question of the individual foster families. The city has cut off all foster care referrals to Catholic. There is no way to be able to place children in these homes without referrals from the City. All foster care referrals from Philadelphia children come through DHS.

And so as a result, Mrs. Paul's home is currently sitting empty. As she will tell you today, it has never sat empty for this amount of time before. The City is refusing to place children in the homes of these individual families simply because they work with [Page 14] Catholic. The city cannot hope to prove that it has—that it furthers its compelling interest to penalize families who were certified long ago. This is not related to their interest in what happens with home studies in the future going forward. They don't have a compelling interest in what they are doing here, nor have they used the least restrictive means available. Again, the history, the long history of Catholic's dedicated service to foster children and families with no complaints shows that the system has worked and the City could

permit them to make referrals. They are not asking to stand in anyone's way. They are not asking to prevent anyone from becoming a foster parent. They are only asking for the ability to make referrals to an agency that is a good fit for a couple who comes to them.

The city has failed to prove that that is not a less-restrictive alternative to meet their goals. The same strict scrutiny standard applies to the Plaintiffs' claims under the Free Exercise clause. And I want to mention for a moment the Free Exercise Clause. The City has sort of merged together two different analyses and they are two separate analyses. First, the 3rd Circuit has made clear in the *Black Hawk* case that where you have a government system that creates a regime [Page 15] of individualized discretionary exemptions, strict scrutiny applies. That's from *Blackhawk v. Pennsylvania*, 381 F.3d at 209. So the mere presence of a regime of individualized discretionary exemptions where religious exemption has been denied is subject to scrutiny because it is not a neutral law of general applicability, so the rational-basis test does not apply, it goes to the strict scrutiny test.

Here, that's exactly what the City has in place. And I would point you toward contract provision Section 3.21. That's ECF 13-4, at pages 14 through 15. This is what the City terms the non-referral provision. The provider shall not reject a child or family for services based upon the location or the condition of the family's residence. I want to address that in a moment. And then at the end, unless an exception is granted by the commissioner or the commissioner's designee in his or her sole discretion.

So the City has a system of individualized and discretionary exemptions from this contract provision. And

the City has made clear in its May 7th letter from the law department to Catholic that it would not make an exception for Catholic in these circumstances. Those two facts standing alone are enough to subject the City's actions to strict scrutiny.

[Page 16]

I do want to just note for a moment, the city claims that this provision of the contract is a flat ban because it assumes that it's talking about home studies. That does not appear to be the case. It appears to be talking about children and families who are referred for foster service, not for home studies. I note the language there says you can't reject them based upon the location or condition of the family's residence.

55 Pennsylvania code section 3700.66 actually has a whole list of requirements about the condition of the family's residence that you consider as part of the home study. And so given that the language in this contract provision seems to be in conflict with the state regulations, I believe that the best reading of this contract provision is that it's not talking about home studies at all. And this is what the city is using to argue that Catholic Social Services is compelled to perform these home studies pursuant to the contract.

Given that there is a system of individualized and discretionary exemption, strict scrutiny applies. As I have discussed, the city cannot hope to meet it. Second, the city's actions have not been neutral. The city has made a number of exceptions [Page 17] to its supposed referral ban for secular reasons, and we will hear a little bit more about that through evidence today.

Finally, under the free exercise clause, I just want to briefly note the Supreme Court's recent decision in Masterpiece Cakeshop. The Supreme Court in that case made clear that there are difficult issues on both sides of these questions, and that the free exercise clause does not disappear when these difficult questions come up. The Supreme Court recognized that governments—and that the courts must strike the balance. But the government when they are considering questions of religious exemption must take those questions seriously and cannot denigrate and refuse to accept religious exercise and sincere religious objections out of hand.

Here, the City Counsel has targeted Catholic in its resolution. The law department has made clear that—the Department of Human Services through the law department has made clear that it will not grant any exceptions and compare Catholic's actions to race discrimination. The human relations commission stated in its letter that it was acting at the behest of the mayor. And the mayor, I will let him speak in his own words, Chaput's actions are not Christian. The Arch [Page 18] don't care about people, it's about image and money. Pope Francis needs to come kick some ass here. I could care less about the people at the archdiocese.

These are statements from the mayor's twitter feed. They were reported in the news articles we have cited ECF 13-7 at 18 through 25 in the news articles as they are reproduced there. Where city has engaged in denigration of religious beliefs and then taken actions that have penalized religious believers and demonstrated that it is not willing to give due consideration to their

free exercise right. The free exercise clause has been violated under *Masterpiece*.

The Court: And you are saying that the statements of the mayor did denigrate and therefore is in violation?

Ms. Windham: Your Honor, I am saying these statements of the mayor are proof that the city's actions were taken to target Catholic for its religious beliefs.

I want to touch briefly on Catholic's — the plaintiffs' free speech claims. First, the city has engaged in retaliation under the free speech clause. They don't deny that Catholic was speaking on a matter of public concern. They do question whether the retaliatory conduct was response to protected activity. [Page 19] as I understand their argument, they are saying no, no, no, this is not because of your statement about marriage, this is about your statement—because of your statements about the contract.

As I have already explained, I don't believe that the contract actually prohibits what Catholic Social Services said it would do. But second, I would also note that when it comes to retaliatory conduct, I would point the Court to the declaration of James Black and the declaration of Doe Foster Mother Number One where they were informed that a denial of a referral in urgent circumstances was made due to the case with CSS. This shows retaliatory conduct for Catholic coming before this Court and filing a lawsuit to protect its civil rights. That is retaliatory conduct in violation of the free speech clause.

Finally, defendants are conditioning government contracts on compelled speech. And they are conditioning speech that falls outside the services that it compensates Catholic for providing. The Valaques case, the



A.O.C. Case before the Supreme Court and the Cradle of Liberty case before this Court demonstrate that the city cannot even in the area of government contracting use government contracts as a vehicle to reach out and restrict speech. It cannot do indirectly [Page 20] what it is constitutionally prohibited from doing directly.

Here with regard to home studies, the city does not compensate Catholic, not one penny for home studies that are performed. The city only compensates Catholic after a placement has been made in a family, and for each day that that child is placed with that family they receive compensation. And so the city is reaching out beyond the activities that it is funding to reach out and grab other activities and other speech by the plaintiffs.

Second, I would note that with regard to these actions, a referral for a family to say this other agency would be a better fit for you, that is conduct the city is definitely not funding. There is not one penny that is going to be paid for someone who is making a referral in the home study context. And so the city's actions are attempting to compel speech outside of the contract. For all of those reasons, the city has violated the First Amendment, has violated the Free Speech Clause, the free exercise clause, and the Pennsylvania Religious Freedom Protection Act.

The plaintiffs have also shown that they meet the respite test. They will be irreparably harmed. They are already being irreparably harmed absent an [Page 21] injunction. The city concedes that their first amendment rights are at stake here. Irreparable harm if those were proven is taking place. Second, an injunction is in the public interest. The city offers public in-

terest arguments, but that argument is entirely circular. It says that children have an interest in—the children should not be placed with Catholic Social Services because it had decided to shut down Catholic Social Services and so it is not in the best interest of children to place with an agency it has decided to shut down. This argument is entirely circular and does not get to the ultimate question of Catholic Social Services and its excellent services for children. The best interest of children is not a magical phrase the city can invoke any time it needs to justify something.

It's a term that has meaning, it's a term with meaning that in part defined by state law which defines it in part, and I am going to be putting Pennsylvania statute Section 2633, Paragraph 4. The ability to live in the least restrictive, most family-like setting that is safe, healthy and comfortable and meets the child's needs. There are 35 of those options available in family-like settings or will be available by the end of June, at least 26 that are available today. And the city is refusing to place [Page 22] children in those homes because of its disagreement with Catholic. This is not in the children's best interest. For the same reasons the balance of the equities favors the plaintiffs, it is in the best interest of children to be placed in these homes. It is also in the best interest of the public to vindicate first amendment rights.

For all of these reasons, we believe that the preliminary injunction and/or temporary restraining order should be granted.

The Court: Okay, thank you.

Ms. Ewing: Good afternoon, Your Honor.

The Court: Good Afternoon.

Ms. Ewing: Counsel for CSS has stated that there are serious, urgent and ongoing harms with respect to the child welfare system because of the actions which DHS and the city have taken to enforce the contract for foster care services with CSS. You will hear testimony today from the highest officials at DHS that there is no crisis with respect to placing children. There is no right of any given foster agency, first of all, to a contract with the city, and secondly, for the city to fill any available home when it—when there is a problem with the underlying contract. But there are no children who are not being placed. There [Page 23] are no children who are not being placed appropriately.

The other harm which I believe I heard was an allegation that individual care decisions about children are being hindered because of the contract dispute. Again, you will hear from the highest officials at DHS that they have specifically made clear to Catholic Social Services that they themselves are available to make decisions quickly as long as they have the appropriate information as to whether an exception should be made. And the types of exceptions that have been made have been things like if a child—a sibling is in foster care and the other siblings are already in a Catholic Social Services home, then the new sibling will be placed in that home. There you will see and the parties have briefed a specific instance in which Catholic Social Services has said that there were issues which should have been resolved more quickly.

We believe, in fact, that entangling them in the litigation and taking them out of the system, the family court system, and the instant communication and easy communication that needs to be made in order to determine what the best interest of any given child is

that it—that making a decision subject to this litigation actually hindered resolution and can't be allowed to continue.

[Page 24]

But I would like to move and comment a little bit on the merits. You will also be hearing some testimony, and so I assume we will be arguing in closing some of the same things. But this is—there certainly is no reason for a—that has been provided for a temporary restraining order in this case. There is no urgency, there is no serious harm, the children are okay. And Catholic Social Services acted accordingly in waiting two months between when the intake was closed and when it brought this motion. But it is—moving to the preliminary injunction, it is—the remedy is an extraordinary one and it's Catholic Social Services' burden to establish the likelihood that it will succeed on demonstrating substantial burden on its religious freedom and free exercise claims, irreparable harm, the balance of equities and the public policy considerations. We believe, Your Honor, that you will find that none of these factors have been met in this instance.

The unique factor in the case before this Court, and one which Catholic Social Services has not really come to grips with, is that it involves a written contract for services which the city is charged by the Commonwealth to itself provide and which it is delegating to contractors who enter into agreements, [Page 25] written agreements, to perform services and be paid with taxpayer dollars. This distinguishes the case at hand from most of all of the other cases that you will hear about and have been written about in this action.

A written contract is an agreement between the parties where they undertake to do what they say they are going to do. And in this instance, the CSS agreed that it will apply the criteria which the commonwealth provides for evaluating foster families and for certifying those families, and none of which have any religious component to them. Since this is work that the city itself is charged with doing and has delegated, the city certainly could not be applying religious considerations to deciding on who would be a good foster parent. And our position is that our contractors can—we cannot allow our contractors to be doing that when they perform that. In effect, CSS has entered into a contract with the city and wants to change a term of that contract unilaterally to permit it to add religious criteria.

So that is an important—a critical difference in our case. And with that in mind, I would like to deal a little bit up front with the religious liberty claims. CSS is claiming that our requirement that it deal with single sex couples the same way that [Page 26] it deals with all other foster parent applicants and to apply the commonwealth's secular criteria somehow interferes with their free exercise of religion under the first amendment. The starting point for free exercise analysis is the *Smith v. Oregon Unemployment Bureau* case which holds that there is no free exercise violation from the application of a valid neutral law of general application so long as the law passes rational basis scrutiny. Our Fair Practices Ordinance, which we disagree with CSS as to whether it is applicable to Catholic Social Services in this—in the contract and the contract is part of the record before Your Honor. But it is obviously such a valid neutral and generally applicable law. And these—this is the type of law, the anti-discrimination laws which justice Kennedy in the

*Masterpiece* bakeshop decision, he describes the general rule that religious and philosophical objections to gay marriage do not allow businesses, and CSS for all of its mission is also a business, to deny protected persons equal access to goods and services under a neutral generally applicable law—antidiscrimination public accommodations law.

So to avoid the application of the *Smith* case, CSS must convince this Court that there is some exception, either in the case law which has followed [Page 27] *Smith* or in statutes, such as the Pennsylvania religious freedom act, to which CSS referred. This statute provides for strict scrutiny, but only for claims which meet the requirement of the statute. And the major requirement in any free exercise claim, whether case law or statutory, is the demonstration of a substantial burden on some religious practice.

So under the—so CSS has to demonstrate a substantial burden. And at least its papers have not been clear as to how its—the churches acknowledged sincerely held religious beliefs regarding gay marriage and single sex couples translates or affects or burdens or has anything to do with the job that it undertakes to do for the city, which is to evaluate families and to report as to whether or not they can provide a nurturing and secure and safe home for a foster child.

What we have a right to expect under the contract and what we have asked is that when Catholic Social Services performs the work of recruiting and certifying foster parents for us, if it is undertaken under the contract, that it not turn away any couples who come to it and that it provides them with an evaluation under the secular criteria that are set forth by the commonwealth, none of which relates to religion and certainly

none of them which would disqualify any [Page 28] applicant on the basis of sexual orientation.

So I would also like to bring the Court's attention to a recent 6th circuit case that provides some illumination on when a party claims the substantial burden in complying with a generally applicable antidiscrimination law on religious grounds. And that case is—we have cited I think in our papers *EEOC v. Harris Funeral Home*, 884 F.3d, 560. And in that case a funeral director claimed that Title Seven imposed a substantial burden under similar religious freedom protection act on his religious ministry of working with bereaved families. And he said this was true, this was the case because he had an assistant whom he fired because she was transgender and transitioning from male to female. He claimed that this would—that if he retained the employee, this would constitute an endorsement or support of her transgender status and that that would be against his religious convictions.

The 6th circuit found that it was entitled to look at how exactly—what exactly the requirement of the statute had to do with the religious belief. And that bare compliance with Title Seven did not constitute an endorsement, and therefore that the employer was required to comply with the Title Seven requirement.

[Page 29]

So accordingly, this Court can find that simple compliance with the city's antidiscrimination requirement does not endorse gay marriage and is not a substantial burden on a sincerely held religious belief that gay marriage may violate tenets of the Catholic Church.

But we definitely disagree with CSS as far as whether even if strict scrutiny would apply that we would not

pass the test. There are many cases that find that antidiscrimination laws are a precise method of achieving a compelling governmental interest in preventing discrimination to groups of people, to protected classes. And so in that funeral home case, the Court found that even if there had been a substantial burden that strict scrutiny was still satisfied because Title Seven was—because Title Seven then would prevail.

Now, just a few words on some of the other exceptions that CSS raised before Your Honor this morning, arguing that there was targeting under the terms of Masterpiece Cakeshop, and referring to some tweets of the mayor which were a long time ago, by the way, and had nothing do with this contract situation. And in the meantime, the city and CSS have since successfully negotiating a host of other contracts, [Page 30] including renewals of many contracts, but not this foster care one. So this is hardly indicative of some sort of animus against Catholic Social Services. Masterpiece Cakeshop also was decided on the basis that these comments, which were a lot more—something like calling the baker in that case despicable for holding the views that he did. That these were held by people who were supposed to be the neutral adjudicators from the civil rights commission and, you know, it's hardly that if parties have a contract disagreement and cannot agree on what the contract means and whether it's being met, that they are not allowed to describe that in respectful terms.

Similarly, there is no selective enforcement here. Two contractors, Catholic Social Services and another contractor, told the city in no uncertain terms that they would not serve single sex families and they would not perform certifications of them to be foster parents. The



other—the city has about 28 other contracts with other agencies for foster care services and it—none of these agencies had any problem with—of the same type. The other contractor, in fact, has withdrawn from the position that it initially articulated and is in the process of negotiating a compliance plan and a new contract and [Page 31] having its intake restored.

The exemption cases also do not apply. There is a lot of—if you look at particularly at the 3rd Circuit’s decision in the FOP versus city of *Newark* case, it gives a good basis of analysis as to what kind of exemptions are relevant ones, and they are ones that you have to identify the correct policy and then you have to decide whether an exception is of the same type directed to furthering that policy or whether it’s something, it’s apples and oranges. And we maintain that in this case, first of all the policy is the—whether or not any exemptions are being given to allow discrimination, and the answer is no, emphatically. And even the exemptions that Catholic Social Services talks about allowing you to refer for geographic convenience and such are for the best interest of the children whereas giving an exemption to discriminate is not.

So another line of cases they rely on are public benefit cases. You cannot deny a public benefit to an applicant simply because they are religious, but a state contract or a city contract for services, government services is not a public benefit. The Teen Ranch case that we cite in our brief holds squarely to that effect.

As far as speech, there is no evidence to [Page 32] support a First Amendment retaliation claim against the evidence that you will hear and that you have seen in your—in the affidavits merely talks about a contract dispute, a regretful contract dispute because we value

the services that Catholic Social Services has provided. But we cannot allow religious exemptions to our—you know, when this is our job, our work, DHS's work and the city cannot pick and choose and favor one religion over another.

And there certainly is no compelled speech. Any speech that is being required is within the terms of the contract. So I assume that we will argue a bit at the end, but CSS will not—has not been able to—or will not be able to prevail on the merits part of its argument. It can only assert its own violations of civil rights, not derivative ones so as to—it cannot bring the claims of foster parents and foster parents cannot claim civil rights violations as a result of any violation or alleged violation of the free exercise of Catholic Social Services.

But there is no irreparable harm, any business harms. We are trying to mitigate. We are trying to negotiate with them. And we are doing everything with the pole star of the best interest of the children, to keep those children in the homes where [Page 33] they have been placed so that they are not being—their care is not being disrupted. They are with their foster parents, and as you will hear, if there cannot be a resolution to this, DHS has transitioned families in the past, several times before, and without any harm.

And in conclusion, we will—you know, I argue there is no basis for an injunction and that any—that requiring the city to enter into a contract would be a form of relief that would not represent the status quo, which is what they are asking. Our contracts expire on the 30th of June and so they are actually asking for a contract of their choice as interim relief. And we are doing

whatever we can to minimize the problem so the intake is not a penalty but it is a way of making sure that we are not creating—enlarging the number of homes that are going to have to be addressed if we can't get to an agreement. So in the—there is no basis upon which an injunction should be granted and the equities do not point to Catholic Social Services. We value their service, but if we cannot get to a place where we can agree and go forward on the contract that is written and our antidiscrimination policy, then we have to part. Thank you.

The Court: Thank you.

Plaintiff, call your first witness.

[Page 34]

Ms. Barclay: Good afternoon, Your Honor.

Stephanie Barclay for the plaintiffs, and we would like to call Ms. Toni Simms-Busch to the stand.

(WITNESS SWORN.)

The Witness: Toni Simms-Busch, T-O-N-I, last name Simms, S-I-M-M-S-B-U-S-C-H.

Ms. Barclay: Would you like me at the podium?

The Court: Yes, please.

DIRECT EXAMINATION

By Ms. Barclay:

Q. Good afternoon.

A. Good afternoon.

Q. Please state your name for the record.

A. Toni Simms-Busch.

Q. Can you describe your current relationship with Catholic Social Services?

A. I am a foster mother.

Q. In what city do you live?

A. Philadelphia, Pennsylvania.

Q. How long have you lived there?

A. Philadelphia, Pennsylvania? My entire life, 38 years.

Q. Can you describe your educational background?

A. Yes. I have a bachelor's degree from Chatham [Page 35] College in forensic psychology and I started a master's program at Argosy University for counseling forensic psychology.

Q. How did you do academically in these programs?

A. I did very well.

Q. Can you describe a little bit about your relevant work experience?

A. Yes. When I graduated in 2002, I worked as a youth counselor with a partial care program for children 3 to 5 and 6 to 9. I then worked in a residential treatment facility for adolescent male and females in New Jersey. I then worked at PSI family services as a foster care agency worker. After that I was a child advocate social worker for nearly four years with the defender association of Philadelphia.

Q. Were you a foster care social worker in Philadelphia?

A. Yes.

Q. And were you a child advocate social worker in Philadelphia?

A. Yes.

Q. You mentioned that you worked at an in-staff and group homes. How long did you work in that position?

A. A little over two years.

Q. When you were a foster care social worker, how [Page 36] long did you work in that position?

A. A little over two years.

Q. And when you were a child advocate social worker, how many years were you in that position?

A. Approximately four years.

Q. I would like to talk to you a little bit about your observations as a foster worker in Philadelphia. During your work, did you ever observe in your experience there to be a shortage of foster homes for children?

A. Yes.

Q. What sort of things did you observe that led you to think that?

A. As a foster care worker, as a child advocate social worker, my professional experience was that children were constantly being relocated due to placement issues. Several children had to be placed—several teenage children had to be placed in shelters due to a lack of available foster homes. Children had to be placed in respite for temporary hold until permanent foster homes could be located, and children sometimes—I had a few cases where children would have to stay at the DHS building until a placement would be found.

Q. What sort of impact did you experience that to [Page 37] have on children?

A. It was devastating. Children, you know, they come from a traumatic experience, losing their biological family, being placed out by their biological family into an unknown circumstance, into an unknown placement, and then being relocated again for whatever reason. So it interrupted their stability, their ability to bond, their ability to form attachments and their education.

Q. Did you experience there to be any sort of correlation between not in a foster home and the amount of times children would be transferred?

A. Yes.

Q. What was the correlation?

A. Yes. So if there were not a lot of foster homes or available foster homes, children would be moved multiple times again. They may be moved into a shelter, they may be moved into a respite, they may be moved into a permanent home if it were available.

Q. What happens to a child in your experience when they are being transferred?

A. Again, children lose their attachment, they lose their sense of self, their education may be interrupted.

Q. Is there any trauma involved?

A. Absolutely. Every time a child is moved, their [Page 38] trauma is impacted and compacted.

Q. Can you describe a little more from your experience what it's like for a child to spend a night or multiple nights at the DHS office?

A. It's devastating. I have been there just a few hours as a worker and it's not a happy place, it's not Disney World. So for a child to have to spend, you know, more than a couple of hours there, possibly having to spend the night there, I am sure it's a very—

Ms. Cortes: Your Honor, I am going to objection to speculation at this point.

The Court: Sustained.

Ms. Cortes: And I would like to strike the record for the entire line of questioning.

The Court: But I won't strike it. But if you could proceed to another subject.

Ms. Barclay: Certainly, Your Honor.

By Ms. Barclay:

Q. How would you describe the difference, again what you experienced being a staff member in some of these different facilities, between the care you provided to a child in a group home as opposed to the type of care a child received in a permanent foster home?

A. In a permanent foster home, a child receives [Page 39] consistent love and support, educational support, consistent supervision. The opposite to that in a group home or a foster home, in any residential treatment facility but—

Ms. Cortes: Your Honor, same objection.

Ms. Barclay: Your Honor, this is—

The Court: Overruled.

The Witness: Whether it be a shelter, the child does not receive that same love and care, that same nurtur-

ing, that same support. It is basically just about supervision, making sure that the child adheres to rules. There is no one-to-one or very little one-to-one interaction that the child will receive from a staff member.

By Ms. Barclay:

Q. How would you describe your primary role in a group home?

A. To supervise and support, to make sure that rules are followed, to make sure that structure is implemented.

Q. Did you ever observe in your experience a correlation between there not being enough foster homes and children being left in biological homes?

A. Yes.

Q. Can you talk about that a little?

[Page 40]

A. Yes, when I was a foster care social worker, the agencies that I had worked with at the time were preparing to close and we had children who—because of contractual issues with the city, the children were being placed into shelter care, some of them were placed into respite, two were placed back into biological homes, which at the time as a foster care worker was not appropriate for them.

Q. And so you have discussed group homes, shelters, other biological homes, the DHS office. In your experience working with children, how did those options compare to the care given a child in a permanent foster home?

A. Nothing compares to the stability of a permanent foster home. Nothing compares to that daily love and



care, those hugs and kisses, the educational support, nothing in the world compares to that.

Q. If you had the choice between a temporary foster placement for a child or a permanent foster placement, which in your experience would have generally been in the best interest of the child?

A. 100 percent a more permanent foster home.

Q. Did you ever experience a time when there was a freeze in referrals when you were a foster care worker?

A. Yes. Again, there were contractual issues with [Page 41] the agency that I was working with and there was a freeze. So we were not getting any new referrals, children were being again not placed in the appropriate placement because our foster care referrals were being frozen. And so again we had to place kids as best as we could.

Q. Does the agency that you were working at still exist?

A. No.

Q. Were you there when that agency closed?

A. Yes, I was.

Q. Can you describe what you observed to be impacts on some of the families and some of the children you worked when that agency closed?

A. I witnessed children being moved from kinship homes into respite homes and group homes and shelters. I witnessed foster children being placed in respite homes because the agency was working—some of those foster parents and some of those kinship parents chose not to go to another agency, for whatever reason.

And so children were constantly being placed into unfamiliar situations.

Q. So were any of these families that you served broken apart?

A. Absolutely.

[Page 42]

Q. And what did you observe to be the impact on the children?

A. It was devastating. I had a case about a little girl, she was approximately seven years old. She was in a kinship home. She had been there almost since birth, and because of the difficulties with—you know, with the contract, the city said that we had to locate a more permanent home for her, because the kinship aunt would not adopt the child. There was a very strong bond between the biological mother and the child and the family and they didn't want to take that bond away. We had to remove that child to another home. And I witnessed her devastation, I witnessed her trauma.

Q. Did some of these families feel like they were unable to transfer to a new agency?

A. Yes.

Q. How did this happen?

A. They didn't feel like they were going to gain the same support as they had been receiving.

Ms. Cortes: Objection, Your Honor, speculation again.

The Court: Sustained.

Ms. Cortes: I ask that you strike her answer.

The Court: That answer will be stricken.

[Page 43]

By Ms. Barclay:

Q. As a foster care worker, did you ever refer prospective foster families to other agencies?

A. Yes. There were instances where I needed to refer them out to other agencies for various reasons. Perhaps there was a language barrier, perhaps there was a difficult medical case or behavioral health case that my agency could not support.

Q. I want to take each of those with you in turn. In the context of a language issue, walk me through what a referral would look like and why that would arise?

A. Right. So if I had a client or a family who was of another language and for some reason I could not accommodate them or my agency could not accommodate them, I would contact a specialized agency and make that referral for that family to be serviced.

Q. What was the name of one of the agencies with language specialty you referred families to?

A. Concilio.

Q. Did you ever refer families for geographic reasons?

A. Yes. We had to refer families for geographical reasons. Perhaps a child was in a specific school district and we wanted to keep them in that school district, or even for safety reasons, if a parent was in [Page 44] a certain neighborhood and we wanted to refer them out, the families would refer them out to a different agency in another neighborhood.

Q. Did you ever refer families for behavioral health specialty reasons?

A. Yes. Yes, we had to do that as well. Again, if our agency was not able to cope with that child or the family was unable to cope with it and needed specialized—and that child needed specialized services, we would refer out to a different agency.

Q. Were you aware of referrals also being made for specialized medical needs of a child?

A. Yes, medical would be the same.

Q. Did DHS ever penalize or sanction you for engaging in these referrals?

A. No.

Q. Did you think that you were doing anything out of the ordinary when you made these sorts of referrals?

A. No. Referrals are made all the time.

Q. When a new prospective foster family approaches an agency and comes to them through the intake process, is that a DHS referral to the agency?

A. No, that's an independent referral, like a self referral, it's not an DHS referral.

Q. So that's a separate pipeline for obtaining [Page 45] families?

A. Yes. DHS did not refer me to be a foster parent, I self referred myself.

Q. Do you have any experience with how foster care placement works for Native American children in Pennsylvania?

A. Yes. I have had personal experience with that, so prior to me becoming a foster parent with Catholic Social Services, I have Native American heritage, I was

thinking about adopting or fostering a Native American child and because I cannot certify myself as a Native American, I was unable to do that.

Q. And was your experience that you could have gone to any agency to try and foster a Native American child?

A. No, I cannot. I cannot.

Q. So what would happen if you went to an agency, any agency in Philadelphia, for example, trying to foster a Native American child?

A. I would not be able to do that because I cannot certify myself as a Native American.

Q. What would the agency do for you?

A. Refer me to—you know, I was not denied to become a foster parent, but I cannot be a foster parent of a Native American child.

Q. If you went to an agency that specialized in [Page 46] placing Native American children, again, what would that agency do for you?

A. Refer me out.

Q. As a foster parent, did you ever work with gay—or excuse me. As a foster worker, did you ever work with gay foster parents?

A. Yes.

Q. What was your experience with that family?

A. I had a specific family, a male foster parent. He had three young boys. I thought he was an excellent foster parent. Took very well—you know, took very good care of those boys.

Q. I want to talk to you a little bit about your interactions with other foster agencies during your child advocacy work. When you worked as a child advocate social worker, did you personally interact with other foster agencies in Philadelphia?

A. Yes. Yes, I have.

Q. Which agencies did you interact with?

A. Pretty much all of them.

Q. From your interactions, what did you personally observe about the quality of care that these agencies were providing?

Ms. Cortes: Your Honor, I would object to relevance.

[Page 47]

The Court: Sustained.

By Ms. Barclay:

Q. Did you ever observe ways in which Catholic Social Services provided services that were beneficial for children?

A. Yes.

Q. Can you give some examples of that from your personal experience?

A. As a professional and also as a foster mother, I received a great deal of support, a great deal of care. If I have a problem or difficulty or just need to vent, I can contact my social worker, my supervisor, my director at any time.

Q. How would you describe the continuity of staff and how that impacted children at Catholic Social Services?

A. I have worked with Catholic Social Services for a very long time, both professionally and as a foster parent, and there is a great deal of continuity. I have not experienced any turnover at all in staff, and that certainly helps the children because they see the same faces, they are able to create bonds with the workers and also the foster parents because they know who they are going to be able to contact.

Q. As a child advocate social worker, were you ever [Page 48] aware of instances where city attorneys would not speak with you about a child's case?

A. No.

Q. That was not something you observed to be a common practice?

A. No, I had very good relationships with the DHS attorneys.

Q. Were people you interacted with generally aware of the religious nature of Catholic Social Services?

A. Yes.

Ms. Cortes: Objection, speculation as well, Your Honor.

The Court: Overruled.

By Ms. Barclay:

Q. How long—let's talk about your time as a foster parent. How long have you been a foster parent?

A. For approximately two-and-a-half years.

Q. Can you tell us about what influenced your decision to become a foster parent?

A. My work as a professional and also my personal inability to have children. And also my belief that—I believe that God placed it in my heart as a calling.

Q. What influenced your decision to choose Catholic Social Services?

A. My professional work with them and also my [Page 49] Catholic beliefs. I knew that we would share the same foundational beliefs.

Q. Can you describe some of the support you have received from Catholic Social Services and how that has been important for you?

A. Again, I know that I can call anyone on my team at any hour of the day and sometimes at night, or text them and I know that they are going to be there. I know if I my call worker, he is going to come as soon as he can. He will spend anywhere between a half an hour to a couple of hours if he needs to or if he wants to, just playing with my boys or being there for me as a support.

Q. Are you currently caring for foster children?

A. I have two young boys. I have a two year old who has been with me for 16 months and I have a—he will be five months old on the 21st of this month and he has been with me since he was three days old. They are siblings.

Q. Are you interested in fostering additional children in the future?

A. I would, yes. I would be very open.

Q. Would you be open to fostering siblings of your boys?

A. Yes.



Q. Are there things that you have experienced [Page 50] Catholic social workers to do to help your boys to love, to be cared for?

A. Yes. Again, when my worker comes, he spends time with my boys, he plays with them, he interacts with them. And he—I believe my boys have a bond with him. When my two-year old sees my worker coming, he runs to him. He does not run to many people, so that's a good thing.

Q. Do you work with CUA as well?

A. I do.

Q. Which CUA do you work with?

A. Net CUA 7.

Q. Is that CUA affiliated with Catholic Social Services?

A. No.

Q. How did your relationship with social workers at that CUA differ, if at all?

Ms. Cortes: Objection, relevance.

Ms. Barclay: Your Honor, this is relevant to the type of harm that Ms. Simms-Busch will experience if she is no longer able to have some of these unique relationships with her social workers at Catholic Social Services.

The Court: Overrule.

And can you specifically say what CUA is? [Page 51]  
There's a lot of acronyms.

By Ms. Barclay:

Q. Could you state again which CUA you work with?

A. Net CUA 7, Northeast CUA 7, CUA, Community Umbrella Agency.

The Court: And what does CUA stand for?

The Witness: Community Umbrella Agency, Your Honor.

The Court: Okay.

The Witness: It's an agency which DHS has created in order to supervise children in their foster homes.

Ms. Cortes: Your Honor, we would renew our objection to the relevance regarding the CUA in this case, since they are not part of this lawsuit and more so it deals with geographic issues.

Ms. Barclay: Your Honor, again, I just want to point out the way in which her relationship with the Catholic Social Services social worker is unique and compare that to relationships with other social workers.

The Court: I will overrule the objection.

By Ms. Barclay:

Q. Ms. Simms-Busch, how does your relationship and the relationship of your children with your Catholic [Page 52] social worker differ if at all from your relationship with the social worker at the CUA?

A. Again, my boys run to my Catholic Social Services—or at least my two-year old runs to my Catholic Social Services worker. He interacts with him. There is no interaction with my CUA worker. I've actually—in the time that I have had my boys the last 16 months, I have had four CUA workers. There is no continuity, there is no continuation of care. My boys have no relationship. There is no time to build a relationship or a bond.

Q. And in your experience, is the continuity with the social workers at Catholic Social Services something unique?

A. Absolutely.

Q. How would you be impacted as a foster mother if Catholic has to close its foster program?

A. I have no idea. I was sitting there listening to the opening arguments and didn't realize how close the deadline was and it almost brought tears to my eyes. I have no idea what is going to happen to the care of my boys or to myself or what decision I am going to have to make.

Q. How will you be impacted by the loss of support, if at all?

[Page 53]

A. I don't know what I would do.

Q. Would you be able to continue as a foster parent with a different agency?

A. Again, I am sitting here questioning this as I sit here because I care about my boys so much, so what—it's like I am being backed into a corner. What choice do I have?

Q. Would it be difficult for you and a loss if you had to continue as a foster parent with a different agency?

A. Absolutely.

Q. How have you felt of the way that the city has treated Catholic Social Services over the last few months?

Ms. Cortes: Objection, Your Honor.

The Court: Sustained.

Ms. Barclay: Thank you, Ms. Simms-Busch. No further questions.

The Witness: Thank you.

The Court: Cross-examine.

Ms. Barclay: Your Honor, plaintiffs would like to call [sic] Sharonell Fulton.

The Court: Cross-examine.

Ms. Barclay: Sorry.

CROSS EXAMINATION

[Page 54]

By Ms. Cortes:

Q. Good afternoon, Ms. Busch.

A. Good afternoon.

Q. Ms. Busch, you had testified earlier about your prior experience within the foster care agency, is that correct?

A. That is correct.

Q. And you had testified earlier about children being relocated and respite and that's—do you recall that testimony?

A. Yes, ma'am.

Q. I didn't get the date. Can you tell us when you experienced that?

A. That was approximately—it was a little over ten years ago.

Q. Okay.

A. Yes.

Q. And despite your—you have only been a foster parent with Catholic Social Services, is that correct?

A. Yes.

Q. You have not been a foster parent with any other of—any of the other 30 agencies in the city, correct?

A. No, when I—

Q. Okay, thank you. And just focusing on some—you are [Page 55] familiar with the certification process that you had to go through to be a foster parent?

A. Yes, ma'am.

Q. Do you perform any of the certifications for any new foster family for CSS?

A. No, ma'am.

Q. Okay.

Ms. Cortes: Court's indulgence, Your Honor.

(Brief pause in the proceeding.)

By Ms. Cortes:

Q. I think it's one last question. You mentioned that a foster agency had closed in your experience as a social worker?

A. Yes, ma'am.

Q. Can you tell us what was the name of that foster agency?

A. Yes, it was psi family services. It was located at 701 Market Street in Philadelphia.

Q. And when did that happen?

A. Again, a little over ten years ago. I'm sorry, I don't have the specific date.

Q. Okay, that's fine.

Ms. Cortes: Thank you.

Ms. Barclay: Brief redirect, Your Honor?

[Page 56]

The Court: yes.

Redirect

By Ms. Barclay:

Q. Ms. Simms-Busch, you have only been a foster parent with Catholic Social Services, correct?

A. Yes.

Q. Have you had experiences with all the other foster agencies in Philadelphia?

A. Yes, I have.

Ms. Cortes: Objection to the relevance, Your Honor.

Ms. Barclay: Your Honor, this is going to be relevant to why—

The Court: Overruled.

Ms. Barclay: Thank you, Your Honor.

By Ms. Barclay:

Q. Do you have experience with all the other foster agencies in Philadelphia?

A. Yes, I have.

Q. And that was as a child advocate social worker?

A. Yes, as a child advocate social worker, as a foster care worker as well.

Q. Was your experience with the other agencies relevant to your decision to choose Catholic Social Services?

[Page 57]

A. Absolutely.

Q. Can you explain that a little bit?

A. Yes. So when I decided to become a foster parent, I—

Ms. Cortes: Your Honor, I would object that this goes beyond the scope of the cross.

Ms. Barclay: Your Honor, she—

The Court: it does not.

The Witness: When I looked at becoming a foster parent, I reviewed my experience with other agencies. I actually went to other agencies. I went to Bethany Christian Services. I did not feel the same relationship that I had, even though professionally I had a relationship with Bethany, I did not feel that I would have the same support or relationship that I had with Catholic Social Services. And I honestly didn't feel like the core beliefs were there. It is a Christian agency, but it wasn't the one that I felt called to.

By Ms. Barclay:

Q. Was there also anything about the support that you anticipated you would receive from Catholic Social Services that was relevant to your decision?

A. Yes, I knew that I would receive support there because again of my professional relationships that I [Page 58] had built.

Ms. Barclay: No further questions, Your Honor.

The Court: Any other questions?

Ms. Cortes: No, Your Honor.

The Court: Thank you.

The Witness: Thank you, Your Honor.

The Court: Now you may call your next witness.

Ms. Barclay: The Plaintiffs call Ms. Cecilia Paul, Your Honor.

(Witness Sworn.)

The Witness: My name is Cecilia, C-E-C-I-L-I-A, Paul, P-A-U-L.

DIRECT EXAMINATION

Ms. Barclay:

Q. Good afternoon, Ms. Paul.

A. Good afternoon.

Q. Can you tell us what your current relationship is to Catholic Social Services?

A. Right now I am a foster parent with Catholic Social Services, but have no children because of the conditions that are going on right now.

Q. In what city do you currently live?

A. Philadelphia.

[Page 59]

Q. How long have you lived in Philadelphia?

A. My whole life.

Q. Can you tell us just a little bit about your educational background?



JA 60

A. I had 16 years of Catholic education, graduated from Villanova University with a BSN.

Q. And did you have any work experience that is relevant?

A. Yes. After getting my degree, I went to Children's Hospital of Philadelphia, worked there for two years. Then had my own family and stayed in the home. Missed nursing very, very much because it's an avocation and then heard about fostering in Catholic Social Services.

Q. Let's talk about your time as a foster parent. How long have you been a foster parent?

A. I have been a foster parent for 46 years.

Q. How many children approximately have you fostered?

A. I have fostered 133 children.

Q. Did you ever adopt any of these children?

A. I have adopted six.

Q. Have you ever been recognized for your care by the city?

A. Yes. Three years ago in May I received a—[Page 60] whatever, a certificate stating that they recognized me as a loving, caring foster parent.

Ms. Barclay: and may I have permission to approach the Witness, Your Honor?

The Court: yes.

By Ms. Barclay:

Q. Ms. Paul, I have handed you what has been marked as plaintiff's exhibit 1. Do you recognize this document?

A. Yes, I do.

Q. What is this document?

A. I didn't hear what you said.

Q. What is this document?

A. It's a document, a certificate of appreciation from the City of Philadelphia issued by DHS, the commissioner at that time was Vanessa Harley who presented it to me on May 26, 2015.

Q. What does the award say that it was for?

A. Excuse me?

Q. What does the award say that—

A. The award says, for answering the call of our most vulnerable children, for helping to right the wrongs, for being a shoulder to cry on, and most importantly for providing Philadelphia's foster children with love, compassion and respect they deserve. You [Page 61] make the difference in the lives of children and youth.

Ms. Barclay: Your Honor, may I have permission to enter this as Exhibit 1 for the plaintiffs into the record?

The Court: yes.

By Ms. Barclay:

Q. Ms. Paul, what influenced your decision to become a foster parent?

A. Having the Catholic background, I chose Catholic Social Services for the caring that they give children,

for the commitment they give children, and the beliefs that I believe in and they do too.

Q. What influenced your decision to become a foster parent, generally?

A. Because I feel that I have been given a gift from God to help children and care for them and love them along with my own children who also accept them and love them.

Q. In addition to your—you mentioned earlier that you had a pediatric nursing background. Was that relevant at all?

A. Certainly, because I had a lot of training with children, especially at children's hospital, and wanted to keep that going. Even though I couldn't do it on a professional level as a nurse in a hospital, I could do [Page 62] it in my home.

Q. Can you tell us about the type of support you received from Catholic Social Services?

A. The kind of support I received from them is excellent. They are always there from—for me no matter what kind of question I might have, they are always there to answer and care—you know, come out. If I need their help face-to-face or on the phone, they are there.

Q. Are you currently receiving normal referrals for foster children?

A. No.

Q. When did the last foster child leave your home?

A. In early April.

Q. So you have not received any normal foster care referrals since April?

A. No referrals, no.

Q. Have you ever gone without foster care referrals for this long?

A. Not usually, no.

Q. How have you felt not being able to care for foster children?

A. I feel very lost, very lost because I can't use the talent that was given to me to help with these children who are out there, mainly infants that I get [Page 63] who are drug addicted, who come into my home and need a lot of care, which I am more than happy to give, and my family also is involved in giving, and not able to do it leaves me very upset.

Q. Have you ever fostered teen children in the past?

A. Yes, I have.

Q. Are you interested in fostering any additional children in the future?

A. I am, yes.

Q. How would it impact you if Catholic Social Services had to close its foster care program?

A. I would really have to give it a lot of thought. I don't know whether I could be able to go to another agency. They are like family to me, Catholic Social Services. And that's hard to start over again and have that feeling that I have for them.

Q. How do you think you would be affected by the loss of services that you rely on?

A. From Catholic Social Services you mean?

Q. Yes.

A. I don't know. I don't what kind of service I could receive from other agencies because I don't know—you know, other agencies. This is the only one I have ever worked with.

[Page 64]

Q. Would it be a loss to you the relationships that you have?

A. If I would choose—yes, it is, just to end it, that's an ending and that would be very, very harmful.

Ms. Barclay: No further questions, Your Honor.

The Court: Cross-examine

Ms. Cortes: no questions.

The Court: Okay. Thank you, ma'am, you may step down.

The Witness: Thank you.

Ms. Barclay: Plaintiffs would like to call Mrs. Sharonell Fulton to the stand.

Ms. Cortes: Your Honor, I would like to ask for an offer of proof at this point.

The Court: Can you provide counsel with a private offer?

(Brief pause in the proceeding.)

The Court: Are we ready to proceed?

Ms. Barclay: Yes, Your Honor.

(Witness Sworn.)

The Witness: My name is Sharonell,

S-H-A-R-O-N-E-L-L, last name Fulton, F-U-L-T-O-N.

DIRECT EXAMINATION

By Ms. Barclay:

[Page 65]

Q. Ms. Fulton, what is your current relationship to Catholic Social Services?

A. I am currently a foster parent with Catholic Social Services.

Q. And what city do you currently live?

A. Philadelphia.

Q. And how long have you lived there?

A. Most of my life.

Q. How long have you been a foster parent?

A. For 26 years.

Q. And how many children have you fostered over the years?

A. 40.

Q. How did your religious beliefs if at all motivate your desire to become a foster parent?

A. Well, I started thinking about it in the early '90's and I kept seeing the commercial. So because I am Catholic, I went to church and I prayed about it and I believe that it was my faith that led me to it.

Q. What led you to choose Catholic Social Services as the agency that you work with?

A. Well, because I went to church, I go to a Catholic church and I have for 55 years, so I decided that I

would start there because they share the values. I share the same values.

[Page 66]

Q. Can you tell us a little bit about, aside from the shared values, some of the support that you receive from Catholic Social Services?

A. Well, when I became a foster parent in 1992, it was a lot different than it is today. The support was there, it was like family. Whenever I had a problem, and you will have problems, I was able to call any hour of the night. Mrs. Fulton, yes. This is happening, that is happening, how am I supposed to handle this, children wanting to kill one another and various different problems. I always got the support that I needed, and the respect.

Q. What sort of training have you received from Catholic Social Services that has helped you address special needs of children you care for?

A. They always offer in-services that—it was mandatory that we take and they try to schedule educators to come in to address some of the many problems that the foster parent was having.

Q. Are you interested in fostering more children in the future?

A. Yes.

Q. Are you currently caring for any foster children?

A. Yes. I have a brother and sister, 4 and 5 years [Page 67] old, that have been with me for nine months.

Q. Are there things that Catholic Social Services does to help you care for the special needs of these children?

A. Absolutely. They support me, they provide me with resources, they push me in the direction where I can get additional education, and they visit often.

Q. Have you ever received training from another agency?

A. Yes. Some years ago I received service from the DHS. They called us all in and we went in for an in-service there, and I felt very sad because the first thing the instructor said was, keep in mind that these are not your children, you are just a surrogate. And I felt that was very cold to start the day because I thought of myself of a little more than what she was projecting.

Q. How if at all did that compare with how social workers at Catholic treat you?

A. Well, I know this, when we have services there, we start with prayer. And to me that sets the platform for a good start.

Q. And what sort of relationships do you have with the social workers at Catholic Social Services?

A. I care about all of them.

[Page 68]

Q. How do they treat you?

A. Good. Good. It's a family affair.

Q. Does anyone you know work with other agencies?

A. I know many other foster parents for belonging to pin, parent involved network, and they don't have the same—

Ms. Cortes: Objection, Your Honor, speculation.

The Court: Sustained.



Ms. Cortes: Lack of personal knowledge. I ask that her answer be stricken.

The Court: It is stricken.

Ms. Barclay: Your Honor, this not being offered for the truth of the matter, but for the influence it is going to have on Ms. Fulton and her decisions moving forward as far as what she can do as a foster parent.

The Court: Sustained.

By Ms. Barclay:

Q. How would you be impacted if Catholic Social Services had to close its program?

A. I have been thinking about this and I don't know. I would be devastated.

Q. How do you think the children in your care could be impacted if Catholic Social Services had to close the [Page 69] foster program?

Ms. Cortes: Objection, Your Honor. Speculation, lack of personal knowledge. She is asking about—

The Court: I think she can answer as to what might physically happen, but any kind of emotional impact she can't answer.

Ms. Barclay: If I could proffer what she would talk about. She was going to talk about what she understands her therapist has said about what the impact would be the children.

Ms. Cortes: Objection, Your Honor.

The Court: Sustained.

Ms. Barclay: And also a time in the past impact, Your Honor, that we will discuss as far as the effect on children.

The Court: I am sustaining the objection.

By Ms. Barclay:

Q. What you understand to be the physical impact on the children in your care if Catholic Social Services closed its program?

A. Well, the two children that I have now would be greatly impacted because when I got these two little sister and brother, they didn't trust, they would not [Page 70] eat, it was away from their ordinary to be placed with me, but I had to gain their trust. I had—

The Court: They would end up moving?

The Witness: Yes, they would end up moving.

By Ms. Barclay:

Q. Was there a time in the past when you were worried that one of the children in your care may end up moving?

A. Yes.

Q. Was there any difficulty in finding a potential placement for him?

A. There was difficulty. I was told that they did not have a placement for him and you normally have to give 30 days and it has been six months.

Q. So after six months the city was not aware of any other potential placement for this child?

A. No.

Ms. Barclay: no further questions, Your Honor.

The Court: Cross-examine.

Ms. Cortes: Very briefly, Your Honor.

Cross-examination

By Ms. Cortes:

Q. Good afternoon, Ms. Fulton.

[Page 71]

A. Good afternoon.

Q. Ms. Fulton, you mentioned that you were at a DHS training?

A. Yes.

Q. Can you tell us what year that was?

A. Not really. I would say more than ten years ago.

Q. And I take it that if you—if it was that long ago, you cannot tell us what particular agency was the training agency?

A. It was through DHS and it was at their headquarters at that time.

Q. And that's all the information you can give us?

A. Well, it was about understanding our position as a foster parent, as I believe. And there were many other foster parents there from all over the city for that particular training. And as I said earlier, the instructor started out with more or less disciplining us and saying, just remember, they are not your children, you are only surrogates, and I honestly felt sad about that.

Ms. Cortes: Okay. Court's indulgence.

(Brief pause in the proceeding.)

Ms. Cortes: No further questions.

The Court: Thank you, ma'am.

[Page 72]

The Witness: Thank you.

Ms. Barclay: Nothing further from the plaintiffs, Your Honor.

The Court: Okay. Does the city have any witnesses?

Mr. Fields: We do, Your Honor, but before we get to our witnesses, we move to exclude the affidavits of Bishop McIntyre, from Jim Amato, James Amato, and the affidavit of James Black that was filed late last week. There are a myriad of disputed facts in those affidavits as well as averments that we have a right to inquire into.

The Court: Okay, we are going to take a brief recess, just about five minutes. And then we will come back.

(Brief Recess.)

The Court: Okay, you may be seated. Before we broke there was a motion. Can you repeat the motion, please?

Mr. Field: So I was moving to exclude the affidavits of Bishop McIntyre, James Amato and James Black as there are disputed facts in those and we have not had an opportunity to cross-examine the witnesses.

Ms. Windham: Your Honor, with regard to the declarations, this Court has set a narrow time [Page 73] window for the hearing. I believe there are at least seven different witnesses who have submitted declarations on this case. If the Court wants to carry this hearing over to tomorrow to allow all of those witnesses, that's something that we are happy to do. However, I would also note that federal rules of evidence 65(b)(1)(a) specifically contemplates evidence coming in through affidavits, just as we have done here, on a

temporary restraining order. I also note the 3rd Circuit's decision in *KOS Pharmacy v. Andrx Corp.*, 369 F.3d 700, which says a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence less complete than a trial on the merits. The city has had ample opportunity to offer arguments and offer its own witnesses. We see no reason to exclude the declarations here.

The Court: The Court has no problem with carrying over this matter so that the witnesses can testify under the circumstances. So you can make a choice. Either we have the witnesses testify or the affidavits will be excluded.

Ms. Windham: Your Honor, we are happy to carry over.

The Court: Okay.

Ms. Windham: We need to check with the [Page 74] witnesses to see when we would be able to have them here for the Court.

The Court: Okay. My intention is to resume at 1 o'clock tomorrow. I have other cases scheduled, but I will move them around so that we can finish this matter.

Are there any witnesses that can be called at this point by the city since they are here? I understand they will be out of turn, but...

Ms. Oliver: Yes, Your Honor.

The Court: Okay. Call your witness.

Ms. Oliver: Thank you, Your Honor. Good afternoon. I call Kimberly Ali.

(Witness Sworn.)

The Witness: My name is Kimberly Ali, K-I-M-B-E-R-L-Y, A-L-I.

Direct Examination

By Ms. Oliver:

Q. Good afternoon, Ms. Ali.

A. Good afternoon.

Q. Where are you employed?

A. I am employed at the Philadelphia Department of Human Services.

Q. And what is your current position?

A. I am deputy commissioner for child welfare [Page 75] operations.

Q. Turning to your educational background, will you please describe your educational background for the Court?

A. Yes. I have a bachelor's degree in criminal justice from Temple University. I have a master's degree in social work from Temple University, and I am also a licensed social worker.

Q. When did you begin your employment with the Department of Human Services?

A. In January of 2000.

Q. And what position did you hold then?

A. I was a social worker in the ongoing service region. As a social worker in that region, I was responsible for servicing families that received both in-home services or placement services.

Q. And thereafter, did you hold any other positions with the department?

A. Yes. In 2002 I became a supervisor at the Department of Human Services in the ongoing service region. I was responsible for supervising five social workers who in turn worked with families that received in-home services as well as placement services.

Q. And have you held any other positions within the Department of Human Services?

[Page 76]

A. Yes. Four years later I was promoted to human services program administrator from the Central Referral Unit at DHS. In that capacity I was responsible for a section who identified both in-home services for families as well as placement for children and youth.

Q. And after that did you hold any other positions?

A. I did. In 2009 I was promoted to director of provider relations and evaluation of programs at DHS. I was responsible for about 30 program analysts as well as supervisors who were responsible for evaluating and monitoring providers over—approximately over 200 projected providers, delinquent providers, dependent providers as well as prevention providers.

Q. And by the way, since your first position as a social worker, were all of these subsequent positions promotions that you received?

A. Yes, they were.

Q. And what is the next promotion that you received?

A. In 2010 I became the operation director for the children and youth division at DHS. In that capacity I was responsible for cases from the hotline, so all child abuse and neglect reports that came in through the

hotline up until cases were closed out through the department.

[Page 77]

Q. Did you receive any other promotions?

A. Yes. In 2014 I became the Chief Implementation Officer for the Department of Human Services for improving outcomes for children. I was responsible for helping the community umbrella agencies, or CUA's, begin to receive their services.

Q. May I stop you for a moment and ask you to explain to the Court the term that you just used, improving outcomes for children?

A. Yes. Improving outcomes for children is a system transformation that the department undertook in 2012 in which we separated the city into ten geographical areas. We issued an RFP because we wanted community-based providers to provide case management services to families. At that particular time, prior to improving outcomes for children, we had a dual case management system in which every family had a DHS social worker and a provider social worker. We felt that it caused a lot of confusion for families, so we moved to a single case management system in 2013 in which families received one CUA—Community Umbrella Agency case manager as well as we developed one single case plan for families.

Q. And so essentially that streamlined the process for families?

[Page 78]

A. Yes, it did.



Q. Did you have any other duties as the chief implementation officer for improving outcomes for children?

A. The main—my main responsibility during that time was to ensure that cases that came into the front door, if they were accepted for services through the Department of Human Services, that they went directly to the Community Umbrella Agency so they could provide case management services. Additionally, we had a number of cases that were still in our ongoing service region. I supervised two units that were responsible for looking at each case individually to try to determine the needs of the child and the family. If the child and the family continued to need services through the Department of Human Services, then we transferred those cases over to the Community Umbrella Agency. Any child who was about to achieve permanency, we kept it at the Department of Human Services so that we could assure that permanency was achieved for that child.

Q. And just very briefly, when you referred to permanency, what are you referring to?

A. I am referring to goals for children and youth. Any child or youth that come into placement with the department in which the Department of Human Services has [Page 79] legal custody of that child, we establish a goal for that particular child. The goal consists of reunification, that means returning a young person to that particular family. If reunification cannot occur, then the next hierarchy in terms of goal is adoption. So identifying appropriate adoptive resources for that child or youth, and then the third hierarchy is permanent legal custodianship.

Q. Thank you. Will you talk a little bit about the structured level of care instrument?

A. Yes. Under my leadership as the chief implementation officer at the Department of Human Services, we developed—with the support of Casey Family Programs, we developed a structured level of tool instrument. What that instrument is used for is to determine the appropriate level of care for a child or a youth. In doing so, we gather referral information that is completed by the CUA case manager or the DHS social worker, we in partnership with Community Behavioral Health, who is our managed care organization for the city of Philadelphia. They are actually co-located at, DHS in the Central Referral Unit at DHS. They will review the child's behavioral health history. We have DHS screening social workers at the central referral [Page 80] unit that will gather the information from Community Behavioral Health as well as information on the referral as well as interviewing the DHS social worker with the CUA social worker to gather and ask structured questions so that we can determine the appropriate level of care for a child or youth. What I mean by appropriate level of care, children can be placed in general foster care or general kinship. That means they will be placed in a family-like setting and they don't have any special needs. We also have specialized behavior health for treatment in foster care, what a young person needs, therapeutic intervention, they may be on some type of medication, or maybe receiving outpatient therapy, their medical foster care because of medical needs and then we have congregate care as well.

Q. So it's important to identify a placement that is most appropriate for each child?

A. Yes.

Q. And is it the goal of your agency to try to place children in the least restrictive setting?

A. Absolutely.

Q. After you were the chief implementation officer for improving outcomes for children, what position did you hold?

A. So October 2016, I was promoted to Deputy [Page 81] Commissioner of Child Welfare Operations at the department, in which I was responsible for both the Department Human Services, so internal divisions at the Department of Human Services child welfare as well as the Community Umbrella Agency.

Q. And your position as deputy commissioner of Child Welfare Operations, that's obviously a high level leadership position, correct?

A. Yes.

Q. And you have the authority to make decisions on behalf of the agency, is that correct?

A. Yes.

Q. Turning your attention to foster care generally in Pennsylvania, will you please explain to the Court how many foster care agencies—how the foster care system works in Pennsylvania?

A. So the foster care system works—the Pennsylvania Department of Human Services gives foster care agencies the authority to either approve, disapprove or provisionally approve foster parents. A foster parent would contact a particular—contact the particular agency on their own because they are interested in becoming a foster parent. In doing—

Q. Excuse me, Ms. Ali, may I interrupt you for a moment because that is actually not what I was inquiring [Page 82] of you.

So state law requires how many children—each agency, such as DHS, it mandates that they are responsible for providing services to children who have been abused or neglected or who are in need of any

In-home services, correct?

A. Yes.

Q. And DHS does that how?

A. How DHS does that is DHS will do an investigation. So we will get a report into our hotline, we will do an investigation based on the allegations in the report. During the course of our investigation if we determine that a young person that there is present danger or active safety threat in a particular home in which we cannot mitigate, then we would seek an order of protective custody in order to remove the young person from his or her home.

Q. Now, after the department removes a child from the home, how does the department go about locating an alternative home for that child?

A. So the DHS investigating social worker upon removal will complete a referral. That referral goes over to our Central Referral Unit electronically as well as to our Community Umbrella Agency electronically.

Q. Prior to that referral, is there an attempt to [Page 83] place children with a kin?

A. Yes. So they still need a referral, so the first question that we would ask of care a parent, the child if the child is an appropriate age is whether or not there is

an appropriate kinship care giver or who is in your family or who do you know in terms of a friend, is there a coach, is there a teacher in which we can place the young person with someone that they know versus placing them in foster care. If the family or the child is able to identify a potential family member, DHS investigative social worker completes emergency clearances in which we get the same day. Those clearances will be a child abuse clearance to make sure there is no abuse or neglect. We complete an online state criminal clearance to make sure there are no criminal activities or no prohibited offenses that will bar the person from becoming a kinship care giver. We also do a DHS history check to insure that there is no active DHS case or history again that would prohibit us from placing the young person with a particular relative. And then we complete a home assessment to gather information to determine whether or not it is an appropriate placement for the child.

After that determination is made, again the referral is over electronically to the central [Page 84] referral unit. The Central Referral Unit would then gather the additional information and send that particular file to a foster care agency.

Q. How many foster care agencies are there in Philadelphia currently?

A. 30.

Q. And who licenses the foster care agencies?

A. The state licenses foster care agencies, PADHS.

Q. And will you please inform the Court as to what efforts are made in terms of the geographic location of where children will be placed in foster homes?

A. It is our attempt to place young people in their community to ensure that young people may maintain a connection to their community, certainly maintain the school that they are attending, any activities that they are attending, if it is safe for that young person to maintain—be maintained in their community. If not, because our foster care agencies are city-wide and they still have an appropriate match, although it may be in a different section of the city, then it is the responsibility for the CUA case manager to ensure that the child continues to remain in the same school, continue to receive the same services.

Q. So we have been talking about CUA's and also foster care agencies.

[Page 85]

A. Yes.

Q. Could you please differentiate for the Court the distinction between foster care agencies and CUA agencies?

A. Yes. The CUA's are Community Umbrella Agencies. As I stated, the city is divided into ten geographical neighborhood, if you will. And the Community Umbrella Agencies—we actually have six providers who are responsible for providing the case management services to children and families who are accepted for formal child welfare services. So for example, if a family is receiving in-home services because we are able to maintain a child in their home, then the CUA case manager is responsible for ensuring the child's safety through weekly visitation, is responsible for developing a case plan for the family so that the family knows what services need to be provided so that we can safely close their case. The CUA case manager is responsible

for all assessments and all referrals or interventions that the family needs.

If the CUA case manager—if a young person is in placement, the CUA case manager again is responsible for all case management activities which includes the same thing, assessment and safety through visitation. That visitation is actually monthly, case [Page 86] planning and intervention that the family needs as well.

Q. And if a child has special needs and has to see a therapist, for example, or has multiple medical appointments to attend, whose responsibility is it to ensure that the child receives those services and attends those appointments?

A. So the foster care parent, because we want foster parents to treat the child like it's their child, is responsible for taking the child to school, medical appointments, behavioral health appointments. However, in the event—because at times foster parents may have multiple children in their homes, in the event that they are unable to do so, it is the CUA case manager's responsibility.

Q. And now will you please explain the role of the foster care agency?

A. Yes. The foster care agency is responsible for identifying potential foster parents; they are responsible for recruiting those foster parents; they are responsible for providing training of foster parents and kinship care parents, and they are also responsible for the certification and maintaining the certification of the foster parents.

Q. And the certification criteria is determined by the Pennsylvania Department of Human Services?

[Page 87]

A. Yes.

Q. And DHS contracts with whom?

A. DHS contracts with the foster care provider agencies.

Q. And the foster care agencies contract with the CUA'S?

A. No, DHS also contracts with the CUA's. So DHS has contracts with the Community Umbrella Agencies as well as foster care agencies.

Ms. Barclay: Your Honor, I would object to the leading questions.

The Court: Overruled.

By Ms. Oliver:

Q. And for purposes of this litigation with regard to Catholic Social Services, Catholic Social Services is a foster care agency?

A. Yes, it is.

Q. And Catholic Social Services also has the CUAs, is that correct?

A. Yes.

Q. So who makes the determination as to whether or not a child is placed in a particular home?

A. The Central Referral Unit makes the determination of the appropriate level of care. So whether or not the child has to be placed in foster [Page 88] care, general foster care, treatment foster care. The foster care. We



then—the Central Referral Unit then sends over that referral information to the foster care agency and the foster care agency selects the foster parent and based on the referral information that CRU synthesises.

Q. Do foster parents have the ability to decide which foster care agency they would like to work with?

A. Yes.

Q. Are there instances wherein the Department of Human Services has ever opposed a child's placement in a particular home?

A. Yes.

Q. And will you please inform the Court, for example, like a circumstance under which that might occur?

A. Yes. Prior to the certification of a foster parent, the foster care provider agency submits information to the Department of Human Services by way of our provider unit so that we can issue what we call a provider location code for that particular foster parent. That code tells you where the foster parent is located. But part of that code is that we do background, a DHS background to determine whether or not the foster parent is known to the department of human [Page 89] services, either have an active placement or active case with the Department of Human Services or whether or not they had a DHS history. So there have been times in which foster parents, potential foster parent may have an active DHS case in which their child, for example, is in placement on the delinquent side of the system. In those situations, we would not issue a provider location code. Or we may find something in the foster parent history, they may have had an extensive history with the Department of Human Services that could be

a recent history. Again, we would deny the issuance of a provider location code in those situations.

Q. Thank you. You talked about the fact that CUA case managers have certain responsibilities with regard to children. What is the CUA chain of command?

A. So the CUA case manager reports to a CUA supervisor who in turn reports to a case management director who in turn reports to a director.

Q. And is there an operations director for a CUA?

A. It depends. Each CUA has a different structure. So some have operations director, particularly the ones who may manage two community umbrella agencies, but for the most part, most CUA's report from their director to an executive director for the agency.

[Page 90]

Q. Ms. Ali, do you have information regarding approximately how many children who are in placement—well, how many children at this time to your knowledge approximately are in placement through the Department of Human Services?

A. 6,000 children.

Q. Okay. And of those children, can you inform the Court roughly approximately how much of those children are placed in kinship care?

A. So about 45 percent of the children who are in placement are in kinship care.

Q. And also with regard to the geographic location of children in terms of their placement, could you tell the Court approximately what percentage of children live within 5 miles of their home of origin?

A. Approximately 52 percent of the children in placement live within 5 miles.

Q. Approximately what percentage of children are placed within 10 miles of their home of origin?

A. Approximately 76 percent. And those are for children and youth who are in foster care or kinship care settings.

Q. Thank you. Are there situations when foster parents work for one agency and they decide to change agencies?

[Page 91]

A. Yes.

Q. Will you please inform the Court as to that?

Ms. Barclay: Objection, Your Honor, as to speculation.

The Court: Well, overruled. You just said inform, you didn't say reasons why.

Ms. Oliver: Thank you, Your Honor.

By Ms. Oliver:

Q. Will you please provide the Court with reasons as to why some foster parents change agencies?

Ms. Barclay: Objection, Your Honor, for speaking about informing and that is hearsay of third parties.

By Ms. Oliver:

Q. To your knowledge as the deputy—

The Court: Overruled.

Ms. Oliver: Thank you.

The Witness: Can you repeat the question?

By Ms. Oliver:

Q. Why do some foster parents change agencies?

A. To my knowledge and in my expertise, the reason why foster parents change agencies is sometimes there may be dissatisfaction with a particular foster care agency. Other times they may have a young person in [Page 92] their home who is in need of specialized services, such as specialized behavioral health, because they have a behavioral health need that exceeds the expertise of particular foster care agencies. In either situation, we try to obtain or we do obtain at the department a reason why the foster parent wants to transfer. If it is dissatisfaction for our foster care agency, then we try to resolve those differences between the foster parent as well as the agency. If it is because a young person needs a higher level of care, we ask the foster parent if they are willing to continue to care for the young person. If they are willing to care for the young person, then as opposed to allowing the young person to disrupt from the foster home in which we would have to remove the child from the foster home, we transfer that entire foster home to a different provider agency.

Q. So in other words, is it your testimony that if a foster parent changes agencies, that does not necessitate the disruption in that child's placement?

A. Absolutely. The first thing we ask foster parents who have children in their home is whether or not they will be willing to continue to foster that child or youth because we want to minimize and avoid disruptions.

Q. And if we can go back for just a moment because [Page 93] you talked a bit about foster home place-

ment, foster care home placements. Can you talk a little bit about the other types of placements such as congregate care, group homes and medical treatment facilities?

A. Yes. So congregate care is the broader term when we talk about nonfamily-like settings. So they consist of group homes in which group homes are located within the community. They are in various sections of the city and outside the city. The young person tends to—typically will attend a school that is in their particular community. We also have child welfare placement that I call institutional placements. Those placements are campus-like placements in which the young person lives on the campus and the school is primarily an on-grounds school in which it is run by the particular placement agency. And then there are residential treatment facilities. These are facilities in which a young person has a psychiatric evaluation that indicates that there is a medical necessity because that young person needs a level of treatment. The RTFs are contracted by Community Behavioral Health, which is a managed care organization, and DHS also holds a small contract with the residential treatment facilities if the young person is committed to the department to provide a personal one-on-one for the child or youth.

[Page 94]

Q. So an assessment is done which determines the type of placement that would be best suited to a particular child?

A. Yes.

Q. And will you talk about respite care, please?

A. Yes. Respite care—so RFPA's are licensed foster parents who are willing to provide temporary care for a child or a youth. Respite providers typically want to do short-term as opposed to long-term placements for children and youth.

Q. And why might respite care be used?

A. Respite care is used for a number of reasons. When young people have higher level of need such as behavioral health needs or medical needs, a foster parent may need a break, if you will. So that child or youth will be placed in respite care, or you could use respite care if a foster parent is going out of town, for example, for the weekend. And then the child again is placed temporary in respite.

Q. Once a child is placed in care, does DHS have the authority to move that child to a different home?

A. DHS has to seek approval from the Court in order to move a child from a placement. And if it's an emergency situation, then DHS can move the child immediately. But again, we have to seek court approval [Page 95] on the back end. If it is a nonemergency situation, then we have to get court approval before the move is to take place.

Q. Thank you.

Ms. Oliver: The Court's indulgence, please.

(Brief pause in the proceeding.)

Ms. Oliver: Thank you, Your Honor.

By Ms. Oliver:

Q. Ms. Ali, generally do CUA's make the first—do foster care agencies and CUA's make referrals to other agencies?

A. No, all referrals come through the Central Referral Unit at DHS. We centralized that process back in July of 2017. The only time a foster care agency can make referrals is if they are referring internally to their program. So for example, net—if a young person is in foster home through Northeast Treatment, the foster—the child is disruptive or needs to move from their foster care agency, then Northeast Treatment or NET will look within their own continuum for the referrals to occur.

Q. Now, you heard testimony today that the Department of Human Services has closed intake with Catholic Social Services, correct?

[Page 96]

A. Yes.

Q. And to your knowledge, who made that decision?

A. Commissioner Cynthia Figueroa.

Q. Have there been other occasions in the past when the Department of Human Services has closed intake at other agencies?

A. Yes.

Q. And when that has happened, could you please describe that process to the Court and what has happened to children when intake has been closed at agencies?

A. So when intake is closed at agencies, the Central Referral Unit will no longer send new referrals to a particular agency. However, when a child or a youth is known to a particular agency, or if they have siblings with a particular agency, then higher level leadership at DHS will grant exceptions.

Q. And to your knowledge, in light of the current stoppage of referrals to Catholic Social Services, have there been any exceptions to that?

A. Yes.

Q. And who makes the determination as to whether exceptions should be granted?

A. I do.

Q. And who makes the requests for those exceptions?

A. Higher level leadership at the particular [Page 97] agency. If you talk about—in this particular case it would have been Jim Amato from Catholic Social Services or Jim Black from Catholic Social Services.

Q. And when intake is closed at a particular agency, what happens to the children who are already placed with those agencies?

A. They remain with the agency.

Ms. Oliver: Thank you. I have no further questions.

The Court: Cross-examine.

Ms. Barclay: May I cross this witness, Your Honor?

The Court: Yes.

Ms. Barclay: may I have permission to move this chair just to put my binder on it?

The Court: Okay.

Cross-examination

By Ms. Barclay:

Q. Good afternoon, Ms. Ali.

A. Good afternoon.



Q. You encourage prospective foster families to find a foster agency in Philadelphia that would be the best fit for that particular family?

A. Yes.

Q. You want families to feel confident and [Page 98] comfortable about the agencies they choose?

A. Yes.

Q. You testified that parents have the ability to decide which agency to work with?

A. Yes.

Q. These agencies will be a big support to the foster parent during their parental journey, won't they?

A. Yes.

Q. The DHS works with a range of foster care agencies with different specialties, right?

A. Yes.

Q. The mayor's office has an office of LGBTQ affairs, correct?

A. Yes.

Q. That office does not provide services to people who do not identify as LGBTQ, correct?

Ms. Oliver: Objection.

The Court: I don't know that she would know that.

The Witness: I was going to say I don't know.

By Ms. Barclay:

Q. Fair enough. That office has partnered with other foster agencies like Second Chance and Philadelphia

[Page 99] Family Pride for LGBTQ recruiting events, correct?

Ms. Oliver: Objection.

The Court: If you know.

The Witness: I'm not sure.

Ms. Barclay: With indulgence, Your Honor.

The Court: Yes.

(Brief pause in the proceeding.)

Ms. Barclay: Permission to approach the witness, Your Honor?

The Court: Yes.

By Ms. Barclay:

Q. Ms. Ali, I have handed you a document entitled Foster Parent Recruitment. This is on the Philadelphia Family Pride website. Does that look correct to you?

A. Yes.

Q. The document says that Philadelphia Family Pride has partnered with the mayor's office with LGBTQ affairs?

Ms. Oliver: Objection.

Ms. Barclay: I am not sure what the objection is, Your Honor.

Ms. Oliver: Your Honor, this document is not a document, that page, that was issued by the Department of Human Services, it's a document from [Page 100] Philadelphia Family Pride.

Ms. Barclay: Your Honor, I am just asking her a question about it, number one, and number two, the rules

of evidence don't apply at a preliminary injunction hearing.

The Court: Well, it speaks for itself. Overruled.

By Ms. Barclay:

Q. Ms. Ali, it says that Philly Family Pride has partnered with the mayor's office of LGBTQ affairs, a Second Chance and DHS recruit LGBTQ adults, single or partnered, in the Philadelphia area to become foster parents, specifically for LGBTQ youths in the system. Did I read that correctly?

A. Yes.

Q. Does this refresh your recollection about any recruiting that is going on by agencies for LGBTQ population?

A. It actually refreshes my recollection about the foster care recruitment that the Department of Human Services did in March in which we had a recruitment strategy and we did a phone bank in which we wanted LGBTQ individuals who are interested in providing that level of care to young people. So we actually targeted—the Philadelphia Department of Human Services [Page 101] actually targeted everyone in all foster care agencies and not just one foster care agency in particular.

Q. So DHS was encouraging recruitment of population for parents to care for LGBTQ youths, right?

A. Yes.

Q. And that's a priority for DHS?

A. One of many, yes.

Q. One of the points of these targeted recruiting sessions was also to find LGBTQ foster parents to care for LGBTQ youths, correct?

A. LGBTQ affirming foster parents. So the foster parents in and of themselves did not have to be LGBTQ.

Q. Sure. But there was also an effort to recruit LGBTQ parents now that they were a priority as well, correct?

A. Yes.

Q. And as you said, to find parents who would be supportive and affirming of a LGBTQ foster child?

A. Yes.

Q. If a family went to another agency looking for a particular expertise with supporting LGBTQ population, it would be appropriate for that agency to send that couple to Second Chance, for example, if they wanted particular expertise?

A. I would not be able to answer that question.

[Page 102]

Q. You were trying to ensure through these programs that LGBTQ populations would be able to find a foster agency that is a good fit for them and they can be confident in, right?

A. Yes.

Q. If LGBTQ populations were not able to work with an agency that was a good fit or that was affirming of them, those LGBTQ families would be harmed, right?

A. Can you repeat your question?

Q. If LGBTQ families were not able to work with an agency that was affirming of them, those LGBTQ families would be harmed, right?

A. Yes.

Q. So it was important for them to be able to find an agency that is a good fit?

A. Yes.

Q. And preventing families from working with an agency that they think is the best fit would cause them harm, right?

A. All of our agencies—the reason why we did a LGBTQ recruitment strategy is because we have a number of young people who are LGBTQ.

Q. I understand, that's not the question I am asking, Ms. Ali.

A. What is the question?

[Page 103]

Q. If a family was prevented from an agency that they believe would be the best fit for them, would that cause a harm for the family?

Ms. Oliver: Objection, Your Honor.

The Court: Sustained.

Ms. Oliver: Just cut it down, the question as to what would be harmful to the family.

By Ms. Barclay:

Q. You heard from Mrs. Paul and and Ms. Fulton and Ms. Simms-Busch offer testimony today?

A. I did.

Q. All of those individuals talked about how Catholic Social Services is a good fit for them, right?

A. Yes.

Q. Do you think it's important for families to be able to feel confident and confident with the option they choose?

A. Yes.

Q. And you feel it's also important for those family to feel supported and confident in their decision?

A. Yes. And, in turn, I think foster care provider agencies should make them feel that way.

Q. You know Ms. Paul from your work at DHS, right?

A. I do not know Ms. Paul personally or from my [Page 104] professional work at DHS.

Q. We have discussed how families need to be able to find an agency that is a good fit for them, but agencies also need to evaluate prospective families for foster care, correct?

A. Yes.

Q. There are limits on who can become a foster parent?

A. Yes. Based on the 3700 regulations.

Q. You also said that you might deny a family based on their history with DHS that comes to you before certification, correct?

A. We deny the issuance of a provider location code, not denying foster parents.

Q. The provider location code for the agency?

A. The provider location code for the agency, and it speaks for the agency as well as the particular foster home.

Q. So if you denied the location code, would that family be able to be a foster parent through that agency?

JA 98

A. Yes. Through another county.

Q. In another county?

A. Yes.

Q. But not in Philadelphia?

[Page 105]

A. Yes.

Q. So you're—you have denied the ability of families to be a foster parent in Philadelphia based on their history with DHS?

A. I have denied the issuance of a provider location code.

Q. Which has the impact of preventing them from being a foster parent in Philadelphia, as you just said?

A. Yes.

Q. You are aware that state law actually requires agencies to consider the ability of the applicants to work in partnership with the foster agency, correct?

A. Yes.

Q. And you said that the state actually licenses foster agencies.

A. Yes.

Q. And that requirement I just quoted you, that's state law, correct?

A. Yes.

Q. And DHS's contract requires catholic to comply with state law.

A. Yes.

Q. The DHS contract also has a list of criminal convictions that would prevent an individual from becoming a foster parent.

[Page 106]

A. Yes.

Q. When a foster agency is considering certifying a family for foster—to foster children, state law requires that the agency consider additional factors, and I want to look at you with what some of those factors are. The agency is required to consider the ability to provide care, nurturing, and supervision to children.

A. Yes.

Q. The agency has considered there is a demonstrated stable, mental, and emotional adjustment.

A. Of the parent.

Q. Of the projected foster family.

A. Yes. Yes.

Q. And that might even require a psychological evaluation, correct?

A. Yes.

Q. Whether the family has supportive community ties is another factor to consider.

A. Yes.

Q. The agency has to consider familial relationships, attitudes, and expectations, especially that might affect the foster child.

A. Yes.

[Page 107]



Q. They have to consider the family's ability to accept the child's relationship with his own parents.

A. Yes.

Q. They have to consider the number and characteristics of children best suited to the foster family.

A. Yes.

Q. And this law requires agencies to consider the ability of the applicant to work in partnership with the foster agency.

A. Yes.

Q. This involved a consideration of which families would be a good fit with the agencies.

A. I am not sure exactly what you are saying to—in terms of good fit.

Q. There's nothing in state law that says that agencies must certify the applicant after considering these factors, is there?

A. I am not sure.

Q. You are not aware of anything in state law that sets forth that requirement, are you?

Ms. Oliver: Objection.

The Court: She said she is not sure.

The Witness: I am not sure.

Ms. Barclay: Just a moment, Your Honor.

[Page 108]

By Ms. Barclay:

Q. DHS's contract with Catholic is not just limited to foster care services, correct?

A. Correct.

Q. It also involves services for adjudicated delinquents, adjudicated dependent teens, and reintegration services that come from the Central Referral Unit, correct?

A. Only the dependent services come from the Central Referral Unit.

Q. And the contract with Catholic Social Services involves services for those dependent teen boys and girls, correct?

A. Yes.

Q. And the contract also involves services for adjudicated delinquents.

A. Yes.

Q. And the contract involves reintegration services.

A. Yes.

Q. This contract has a provision about the city's public accommodation ordinance.

A. Yes.

Q. Public accommodations in Philadelphia should accept all comers, right?

[Page 109]

A. I don't know the specifics.

Q. Catholic's has been partnering with the government to provide foster care services for years, right?

A. Yes.

Q. The DHS contract specifically observes that Catholic is an organization with a religious mission.

Ms. Oliver: Objection, Your Honor. The questions specifically with regard to the DHS contract, the contract was entered as an exhibit in these proceedings. And I believe the Court can certainly review the contract if the Court deems it necessary and appropriate.

Ms. Barclay: may I have permission to approach the Witness with the contract, Your Honor?

The Court: Yes.

Ms. Oliver: Your Honor, at this time, before this document is shown to the Witness, if we can please take a look at the document.

The Court: Yes.

By Ms. Barclay:

Q. Ms. Ali, if you can turn your attention to the bottom of page 27. This is ECF 13-3.

Ms. Oliver: Objection, Your Honor. I am objecting at this time to this witness being questioned [Page 110] regarding the contract, as the contract speaks for itself and this witness is not an attorney.

Ms. Barclay: If the contract speaks for itself, Your Honor, there should not be a problem briefly discussing that.

Ms. Oliver: Your Honor, she is also not the person who negotiated the contract and would not have knowledge specifically as to the terms of the contract. I submit to the Court that on cross-examination that her testimony—her questions should be limited to questions about DHS's policy, practices or procedures, and specifically not questions with regard to the contract about which she does not have knowledge.

Ms. Barclay: The religious nature of the agency, Your Honor, is relevant to questions about fit with families and the population that the agency reaches. And so we are bringing the witness's attention to that for the cross-examination purposes.

The Court: For that limited purpose, I will permit it.

By Ms. Barclay:

Q. Ms. Ali, if I could turn your attention to the bottom of page 27 of document ECF 13-3. This says that –

[Page 111]

Ms. Oliver: may I have a moment, please?

The Court: Yes.

(Brief pause in the proceeding.)

Ms. Oliver: Could you please again state what you are referring her to?

By Ms. Barclay:

Q. Ms. Ali, if I could turn your attention to the bottom of page 27 of document ECF 13-3. This says: provider organizational overview. The mission statement. Catholic Social Services of the Archdiocese of Philadelphia continues to work—the work of Jesus by affirming, assisting, and advocating for individuals, families, and communities. The vision and value statement of Catholic Social Services.

Then it goes on to talk about the ways that—if you turn to the next page—Catholic Social Services exists to transform lives and to bring about a just and compassionate society where every individual is valued, families are healthy and strong, and communities are

united in their commitment to the good of all. We envision a world touched by God's mercy where poverty and need are alleviated and the people share justly the blessings of creation.

And then if I could turn your attention, Ms. Ali—did I read that correctly?

[Page 112]

A. Yes.

Q. If I could turn your attention to document ECF 13-3, page 38. This is an organizational chart, and it says: Catholic Social Services. Archdiocese of Philadelphia. Organizational structure. Is it possible that—

Ms. Oliver: No. Excuse me. We don't seem to have that. Ours goes to 37.

Ms. Barclay: It's right here.

By Ms. Barclay:

Q. Is it possible that the religious nature of Catholic Social Services allows it to reach different populations and different families in unique ways?

A. Ask the question—can you repeat that question?

Ms. Oliver: is that a question?

By Ms. Barclay:

Q. Is it possible that the religious nature and mission of Catholic Social Services allows it to reach different unique families in unique ways compared to other agencies?

Ms. Oliver: Objection; calls for speculation.

The Court: Sustained.

[Page 113]

By Ms. Barclay:

Q. In all the time you have been at DHS, for the 18 years, I believe you said—correct, Ms. Ali?

A. Yes.

Q.—you are not aware of anyone filing a complaint against Catholic Social Services for performing foster care consistent with this religious mission, are you?

The Court: Ask that question again.

By Ms. Barclay:

Q. In the 18 years that you have been at DHS, you are not aware of anyone filing a complaint against Catholic for performing foster care consistent with this religious mission, are you?

A. I'm not—I don't know. No.

Q. You are not aware—

A. I am not aware.

Q. You are not aware of anyone filing a complaint against Catholic Social Services in the provision of foster care, to your knowledge?

A. I am unsure.

Q. Can you think that at this time any example of a complaint filed against Catholic Social Services in the provision of foster care services?

A. I am really not sure.

[Page 114]

Q. Would you have remembered if a complaint was filed against the agency?

Ms. Oliver: Objection, Your Honor; asked and answered.

The Court: She is not sure.

The Witness: I'm not sure. I don't know how—

Ms. Barclay: I am not sure if she's not sure she would never have known about the complaints because it would not have come to her attention, or she just at this time can't think of any.

The Court: She said she is not sure. So she—that's her answer. She is not sure.

Ms. Barclay: Your Honor, may I have permission to just confirm what that answer means?

The Court: I would think that's basic English. She is not sure.

Ms. Barclay: Okay.

By Ms. Barclay:

Q. You are not aware of any families that were prevented from becoming foster parents because of Catholic Social Services?

Ms. Oliver: Objection.

The Court: Overruled.

The Witness: I would not know that.

[Page 115]

By Ms. Barclay:

Q. So you are not aware of any personally?

A. I don't—I don't know.

Q. You are familiar with DHS's operations, policies, and procedures, including the practices that are the subject of this action?

A. Yes.

Q. The DHS foster care contract says that, quote, the provider shall not reject a child or family for services based upon the location or condition of the family's residence, their environmental or social condition, or for any other reason if the profiles of such child or family are consistent with the provider's scope of services or DHS's applicable standards as listed in the provider agreement, unless the exception is granted by the commissioner or the commissioner's designee in his sole discretion.

My question is: this paragraph is dealing with a rejection of referrals, correct?

A. Yes.

Q. And this is referring to a rejection of a referral from DHS, correct?

A. Yes.

Q. Non-relative family members generally approach foster agencies about becoming foster parents.

[Page 116]

A. It depends.

Q. One of the ways that non-relative family members can become a foster agency—or can become foster parents is by approaching a foster agency, correct?

A. Yes. That's one of the ways.



Q. And if they come through that way, agencies will decide to evaluate those families as part of their normal intake process.

A. As part of their normal—can you define what intake process is?

Q. Let me ask you the question a different way. If an agency is evaluating a family that came to them on their own, that type of foster family is not one that was referred to the agency by DHS, is it?

A. Not necessarily.

Q. And kin care is a situation where DHS would refer an entire family, correct?

A. Yes.

Q. And you testified earlier that DHS, when it makes referrals, will identify the needs of the family as well as the needs of the child to try to find the ability to meet those needs, correct?

A. The needs of the child. So we determine the needs of the child and whether or not the foster parent or the kinship caregiver is able to meet those needs. [Page 117] so we lead with the needs of the particular child.

Q. Let's assume that there was a family that was primarily Spanish speaking. DHS would consider that in a kin care referral as far as referring to an agency that was able to communicate with the family and the child, correct?

A. It would depend.

Q. So you would refer a Spanish-speaking family to another agency that didn't communicate with them?

A. If the particular agency has Spanish-speaking staff, then we would make that referral to that particular agency.

Q. And that would be a consideration?

A. That would be a consideration.

Q. This paragraph also refers to a provider's scope of services. Providers are required to comply with state law, correct?

A. Which document are you referring to?

Q. If you want to turn to—this is ECF 13-4 of the document you have in front of you at pages 14 to 15.

Ms. Oliver: Could counsel please state again which document you are referring to.

Ms. Barclay: This is the contract.

Ms. Oliver: And the specific page and section?

[Page 118]

Ms. Barclay: It is ECF 13-4, and it's pages 14 and 15.

By Ms. Barclay:

Q. Ms. Ali, would it be helpful if I—

A. Can you just make sure I have the correct—yes, please.

Q. Ms. Ali, this paragraph says that providers shall not reject a child or family for services based upon the location or condition of the family's residence, their environmental or social condition or for any other reason if the profile of such child or family is consistent with provider's scope of services.

My question to you earlier is that a provider's scope of services includes complying with applicable state laws, correct?

A. Yes.

The Court: Do you understand the question?

The Witness: Yes.

By Ms. Barclay:

Q. This provision does not prevent agencies from referring families to an agency that would be a better fit for the family, does it?

A. The agency is not—

Ms. Oliver: Objection.

[Page 119]

The Court: Overruled. Answer the question.

The Witness: Repeat the question, please.

By Ms. Barclay:

Q. This provision that we just read does not prevent agencies from referring families to another agency that would be a better fit for the family, does it?

A. So provider agencies would not refer a family to—or a child to another agency, as I testified earlier, that the Central Referral Unit is a unit in the Department of Human Services that makes referrals when you are going outside of a particular agency.

Q. I understand that. I am not asking you about a DHS referral of a child.

If a prospective foster parent approaches an agency about being considered for the home study certification process, this contract provision does not prevent

that agency from sending that family or allowing them to know about another agency that would be a better fit for the family, does that provision?

Ms. Oliver: Objection, Your Honor. I renew my objection with regard to the contract—

The Court: I think that's an unfair [Page 120] question because it's asking for a negative. So I am going to sustain the objection.

Ms. Barclay: Let me see if I can word that a little differently, Your Honor.

By Ms. Barclay:

Q. Sometimes families might come to an agency not as a DHS referral but on their own. We discussed that earlier, right?

A. Yes.

Q. And if that family comes to an agency, this contract provision does not say anything about whether or not the agency could give the family information about another agency better able to meet their needs.

Ms. Oliver: Objection, Your Honor. Questions with regard to the contract are conclusions of law.

The Court: Sustained.

By Ms. Barclay:

Q. Do you enforce this contract provision in an even-handed manner?

The Court: What contract provision?

Ms. Barclay: This contract, Your Honor.

Ms. Oliver: Objection, Your Honor. It's an improper question for this witness. She does not enforce the contract.

[Page 121]

Ms. Barclay: Your Honor, this witness has testified that she is familiar with DHS's operations, policies, and procedures, including the practices that are the subject of this action. And under the Free Exercise Clause, one of the very important legal questions is not just what a contract provision or policy says in a vacuum but how the relevant officials enforce that policy and if they enforce it in an even manner. So it's very relevant to the questions at issue in this case.

Ms. Oliver: Your Honor, I submit that she is not the relevant official. It's not an appropriate question for this witness.

The Court: Well, she is an appropriate witness as far as the policy. But I don't know whether or not there is an issue of equal application. I mean, as far as she is concerned, she is the appropriate person.

By Ms. Barclay:

Q. DHS would not prevent an agency from letting a prospective foster family know about another agency that might better meet their needs?

A. DHS will have a problem with that. If a potential foster parent seeks out, as you indicated, on their own and contact a provider—a foster care [Page 122] provider agency wanting to become a foster parent, we would expect the foster care provider to train and certify that foster parent.

Q. No matter what?

A. If it's in—if it's aligned with the 3700 regulations.

Q. The 3700 regulations meaning?

A. The foster care regulations. So we expect for the foster care provider agency—as a foster care provider agency, we expect you to recruit, to train, and to certify potential foster parents.

Q. And your position is that it would violate those regulations if an agency let prospective foster parents know that a different agency would be a better fit for them.

A. Because it's the foster parents' choice. So if in the foster parent sought out a particular provider agency, that is the foster care provider agency that the foster parent wants to work with. So we would expect the foster care provider agency to train and certify them.

Q. And it would be a violation of DHS policy if that agency referred them to a different agency for any reason?

The Court: Well, that's a kind of a [Page 123] broad question.

By Ms. Barclay:

Q. It would be a violation of DHS policy if they referred that family to another agency that they thought would be a better fit for that family?

A. If that referral—define your referral. What are you talking—define your referral.

Q. If that agency told the family that another agency would be a better fit for them, and so – sent that family to a different agency, it's your position that this would violate DHS policy?

A. Yes.

Q. So the contract's provision also allows the commissioner to make exceptions in his or her sole discretion, correct?

Ms. Oliver: Objection. Question is regarding the contract, Your Honor.

Ms. Barclay: I can move on, Your Honor.

The Court: Yes, please.

By Ms. Barclay:

Q. Are you aware of DHS making exceptions to this policy in the past?

A. No, I am not.

Ms. Oliver: Objection to what policy.

Ms. Barclay: The contract provision that [Page 124] we have been discussing.

The Court: Well, I think you need to be more specific.

By Ms. Barclay:

Q. You testified earlier that if an agency referred a family to a different agency because they thought it would be a better fit, that would be a violation of DHS policy. And I am asking, has DHS made exceptions to that policy, that you are aware of, in the past?

Ms. Oliver: Objection. I believe that counsel is mischaracterizing her testimony.

The Court: Overruled. Can you answer the question?

The Witness: Can she ask it again?

By Ms. Barclay:

Q. You testified that if a family approached an agency and the agency referred them to a different agency as being a better fit for that family, that would be a violation of DHS policy. And I am asking, are you aware of times in the past where DHS made an exception to that policy?

A. I am not aware.

Q. Only certain agencies are allowed to care for a foster child with certain behavioral health issues, correct?

[Page 125]

A. It's not true.

Q. Behavior issues are ones that require additional expertise provided by certain agencies, correct?

A. Depending on the level of behavioral health needs of the young person.

Q. But you have previously said under oath that behavioral issues require additional expertise that can better be provided sometimes by another agency.

A. I actually said specialized behavioral health, which is different from the broader behavioral health. Young people who come into placement because of the trauma that they suffer more often than not have some behavioral health needs, which would be separate and apart from specialized behavioral health, which is often-times a diagnosis, prescription medication, the foster parent has to maintain medication logs. So that is different from just behavioral health.

Q. Okay. So specialized behavioral health is an issue that requires additional expertise by an agency?

A. Yes.



Q. Such agencies have to offer parents specialized training, right?

A. Yes.

Q. They also have to meet additional requirements with regard to staff?

[Page 126]

A. Yes.

Q. These agencies have an add-on contract with the city that lets them provide those specialized behavioral health services for those children, correct?

A. Yes.

Q. For instance, one agency that has those behavioral health add-on contracts is Devereux?

A. Yes.

Q. Some foster parents might only be interested in fostering a child with those sort of specialized behavioral issues. If such a parent showed up at an agency without that specialty in that contract, then that agency would need to refer that family to an agency with a contract like Devero, right?

A. If the foster parent is requesting that.

Q. Right.

A. Yes.

Q. If the foster parent is requesting to foster a child with specialized behavioral health issues.

A. So what we would ask the foster care provider agency to do is explain to the potential foster parent about the type of young people that they provide foster care for, and if the foster parent does not want to foster

with that particular agency, then it would be their choice to foster for another agency.

[Page 127]

Q. And so if they only wanted to foster young people with that specialized behavioral health issue, they would need to be referred to an agency with that specialty?

A. Yes.

Q. Have you granted a formal exception for these types of referrals?

The Court: Formal exception, that is assuming that an exception is necessary or required.

Ms. Barclay: I am not assuming that an exception is required. I am asking if an exception has ever been granted. That you are aware of.

The Court: Well, under the circumstances that you have outlined, you are assuming that one is required.

By Ms. Barclay:

Q. Is an exception required from the DHS policy we were discussing earlier?

The Court: If?

By Ms. Barclay:

Q. To refer a family to a different agency with the specialized behavioral health specialty.

A. I guess the difficulty that I am having is that this speaks to foster parents who are—who—individuals who are already foster parents and not a [Page 128] potential.

Q. No, my hypothetical is assuming prospective foster parents who are only interested in fostering youth with specialized behavioral health issues. So it does not require a formal exception in order for an agency to refer them to a different agency if they could provide that behavioral health expertise, does it?

A. No.

Q. Only certain agencies are allowed to care for foster children with certain specialized medical issues, right?

A. Depends, again. And it depends on the level of medical need. For example, a medical one in which a young person may have asthma, for example, could be cared for by a general foster care foster parent.

Q. So—but there are some medical needs that can only be provided for by an agency with that specialty, correct?

A. Yes.

Q. And these agencies also have to receive an additional license through the state office of medical assistance?

A. Yes.

Q. They then receive an additional line item, add-on on the foster care contract, to provide these [Page 129] special medical services, right?

A. I am not completely familiar with the line item.

Q. Jewish Family Children Services is one agency that has this medical expertise that they provide for families, correct?

A. Yes.

Q. Some foster parents—prospective foster parents might only want to foster a child with particular medical issues, right?

A. Yes.

Q. If such a parent showed up in an agency that didn't have this special contract, they would need to be referred to an agency like Jewish Family that does have that expertise, correct?

A. We would ask the foster care provider agency to explain the children that they service, some of which will be medical level one, and let the foster parent decide whether or not they want to transfer—potential foster parent, whether or not they want to provide foster care for medical agency.

Q. But if they only wanted to foster youth with this specialized medical issue, there are some agencies that they cannot receive that service from, correct?

A. Correct.

Q. And so if they wanted to be foster parents, they [Page 130] would need to be referred to a different agency, like Jewish family children, that has that specialty?

A. Yes.

The Court: The biggest problem is I think you are disagreeing what is a referral.

The Witness: Yes.

The Court: I mean, what is it you are trying to do—and I think it's inappropriate—is to get this witness to use the same words that you are using and mean the same thing. She clearly is not on the same wavelength

as you when talking about referral. And I think that's where the confusion lies.

By Ms. Barclay:

Q. So there are two different ways that I am aware of that the word "referral" can be used. It can mean referral from DHS to agencies, right, from your Central Referral Unit?

A. Yes.

Q. And so for ease of reference, what I have been talking about is that sometimes agencies can provide additional information to families about other agencies that would serve their needs and give them the choice to go to that agency?

A. And I am invisible to that process.

Q. And so what I am explaining is that—what I [Page 131] understand, if a family went to—wanted to only foster children with a special medical condition, for example, and if they approached an agency that does not have that specialty, it would be appropriate for that agency to give them information about other agencies that would better meet their needs and give the family the choice to go to that agency.

The Court: Well, that's not what happened here. That's speculative.

Ms. Barclay: I am trying to understand what DHS's position is on the application of policy, Your Honor.

The Court: I think that the witness has already stated what DHS's position is. The policy that you are asking about is purely speculative. It's not the situation that we have here. At least I have not heard anything about such a situation.

Ms. Barclay: Mrs. Simms-Busch did testify about referrals that were made by agencies, about using the word referral; she meant sending families to other agencies that better met their needs because those families wanted to care for children with medical expertise.

That is relevant to the way in which this policy is applied vis-à-vis other types of situations [Page 132] where an agency might send a family to a different agency for a better fit, Your Honor.

The Court: I am going to sustain the objection. There is no objection. I am going to.

Ms. Oliver: Objection, Your Honor.

The Court: I am going to sustain the objection.

By Ms. Barclay:

Q. Some foster agencies that DHS works with has advertised that they only serve kin care populations, correct?

A. I don't know of any foster care provider that DHS provides foster care with that only does kin. Foster care provider agencies do both kin and foster care.

Ms. Barclay: Permission to approach the Witness, Your Honor?

The Court: Yes.

Ms. Barclay: I am actually going to move on, Your Honor.

The Court: Okay.

By Ms. Barclay:

Q. Some agencies have an expertise in certain Latino communities, correct?

A. Yes.

[Page 133]

Q. For example, Concilio was one agency that DHS works with this expertise?

A. Yes.

Q. Another agency with this specialty is APM?

A. Yes.

Q. If a Spanish-speaking prospective foster family approached an agency that didn't have Spanish-speaking social workers, it would be appropriate for the agency to tell the family about another agency, like Concilio, that can better meet their needs, correct?

A. We expect for foster care provider agencies, since we service the entire city of Philadelphia, to provide interpreting services for foster parents and biological parents. We don't expect them to necessarily refer to a Spanish-speaking agency.

Q. But if an agency did make that referral, that would be appropriate if they thought another agency could better meet the needs of the Spanish-speaking family, right?

A. If the foster parent chooses to go to a different agency. If the foster parent approached that foster care provider agency and wanted to be a foster parent, we expect the foster care provider agency to train and certify that foster parent.

Q. So if an agency said, we don't think we would be [Page 134] the best fit for you because we don't have the language expertise to best serve your needs, and so we are not able to provide certification for you, if an

agency did that, you think that would be a violation of DHS expectations?

A. If the agency was to do that, the agency also needs to ask the foster parent what is his or her choice and allow the foster parent to make that decision.

Q. If the foster parent wanted to work with an agency and thought that the agency could not meet their needs and the agency said, we don't think we are able to meet their language needs, but we can send you to another agency that does, after explaining to the family why that was the case, that would be appropriate, right?

Ms. Oliver: Objection, Your Honor. I believe that this line of questioning has been asked and answered numerous times.

The Court: Sustained. Sustained.

By Ms. Barclay:

Q. Federal law requires that Native American children generally be placed with the tribal members or individuals of Native American ancestry, right?

Ms. Oliver: Objection as to what federal law requires.

Ms. Barclay: The witness's knowledge [Page 135] about whether or not it's appropriate to send a foster family to a different agency is relevant, Your Honor.

The Court: Overruled. She can answer.

The Witness: Repeat the question, please.

By Ms. Barclay:

Q. Federal law requires Native American children generally to be placed with tribal members or individuals with Native American ancestry, right?



A. Yes.

Q. Some agencies in Pennsylvania specialize in placing Native American children, right?

A. I can only speak to Philadelphia.

Q. You are not aware of other agencies that have that specialty?

A. Not in Philadelphia.

Q. Are there any such agencies in Philadelphia, that you are aware of?

A. No. There aren't any, that I am aware of.

Q. So if a non-Native American family went to an agency in Philadelphia wanting to foster a native American child, they would be unable to do so, correct?

A. Repeat the question.

Ms. Oliver: Objection; calls for speculation.

[Page 136]

The Court: Sustained.

By Ms. Barclay:

Q. DHS guidelines emphasize the importance of geographic proximity for foster care placements, correct?

A. Repeat that.

Q. DHS guidelines emphasize the importance of geographic proximity for foster care placements, correct?

A. I am trying to determine what are you saying. What are you citing?

Q. You said earlier in your testimony that geography is important for consideration of the placement of the

child because you want to keep the child in their community, correct?

A. Yes. However, I also testified that if, in fact, there was a better fit outside of the community, that we would place the child outside of their community. And then it would be the core case manager's responsibility to ensure that the child maintained educational stability as well as behavioral health and medical stability.

Q. You said that 52 percent of children are within 5 miles of their original home, right?

A. Yes.

[Page 137]

Q. And so sometimes referrals can be made or families are sent to other agencies where it will be closer to the child's home, if that would be in the child's best interest, right?

A. No.

Q. You are not aware of any such referrals for geographic reasons?

A. No. We don't do referrals for geographic reasons. Our foster care provider agencies are citywide. So if after the Central Referral Unit sends—or makes a level of care decision and sends over the referral to all of the foster care agencies that provide that level of service, the foster care provider agencies will determine the best fit for the most appropriate—the most appropriate foster parent for that particular child.

So we will not—if the foster parent is an appropriate placement, then we will place that child with their foster parent and, again, expect that the services that the child receive in their community, which is primarily

their educational needs, to ensure that that child stays in their school, we call their school of origin.

Q. If a family wanted to foster a child in their own neighborhood, but they approached a foster agency on [Page 138] the other side of the city, would it ever be appropriate for the foster agencies they approached to send them to an agency that is closer to their own neighborhood?

A. So what I would say in response to that is that foster care providers want to increase their capacity with resource experience with foster parents. Therefore, the foster care provider would try to accommodate their foster parent. They just would not refer them to another agency that is closer.

What I mean by accommodating, they would, if possible, provide the training that the foster parent needs in their own home as opposed to having the foster parent travel across the city. If it is the foster parent's desire, then that's another question.

Ms. Barclay: One moment, Your Honor.

By Ms. Barclay:

Q. You have represented to this Court that you're committed to ensuring placement in a child's best interest, correct?

A. Yes.

Q. And DHS leadership has said that they will continue to consider any requests indicating that a placement with Catholic is not in a child's particular best interest?

A. Yes.

[Page 139]

Q. This would include placing a child with a foster family with Catholic, which has already cared for the rest of the child's family?

A. Yes.

Q. This could also include placing the siblings of a Catholic family that has a preexisting relationship with a child?

A. Yes.

Q. You have never communicated in writing to other CUA's that they are allowed to refer children to Catholic in these instances, have you?

Ms. Oliver: Objection.

The Court: Overruled.

The Witness: The CUA's do not make referrals to other foster care agencies. Those referrals are made by way of the Central Referral Unit.

By Ms. Barclay:

Q. But CUA's do provide input from the Central Referral Unit.

A. They provide input based on the needs of the particular child.

Q. Right.

A. They provide input about the child.

Q. They provide input about what placement it would be in the best interest of the child, correct?

[Page 140]

A. Who provides information—the CUA case managers provide input about the child's needs. The Central Referral Unit in concert with Community Behavioral

Health, which is the managed care organizations, are the individuals who determine the appropriate level of service for the particular child.

Q. And you have not communicated to those CUA's that DHS will be considering still making placements with Catholic if that placement is in the best interest of the child in writing, have you?

A. What we have communicated—

Q. I am not asking what you have—

A. Yes, we have.

Q. What have you communicated in writing?

A. So we communicated to the CUA's around, I believe, march the 26 or march the 27—I can't remember off-hand—that we did not want to see any placement disruptions of young people. And there was some other pointers, some other—so we did.

Q. You communicated to the CUA's, we are asking that you refrain from making any foster care referrals to Bethany Christian Services and Catholic Social Services, right? That was in your communication to them.

A. That was part of it. Some additional language.

[Page 141]

Q. That was a quote from your communication to them.

A. And some additional language, yes.

Q. The e-mail also stated: please forward this e-mail to your staff, particularly staff with the responsibility to identify placement, correct?

A. Yes.

Q. You did not say anything in this e-mail about ensuring that additional placements were going to be with Catholic if it would be in the best interest of the child.

A. No. Because that information was communicated to Catholic—

Q. But—

A.—to keep it centralized.

Q.—you communicated that to other CUA executive leadership.

A. No. And we wouldn't have.

Q. And you have not communicated that to DHS staff in writing, have you?

A. No.

Q. You have not communicated to any staff in the Central Referral Units that they can refer children to Catholic if it would be in their best interest, have you?

[Page 142]

A. What was communicated to the—

Q. You have not communicated in writing to the Central Referral Unit staff that they can make referrals to Catholic if it would be in the best interest of children?

A. No.

Q. And you didn't say anything in this e-mail about ensuring that children would be placed with sibling groups, did you?

A. No.

Q. You didn't say anything in this e-mail about ensuring that children could be placed with families with preexisting relationships?

A. No.

Q. This e-mail—and this is ECF 13, exhibit 1, attached e, this was sent out on March 27, correct?

A. Do I have it here?

Ms. Barclay: permission to approach the witness, Your Honor?

The Court: Yes.

Ms. Barclay: Your Honor, I am approaching the witness with ECF 13-6. It's attachment e. It's already been admitted.

The Court: What is your question?

[Page 143]

By Ms. Barclay:

Q. Ms. Ali, you sent this e-mail out on March 26, correct?

A. Yes.

Q. And this e-mail was forwarded on March 27th to staff by Stacey Boyd?

A. Yes.

Q. And Stacey Boyd reports to you, correct?

A. Yes, she does.

Q. And she also works for DHS?

A. Yes, she does.

Q. And in her follow-up e-mail, she said: good afternoon, executive leadership. Please see below. The information must be communicated to your respective staff in order to ensure that—all caps—no referrals are sent to these two providers effective immediately.

Did I read that right?

A. Yes.

Q. She did not say anything about ensuring additional placements for the best interest of the child.

A. No.

Q. She did not say anything about instructing the children could be placed with sibling groups.

[Page 144]

A. No.

Q. She did not say anything about instructing the children could still be placed with families with a preexisting relationship.

A. No.

Q. Now, the event that precipitated this e-mail is that on March 24th, Catholic let the commissioner know that they had accepted a referral for a child.

A. I am not sure.

Ms. Oliver: Objection. Your Honor, can counsel clarify that question or repeat the question?

By Ms. Barclay:

Q. You were discussing this issue with Commissioner Figueroa before you sent out your e-mail on March 26, correct?

The Court: Do you understand?



Ms. Oliver: Objection as to this issue. It's vague, Your Honor.

The Court: Yes. Go back a couple of steps, please.

By Ms. Barclay:

Q. Before you sent out your e-mail on March 26, did you discuss that e-mail with Commissioner Figueroa?

The Court: The one that she was going to send out on March 26?

[Page 145]

Ms. Barclay: Yes.

By Ms. Barclay:

Q. So the e-mail that you were going to send out on March 26, did you discuss that with Commissioner Figueroa?

A. Yes.

Q. And did you understand that Commissioner Figueroa had been notified that Catholic Social Services received a referral from a child on March 24?

Ms. Oliver: Objection. Your Honor, lack of foundation.

The Court: Well, overruled.

If you know.

The Witness: Can I tell you what—I don't know the specifics in terms of a child that was spoken about. I do know that—the situation I knew of was another provider agency—if I can say the agency was Bethany—accepted, was going to accept the referral from another foster care agency. As I testified, foster care

agencies cannot refer outside of their particular organization. Therefore, this e-mail was sent out because of that.

By Ms. Barclay:

Q. I want to take you to the evening of May 25, 2018. You communicated with Jim Black regarding Doe [Page 146] foster child placement, correct?

A. Yes.

Q. And you weren't there, at DHS—

Ms. Oliver: Objection, Your Honor. This line of questioning is beyond the scope of direct.

Ms. Barclay: This line of questioning is relevant to the assertion by DHS that was made on direct as far as their ensuring that placements will still be made in the best interest of children, and that being a priority for them, Your Honor.

The Court: I'm going to sustain the objection. But I'm also going to recess. Until tomorrow. At 1 o'clock.

Ms. Barclay: Thank you, Your Honor.

(All rise.)

\* \* \*

JA 134

**Transcript of Hearing on  
Temporary Restraining Order**

[Page 1]

United States District Court  
Eastern District of Pennsylvania

Sharonell Fulton, et al.

vs.

City of Philadelphia,  
et al.

Civil Docket for Case  
No. 18-2075

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Philadelphia, PA

June 19, 2018

Before Honorable Judge Petrese B. Tucker

**TEMPORARY RESTRAINING ORDER**

Day 2

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[Page 3]

The Court: Good afternoon.

All Counsel: Good afternoon, Your Honor.

The Court: You may be seated. Can the witness take  
the stand, Ms. Ali.

(Ms. Ali retakes the stand.)

The Court: Okay. You may continue.

Ms. Barclay: Thank you, Your Honor.

Continued cross examination

By Ms. Barclay:

Q. Ms. Ali, you remember that you gave testimony  
yesterday?

A. Yes.

Q. And is there any of that testimony you want to  
change at this point?

A. No.

Q. You still stand by yesterday's testimony?

A. Yes.

Q. And do you understand that you are still under oath today?

A. Yes.

Q. You report to Commissioner Figueroa, correct?

A. Yes.

Q. Yesterday we discussed an e-mail that you sent on March 26th.

A. Yes.

[Page 4]

Q. You consulted with Commissioner Figueroa before seeing that e-mail, correct?

A. Yes.

Q. On March 24 Catholic notified DHS that it had accepted a placement to reunite a child with its sibling. You discussed that situation with Commissioner Figueroa, correct?

A. I discussed four cases with Commissioner Figueroa over the course. I don't know specifically in what order.

Q. I am not asking which order. I just want to know, is it correct that you did discuss this case with Commissioner Figueroa?

A. Can you clarify what "this case" is.

Q. On March 24th, Catholic notified DHS that it had accepted a placement, and I can tell you the name of the child, to reunite that child with its siblings. Do you

recall discussing that situation with Commissioner Figueroa?

A. Yes.

Q. Did you discuss that on March 24th?

A. I am not sure if it was on March the 24th.

Q. Would it have been nearly thereafter if not on March 24th?

A. Yes.

[Page 5]

Q. One thing you told me yesterday was that the reason for your March 26 to 27 e-mail to CUA leadership was a need to reiterate the rule that no agencies should be making referrals, is that correct?

A. Referrals to outside agencies, yes.

Q. Your e-mail on March 26 does not say that in those terms. Correct?

A. Can you show me a copy of the e-mail.

Q. Absolutely.

Ms. Barclay: Permission to approach the witness, Your Honor.

The Court: Yes.

By Ms. Barclay:

Q. Ms. Ali, I am approaching you with what has been marked as plaintiff's exhibit number 3. Your e-mail does not just reiterate a general rule that no agency should be making referrals, does it?

A. No.

Q. Your e-mail targets just two agencies, doesn't it?

Ms. Oliver: Objection to the characterization of “target.”

The Court: Sustained.

By Ms. Barclay:

[Page 6]

Q. Your agency is discussing just two agencies. Your e-mail is discussing just two agencies, correct?

A. Two agencies with an intake closure.

Q. So it’s correct that your e-mail is just discussing two agencies with an intake closure?

A. Yes.

Q. In fact, the subject line of your e-mail says: intake closure for Bethany and Catholic Social Services foster-care program, correct?

A. Yes.

Q. You didn’t send another e-mail telling CUA’s not to make referrals to the other 28 agencies, did you?

A. I would not have done that.

Q. And you didn’t do that, right?

A. I would not have done that. Because CUA makes referrals.

Q. Right. And I am trying to confirm you did not send another e-mail reminding CUA not to make referrals to any other agency because CUA makes referrals. You didn’t send another e-mail?

A. No.

Q. You asked for confirmation that the e-mail was sent to anyone who could, quote, generate, approve or

submit a referral to — and then Catholic or Bethany are [Page 7] the two agencies you are referring to, correct?

A. My e-mail does not say that.

Q. I apologize. That's the e-mail of Ms. Stacy Boyd who reports to you, correct? And her e-mail says: provide confirmation that the e-mail would be sent to anyone who would, quote, generate, approve or submit a referral to Catholic or Bethany, correct?

A. Yes.

Q. And her e-mail does not ask about that sort of confirmation for the other 28 agencies, does it?

A. She didn't send the e-mail to the other 28 agencies. Her e-mail just went to CUA leadership.

Q. But my question is when she is saying, please reply separately to me confirming that you have shared this information to those that could potentially generate, approve or submit a referral to these providers, she is referring to Bethany and Catholic, correct?

Ms. Oliver: Objection, Your Honor.

The Court: Overruled.

The Witness: Repeat the question. I am not sure if I understand it.

By Ms. Barclay:

Q. Let me read you the sentence in her e-mail.

A. Yes.

[Page 8]

Q. She says: please reply separately to me confirming that you have shared this information to those that



could potentially generate, approve or submit a referral to these providers. And I just want to confirm that when she says "these providers," she is referring to Catholic and Bethany, correct?

A. Yes.

Q. And she did not send an e-mail or say in this e-mail that she needed that sort of confirmation for referral to any of the other 28 agencies, did she?

A. No. That's when the other agencies are open, their intake was not closed.

Q. Thank you. I want to take you to the evening of May 25. You received texts from Jim Black regarding Doe Foster Child Number 1.

A. Correct.

Q. And you and Mr. Black communicated about this situation?

A. Via text as well as telephone.

Q. Beyond your communication with Mr. Black, did you receive any other communication that evening about Doe Foster Child?

A. You said besides Mr. Black?

Q. Besides Mr. Black?

[Page 9]

A. No.

Q. So your DHS staff never called you that night regarding Doe Foster Child's placement, did they?

A. No.

Q. And you didn't know why staff denied the placement with Doe Foster Child — you didn't that night —

Ms. Oliver: Objection, Your Honor, beyond the scope of direct.

The Court: Overruled.

The Witness: Repeat the question. I'm sorry.

By Ms. Barclay:

Q. You don't know why your staff denied the placement with Doe Foster Child's former foster mother.

A. I don't because I have not had a conversation with the staff.

Q. It's possible that DHS staff denied this referral solely because of the ongoing case and referral for use with Catholic, isn't it?

Ms. Oliver: Objection, calls for speculation.

The Court: Sustained.

By Ms. Barclay:

Q. If DHS staff had denied this referral solely [Page 10] because of the ongoing case and referral for use with Catholic, what would be your position on that denial by DHS staff?

Ms. Oliver: Objection, calls for speculation.

The Court: Sustained.

Ms. Barclay: Your Honor, I am not asking if she knows what her staff did. I'm asking what her position would be on the denial if that was the circumstances of the denial.

The Court: That is speculative, so I am going to sustain the objection.

By Ms. Barclay:

Q. DHS staff did not communicate to you that night that Doe Foster Mother was willing to adopt Doe Foster Child, did they?

A. No.

Q. In fact, your previous testimony is that you learned through litigation that this foster mother was willing to adopt?

A. That is correct.

Q. If this situation were not brought to your attention by Catholic, you may have never learned about it?

Ms. Oliver: Objection.

[Page 11]

The Court: Sustained.

By Ms. Barclay:

Q. You have not asked CUA to report to you about similar situations, have you?

Ms. Oliver: Objection.

The Court: That has been asked and answered. Sustained.

By Ms. Barclay:

Q. You have not asked your own DHS staff to report to you about this sort of situation in the future, have you?

The Court: What sort of situation?

Ms. Barclay: The Doe Foster Child situation where the Doe Foster Mother was willing to adopt the child.

The Witness: I am not sure what the question is. I'm sorry, repeat it again.

By Ms. Barclay:

Q. Since May 25, you have not communicated in writing to DHS staff that they should notify you if there is a potential referral with a child to Catholic where that child would be reunited with a family with a former relationship?

A. No.

Q. But there has been some confusion on the ground from lower level DHS workers about when referrals to [Page 12] Catholic are allowed, isn't it?

Ms. Oliver: Objection.

The Court: Sustained.

Ms. Barclay: Your Honor, this is a statement in the brief by Ms. Ali's attorneys, so I am not sure what the objection is. But I am quoting from their brief.

The Court: I am not sure what the relevance is so I am going to sustain the objection.

Ms. Barclay: May I explain the relevance of this statement, Your Honor?

The Court: No. Let's move on.

By Ms. Barclay:

Q. You have been doing foster-care work for about 18 years?

A. Yes.

Q. What motivated you to do this type of work?

A. Ministry.

Q. What do you mean by “ministry”?

A. What I mean by ministry is when I work as a social worker is — I believe is a calling so I do it because of ministry and I also do it because of my educational background to help people.

Q. Well, first, let me say thank you for your ministry and your service to these children and I do think that is very admirable. Is it safe to say you are [Page 13] not in this line of work for the money?

A. Absolutely. Yes, it is safe to say that.

Q. I thought that might be a fair assumption. So you don’t think of foster-care work as a business, do you?

Ms. Oliver: Objection.

The Court: Sustained.

By Ms. Barclay:

Q. Do you consider foster-care to be something that is offered as a business?

Ms. Oliver: Objection.

Ms. Barclay: I am still not sure what the objection is, Your Honor.

The Court: I am going to sustain the objection.

By Ms. Barclay:

Q. Do you think foster-care agencies are businesses?

Ms. Oliver: Objection, relevance, Your Honor.

Ms. Barclay: The relevance is, Your Honor, that in opening argument that Ms. Ali’s attorney spent some of his time describing foster-care agencies as businesses, and I want to understand if that is a position that Ms. Ali also takes. This is an issue that

the attorneys for Ms. Ali [Page 14] have made relevant in this litigation.

Ms. Oliver: Your Honor, I object on the grounds that that's a legal issue.

Ms. Barclay: Whether or not a foster-care business — a foster care agency is a business is not a legal issue. That's a factual question.

The Court: But I don't know whether she is in a position to answer that. Anything she would say would be her opinion, and that's not relevant to these proceedings.

By Ms. Barclay:

Q. Have you ever personally referred to foster-care agencies as businesses?

A. No.

Q. You know that Catholic is a nonprofit organization, right?

A. Yes.

Q. Are you aware that Catholic actually loses money providing foster-care services?

Ms. Oliver: Objection.

The Court: Overruled, if she is aware.

The Witness: I don't know.

By Ms. Barclay:

Q. Are you aware that Catholic provides these services as part of their religious mission?

[Page 15]

A. I am not sure.

Q. So you said you have never referred to — personally referred to foster-care as a business. I just want to confirm, you have also never referred to Catholic Social Services as a business, have you?

Ms. Oliver: Objection.

The Court: Sustained.

By Ms. Barclay:

Q. You are familiar with policies and procedures governing foster-care, correct?

A. Yes.

Q. And you're familiar with policies and legal requirements that agencies have to comply with in order to be a provider in Philadelphia?

A. I am familiar with policies and regulations. I would not say that I am familiar with all of the legal.

Q. Is it your position — what was the basis for the referral freeze to Catholic Social Services?

A. So the basis of the referral freeze or the intake closure to Catholic Community Services is because Catholic Community Services refused to certify foster parents or provide an adoption home study for foster parents who were in a same-sex union.

Q. And what was the explanation for the DHS policy that that violated when you communicated that referral [Page 16] for use to catholic?

A. According to our attorneys, it was fair practice.

Q. The fair practice ordinance, meaning what?

A. I don't know all the details.

Q. Do you think foster-care is a public accommodation?

A. I can't answer that question.

Ms. Oliver: Objection.

The Court: She said she can't answer it.

By Ms. Barclay:

Q. Yesterday I think I understood your testimony to be, and correct me if I'm not getting this right, that I think I understood your testimony to be that if a qualified foster family wanted to receive a home study from a particular agency, then that agency would have to provide the home study?

A. I'm sorry. Repeat it again.

Q. Yesterday I understood your testimony to be that under DHS policy if a qualified foster family wanted to receive a home study from a foster agency, then that particular foster agency would have to provide it. They could not turn that family away?

A. Unless it was the family's choice, yes.

Q. So presumably this is an important policy for [Page 17] DHS?

A. Yes.

Q. And this is a policy that you have a compelling interest in enforcing, correct?

The Court: What do you mean by "compelling"?

By Ms. Barclay:

Q. This is a policy that you have a strong interest in enforcing, correct?

A. I would say interest in enforcing.

Q. You have an interest in enforcing this policy.



A. Yes.

Q. Not a strong interest?

A. I have an interest in enforcing all policy. Whether it's strong or weak, I cannot say that.

Q. Okay. So you have an interest that is no stronger or no weaker than enforcing any other policy?

A. Yes.

Q. And when did you first put this particular policy in writing?

A. What particular policy?

Ms. Oliver: Objection.

Ms. Barclay: I am not sure what the objection is, Your Honor.

The Court: I was going to ready to ask you what policy.

[Page 18]

Ms. Barclay: The policy I just described to her from yesterday's testimony that she agreed to, which is that if a qualified foster family wanted to receive a home study from a particular agency and that was the family's choice, then that agency would need to provide that home study.

By Ms. Barclay:

Q. I am trying to understand, Ms. Ali, when did you first put that policy in writing?

Ms. Oliver: Objection, Your Honor. Assuming facts not in evidence.

Ms. Barclay: I am just basing on her own testimony, Your Honor, that is in evidence.

The Court: When you say “in writing,” I don’t know that it’s been placed in writing.

By Ms. Barclay:

Q. Okay. Have you ever put this policy in writing?

A. It is my understanding of the contract, so me personally, no, I don’t put contracts in writing or policies in writing. Those are done by a separate department.

Q. Great. So your understanding is that this policy — the place where it is written down exclusively comes from the foster-care contract?

The Court: Exclusively? She didn’t say [Page 19] that.

Ms. Barclay: I am just confirming if that is true.

The Witness: I was going to say the same thing, as exclusively.

The Court: Yes.

By Ms. Barclay:

Q. Is there another spot you’re aware, other than the contract, where this policy is written down?

A. I am not sure.

Q. So you are not aware, right, at this time of another spot where it is written down?

Ms. Oliver: Objection, asked and answered. The witness is not sure.

The Court: Overruled. She can answer.

The Witness: I said I am not sure.

By Ms. Barclay:

Q. Thank you. And I am just trying to clarify at this time you are not aware of anywhere else where this policy is written down. That's just a yes or no question.

The Court: She is not sure.

Ms. Barclay: okay.

By Ms. Barclay:

Q. How have you communicated this particular policy [Page 20] to foster agencies?

A. I have not. It's in the contract.

Q. Okay. So the contract is the main way in which you communicate this with the agencies?

A. Yes.

Q. And how do you communicate to foster agencies, if at all, whether or not they are required to comply with public accommodation requirements?

A. I have not.

Q. Okay. You have been doing this work for 18 years?

A. Yes.

Q. Have you ever had conversations with anyone about DHS's own obligations for providing a public accommodation regarding foster-care services under the fair practices ordinance?

Ms. Oliver: Objection.

The Court: Overruled.

The Witness: Repeat it, please.

By Ms. Barclay:

Q. Have you ever had conversations with anyone about DHS's own obligations providing a public

accommodation with respect to foster-care services under the fair practices ordinance?

A. Other than in this situation?

[Page 21]

Q. Yes, other than in this situation.

A. No.

Q. And in this situation, have you had conversations about your own requirements and DHS's own obligations to provide public accommodation services with respect to foster-care?

A. No.

Q. Have you — so you have never trained staff about that issue either?

A. No.

Q. Thank you. You state in your declaration that a situation in which a foster agency shut down — or excuse me.

You described in your declaration a situation in which a foster agency shut down and the children needed to be transferred, correct?

A. Yes.

Q. You stated that, quote, the goal is to keep children in the same home and not disrupt the children and their care, end quote. Correct?

A. Yes.

Q. And that was the goal because moving children from one home to another can be traumatic?

A. Absolutely.

[Page 22]

Q. And in general, moving children between any sorts of placements can compound their trauma?

A. It depends.

Q. Is it a possibility that moving children between placements compounds their trauma?

A. It's a possibility.

Q. In your experience and your years of doing it, is it a likely possibility that children will experience trauma from moving from one placement to another and losing the familiarity of the past placement?

A. Not necessarily. Depends on the situation.

Q. Your goal was to keep children in their same home so that they could avoid that sort of disruption, correct?

A. In that particular situation when — the foster-care situation you are talking about?

Q. Yes.

A. Yes.

Q. And you were treating it as in the best interest of children in that situation to be able to stay with their same foster parent?

A. Yes.

Q. If Catholic were forced to shut its program down, you agree that children and families would need to be transitioned to another agency?

[Page 23]

A. It depends on the individual child.

Q. But if Catholic is shut down, then the families and children that were previously under Catholic's care have to be moved to the care of another agency, right?

A. Not necessarily, because we will look at whether or not any of those children or youth that are placed in the Catholic Community — Catholic Social Services, excuse me, foster home if they are about to achieve permanency. So if those young people were going to either be reunified with their family, if they were going to be adopted, or if they were going to achieve permanently the custodianship, then we would not want the foster parent to remain — and the child to remain with Catholic Community Services. So it depends on the — and we would look at each child and youth individually.

Q. So some children are going to be able to achieve permanency or maybe be reunited, and so would not need to be a foster child any more. Is that right?

A. Yes.

Q. For the children that needed to remain foster children because they could not achieve those goals, is it correct that they would need to be transitioned to another agency?

A. Yes.

[Page 24]

Q. If some parents did not choose to transition to the other agency, then those children would have to be removed from that family, correct?

A. Yes.

Q. And that could possibly cause trauma for those children, correct?

A. Yes.

Ms. Barclay: No further questions, Your Honor.

The Court: Okay. Any redirect?

Ms. Oliver: Yes, Your Honor.

Good afternoon, Your Honor.

The Court: Good afternoon.

Redirect examination

By Ms. Oliver:

Q. Ms. Ali, let's start with — you provided testimony about the intake closure at Catholic Social Services, and you also said that there were some exceptions, correct?

A. Yes.

Q. Will you please inform the court as to what types of exceptions there are?

A. So the exceptions that we will make is that we will determine whether or not that child had siblings that were placed in a particular foster home through [Page 25] Catholic Community Services and whether or not their foster parent would be willing to allow the siblings to be reunited in their foster home. We also make exceptions when a child or youth was previously placed in a Catholic Community Services foster home, we would want to ask that foster parent would they be willing to resume and allow the child to return back to their home for foster-care.

Q. And how would those exceptions become known?

A. The exceptions would become known to myself or commissioner Figueroa by way of the CUA leadership. They would either send an e-mail, a telephone call, or

even a text message to myself or Commissioner Figueroa.

Q. And since the intake closure, has DHS in fact, either you or the commissioner, received requests from Catholic Social Services leadership with respect to exceptions?

A. Yes.

Q. And have any of those exceptions been granted?

A. All of them.

Q. And how many have there been?

A. A total of four.

Q. And in addition to the exceptions coming to your knowledge by way of Catholic leadership, would — is there — are there any instances where DHS would know of [Page 26] such exceptions?

A. There are instances in which DHS would know of exceptions.

Q. And are you able to provide — explain to the court how DHS would know?

A. If the information was brought to DHS by way of a CUA case manager or a DHS social worker, then the DHS social worker would ask or try to determine whether or not they can get an exception to the rule.

Q. And again the exception is presented to you?

A. Yes.

Q. Additionally, turning your attention to foster — prospective foster parents and their desire to work with particular agencies. First of all, can foster-care agencies — do you believe it's appropriate for foster-care agencies to inform prospective foster parents



about the services that may be offered by other foster-care agencies?

A. Only at the request of the foster parent, the potential foster parent.

Q. And do you believe that — I believe you have already testified that foster parents — it's their choice to choose which agency with which they would like to work?

A. Yes.

[Page 27]

Q. Do you also believe it's appropriate for a foster-care agency to refuse to evaluate a family?

A. No.

Ms. Oliver: Your Honor, I have no further questions of Ms. Ali.

The Court: all right. Any other questions?

Ms. Barclay: yes, Your Honor, but I will be brief.

Recross Examination

By Ms. Barclay:

Q. You just spoke about exceptions to the referral freeze, and I believe you said for reuniting siblings or for families with preexisting relationships. Did I get that right?

A. Yes.

Q. Any other basis for an exception?

A. It could be. I can't think of any offhand.

Q. Sure.

A. The most important thing we would do is — I would do is have a conversation with the CUA leadership to determine why an exception should be granted.

Q. When was the first time you communicated this policy of granting exceptions?

A. I didn't communicate this. Commissioner Figueroa communicated that to Catholic Community [Page 28] Services — Catholic Social Services.

Q. When is your understanding that that was communicated?

A. Around the time the intake was closed.

Q. When intake was closed, that's your understanding?

A. On or about.

Q. And when that policy granting exceptions communicated was — well, let me back up a little bit. You said that one of the ways that these situations will become known to you is through CUA leadership?

A. Yes.

Q. And it's possible that if CUA leadership does not notify you, you won't know about the need to grant an exception?

A. That's possible.

Q. And you have not requested CUA leadership to bring any of these situations to your attention, have you?

A. I have.

Q. Have you requested in writing that all CUA leadership bring to your attention situations where a

referral may need to be made to catholic to reunite siblings or families with preexisting relationship?

A. I have not to all CUA leadership. However, in [Page 29] conversations with Jim Amato and Jim Black, I always say if there is any additional, if there is any other cases that I need to consider, just let me know.

Q. But you have not communicated this to leaders of other CUA's, have you?

Ms. Oliver: Objection.

The Court: Sustained.

Ms. Barclay: Your Honor, may I understand the basis for the objection?

The Court: Sustained.

By Ms. Barclay:

Q. You said that there hypothetically could be instances where DHS staff would bring these sorts of situations to your attention?

A. It could be.

Q. But that's never actually happened so far, has it?

A. Not for Catholic, but for other situations, yes.

Q. Since this litigation has started, DHS has not brought to your attention any needs for an exception based on this policy you described, correct?

A. Yes, they have.

Q. In what instances have DHS staff brought to your attention the need to grant an exception?

A. So we currently have a group home provider in [Page 30] which their intake is closed. It was a young person who was placed at that group home previously.

I granted the exception for that young person to be placed back at that group home.

Q. DHS staff has never brought to your attention situations where a child needed to be referred to Catholic, have they?

Ms. Oliver: Objection, asked and answered, Your Honor.

Ms. Barclay: This is not something that she answered yet, Your Honor. I am asking specifically —

The Court: Ask it again because I thought it had been asked and answered.

By Ms. Barclay:

Q. DHS staff, since the beginning of this litigation, has not brought to your attention a situation where it would be in the best interest of the child to be referred to Catholic Social Services?

A. No.

Q. You said that — when asked would it be appropriate for a foster agency to inform a family about other services offered, you said only at the request of that foster parent, correct?

A. Yes.

Q. So it would be inappropriate for an agency to [Page 31] notify a family about, for example, language services of another agency if the foster family did not specifically ask about that?

A. Yes. I would expect that foster-care agency to tell them what type of services they offer at their particular agency, knowing that our children are

assigned to and families are assigned to all ten CUA's, so the —

Q. I am not talking about CUA's. I'm talking about foster agencies.

A. In all foster-care agencies. So we would expect the foster-care agency to be able to provide language services to children or youth who are placed in their foster-care as well as the parents.

Q. Is it a requirement of the contract that all foster agencies provide language services?

A. I am unsure.

Q. So a foster agency would need to first let a family know about any language services, if any, that that foster agency itself offered, right?

A. If that was the question.

Q. Well, if a family — say a Latino family approached an agency, that foster agency would, according to you, first need to notify the Latino family about any language services that foster agency provided, [Page 32] correct?

A. Yes.

Q. And the agency could not notify them about services offered by other agencies unless the family specifically asked for information about other agencies?

Ms. Oliver: Objection.

The Court: Sustained. I think we have gone far afield to the recross.

By Ms. Barclay:

Q. You spoke in your testimony about the importance of letting families choose the agency that they want to work with, correct?

A. Yes.

Q. And do you believe that it's also important for Mrs. Paul and Ms. Fulton and Ms. Toni Simms-Busch to be able to choose the agency they want to work with?

A. Yes.

Ms. Barclay: Thank you. No further questions.

The court:

Ms. Oliver: Your Honor, I have no redirect. However, I'd ask to reserve the right to recall Ms. Ali after the plaintiffs rest.

The Court: Yes. You may step down.

[Page 33]

The Witness: Thank you.

(Witness excused.)

The Court: You may call your witness.

Mr. Rienzi: Your Honor, are you asking for plaintiffs to present their next witness?

The Court: Yes.

Ms. Barclay: Your Honor, the plaintiffs would like to call Mr. James Amato to the stand.

Ms. Windham: Your Honor, if I may, we are calling Mr. Amato to the stand today. There was discussion yesterday about the declarations of Bishop McIntyre and James Black. We believe that Mr. Amato's testimony today will be able to cover the relevant

portions of the testimony of bishop McIntyre and James Black.

I would also note for the court that Mr. Amato's declaration already authenticated a number of documents which were attached to plaintiff's motion.

The Court: Okay. It's noted.

(Witness sworn.)

The Clerk: State and spell you name for the record, please.

The Witness: James Amato, A-M-A-T-O.

Direct examination

By Ms. Barclay:

Q. Good afternoon, Mr. Amato.

[Page 34]

A. Good afternoon.

Q. What is your current relationship to Catholic Social Services?

A. I serve as a secretary for Catholic Human Services, oversee Catholic Social Services and nutritional development services.

Q. In what city do you currently live?

A. Philadelphia.

Q. How long have you lived there?

A. My life, my whole life.

Q. Can you tell me a little bit about your work experience in the child welfare arena?

A. Yes. I have been involved in child welfare since 1976 when I graduated from temple with a degree in social work. Worked for a couple of years in residential care for children at an agency affiliated with the Archdiocese, and then went on to get a master's degree in social work and worked at children's aid society and foster-care agency for a couple of years and then moved into progressive management, running a home for children run by Catholic Social Services, and then into senior management.

Q. How long total have you been working in child welfare?

A. 42 years.

[Page 35]

Q. Can you describe a little bit more about your role at Catholic Social Services?

A. My role involves two things basically. One, I am the executive vice-president of all 13 of our nonprofit corporations, and I manage the operations, the daily operations of the Catholic Human Services.

Q. And can you tell us a little bit about the way in which Catholic Social Services as a nonprofit organization is organized?

A. Catholic Social Services is organized into several different divisions. Youth services is a prominent division. Developmental program serving those with intellectual disabilities. Housing and homeless and family based services. And we also have Catholic housing and community services, which addresses the needs of seniors.

Q. Does senior leadership report to you?



A. Yes.

Q. And do you have a hand in both governance and operations?

A. I do.

Q. I believe Catholic Social Services has two programs relevant to foster children. Can you tell us a little bit about both of those.

A. The most long-standing program is Catholic [Page 36] Social Services Foster-Care Department, which has been — has its roots in 1917 as the Catholic Children's Bureau and then grew into Catholic Social Services foster-care department, today serving about 120 some children and 100 foster homes. And we also have our residential services for adjudicated delinquent youth, run by Saint Gabriel's system and dependent adolescent, teens, boys and girls, run by St. Francis and St. Vincent's homes.

Q. Does Catholic Social Services also have a CUA?

A. We also have a CUA that handles most of northeast Philadelphia.

Q. I want to talk to you a little bit about the religious ministry of Catholic Social Services. Can you tell us some of the ways in which, on a daily or weekly basis, Catholic Social Services is operating in a religious fashion?

A. Yes. All of our meetings begin with — and many times end with prayer. Our facilities all have chapels. They are well used by staff. And that our Catholic identity is very apparent in our religious artifacts on the walls and those kinds of things.

Q. And how frequently is prayer involved in what you do?

A. Daily, several times daily

[Page 37]

Q. How has your religious mission been made apparent to those you interact with, including the city?

A. Well, as far as the city goes, every year we submit a program description that I believe is part of the contract, and that clearly identifies our Catholic identity, our history and our mission, so that's very clear. Also we do a lot in orientation training with staff that underlines the importance of that to who we are and why we do what we do.

Q. How many at-risk children were served across all Catholic Social Services programs last year?

A. Over 1500.

Q. Is providing foster-care services a religious ministry for Catholic Social Services?

A. The church's care for orphans — which is an outdated word — and at-risk children is centuries old.

In Philadelphia it dates back to 1797, when we responded to the needs of children whose families — parents had died due to yellow fever. So intrinsic to who we are and what we do is the care of at-risk children and who are many times the poorest children in our communities.

Q. And so just to confirm, is foster-care services a religious ministry of Catholic Social Services?

A. It absolutely is, yes.

Q. You mentioned some of the roots of your program [page 38] was the epidemic of yellow fever. Did that ultimately formalize in a specific program in the early 1900's?

A. Yes. The first response was that, and then that grew into the orphanage movement in the mid-19th century. And that followed by the establishment of the Catholic Children's Bureau in 1917, which was dedicated to foster-care.

Q. So that 1917 Catholic Children's Bureau was providing foster-care to children?

A. Yes.

Q. Was there any government involvement with this program in 1917?

A. To my understanding, no.

Q. How did it work? How did you find children and care for them? Can you walk us through that a little bit?

A. Well, the religious sisters who ran Catholic Children's Bureau had a deep network of relationships around the city with parishes and community groups. And when it became known that a child was at risk, they would do a home evaluation. If the child needed to be removed — in those times, many times the parents would agree to that, because they are called voluntary placement. The child would be removed, placed in a foster home and we would track them and the child's [Page 39] progress in that home.

Q. I think you said were these networks known through Catholic parishes?

A. Catholic parishes were a great source of referrals for that program.

Q. So when did Catholic partnership with government begin to provide these services?

A. Well, I came into the work in 1976, and I can tell you then, it was well established. So my guess is that this happened in the late '40's, early '50's, that the contracts became involved with government.

Q. And at that point when the government became involved, is it your understanding that the government took over all aspects of it or were there things that Catholic Social Services was still doing at the beginning of that partnership?

Mr. Field: Your Honor, I object, the witness said he was not around when the government became involved.

The Court: To the extent he knows the history, I am going to overrule the objection.

The Witness: So repeat the question, please.

By Ms. Barclay:

Q. Sure. So when this government partnership began, what is your understanding as far as the role that Catholic Social Services would play with regard to [Page 40] removing and placing children and the role that the government played.

A. Catholic Social Services, to my understanding at those times, had tremendous oversight of the intake function. So that once a child became known to be at risk and was evaluated as such, we would place the child and simply advise the city that there was a

voluntary placement and they would then move forward and support that.

Q. By the time you joined Catholic Social Services in the '70's, how had the roles changed as far as what the government was in charge of?

A. Well, things changed for the better and they changed swiftly. And they're now — in my time from the mid-'70's on, all the intake was handled through the Department of Human Services, and that was done after a child protective services investigation, the child was seen as needing to be placed.

Q. Now at this time is Catholic Social Services authorized to provide foster-care services without a government contract?

A. You really can't do it without a government contract.

Q. So you would be breaking the law if you tried to provide foster-care services without a contract?

[Page 41]

A. Yes.

Q. Does Catholic Social Services make money from this government contract in providing these services?

A. Absolutely not. And just to give you an idea in — last year we subsidized these services to the tune of \$3.8 million.

Q. Where do those subsidies come from?

A. They come from endowments, donations and general archdiocesan support.

Q. Yesterday the attorneys for DHS referred to Catholic Social Services as a business. Is that how you think of your work?

A. I really don't know of any business that would start or be able to finish with a \$3.8 million subsidy. I never thought of it as a business.

Q. So before yesterday, have you ever heard that?

A. Never.

Q. How would you describe the work that Catholic Social Services is doing?

A. A religious ministry based on a nonprofit corporation — corporations that have a deep commitment to the poor and the vulnerable in our community.

Q. I want to talk to you a little bit more about some of the logistics of foster-care. When Catholic Social Services performs a home study, what does that [Page 42] process entail?

A. It entails an assessment of the relationships that exist in that foster home, the suitability of the physical plan of the foster home to be safe for a child, and then obviously getting clearances too for everybody in the home. If all of those things are up to par, then we — then the home is certified as a foster home and the home study is complete.

Q. Does Catholic Social Services request a pastoral reference as part of that process?

A. It requests a reference from clergy for all interested people who apply to be foster parents.

Q. So is it correct that they ask for a pastoral reference?

A. Yes, they request a pastoral reference.

Q. With regard to the relationships that you said that you would analyze, does this process culminate in anything relevant to those relationships as far as writing that you would provide?

A. The process culminates after the evaluation is done and a certified home study, which would enable the family to actually begin receiving children in their home.

Q. Does that home study include any written endorsements of those relationships?

[Page 43]

A. It is — the home study is a written evaluation, yes.

Q. And an endorsement?

A. And an endorsement, yes.

Q. Are you aware of any policy or law that says that an agency must certify any qualified prospective foster family that wants to be certified by that agency?

A. No, I am not aware of that law.

Ms. Barclay: permission to approach the witness, Your Honor.

The Court: Yes.

By Ms. Barclay:

Q. Mr. Amato, I am approaching you with what has been labeled and it's exhibit number 4. Mr. Amato, I have approached you with what is described as Pennsylvania state resource — family association resource parent manual. Are you familiar with this document?

A. I have heard of it, yes.

Q. And at the top of page 7, it says that: note, these are minimum requirements and individual agencies will vary with their policies. Is that consistent with your understanding that agencies can have their own additional requirements or considerations for why they would certify a foster parent?

[Page 44]

A. Yes, it is.

Q. What are the religious beliefs of Catholic Social Services with respect to marriage?

A. That a marriage is a sacred bond between a man and a woman.

Q. Across all programs what does that mean for LGBTQ individuals who might want or need services from Catholic?

A. We regularly serve proudly people of all faiths, all backgrounds, without regard to sexual identity, so that today we are serving folks from the LGBTQ community.

Q. What about the same-sex couples who approached Catholic about receiving a home study service to become foster parents? Has that situation ever arisen?

A. Well, that situation has not arisen, and — to my knowledge since the time that I've been in Catholic Social Services.

Q. And hypothetically speaking, if Catholic were forced to provide a written certification endorsing a same-sex marriage, would that violate the religious exercise of Catholic Social Services?



A. Yes, it would.

Q. I want to talk to you a little bit about some of the strengths and hallmarks of Catholic Social Services [Page 45] foster-care program. What would you describe as some of the strengths and unique aspects of your program?

A. I think the key strength is the accumulated knowledge after doing it for 100 years. The staff, our turnover is very, very low. The staff has excellent relationships with the foster parents and I think that leads to — we keep our case loads low so that we can continue to provide adequate support, and I think that kind of results in some of the things that we heard yesterday.

Q. It is your understanding that your case loads are deliberately lower than many other agencies?

A. Absolutely, particularly now with the new standards that come with the CUA.

Q. How long has your longest staff member been there?

A. Over 35 years.

Q. How do you think the continuity with your staff impacts the children that you serve?

A. What I have heard and witnessed is our foster parents can call at any time and get access to our social workers. But if they can't, we have Bob Montoro running it who has been there for many years. We have Christy Reed, the supervisor, who has been there for many years. And we have an Eileen Mullen who is a case [Page 46] worker who has done most of these home study, who has been there about 35 years, and she is readily available and accessible and I find that

foster parents see that as a great source of support and hope.

Q. From your personal experience have you ever observed there to be a surplus — or which have you observed, a surplus or a shortage of foster families for foster children?

A. Absolutely there is a shortage of foster families for children, particularly adolescent children.

Q. What led you to arrive at this conclusion?

A. Reading, going to meetings with the senior management from DHS, seeing some of the children that we have served in group care that have the profile that could be matched with a foster family but there's simply not sufficient families for the adolescent children.

Q. What physically happens — what else physically happens to children when there are not enough foster homes for children?

A. I think the most sad thing that happens is that a child would have to wait and sit in the child care room at the city while agencies are appropriately pressed to find a foster home for them. That would be one item that we all are trying to avoid. Number two would be the potential placement of a young kid in a [Page 47] congregate care shelter, which now best practice says is not the best way to go. So those would be just two of the things that would come to mind.

Ms. Barclay: Permission to approach the witness, Your Honor?

The Court: Yes.

By Ms. Barclay:

Q. Mr. Amato, I am approaching you with what has been marked as plaintiff's exhibit number 5.

Mr. Field: Your Honor, may we have a moment to review this exhibit? We have not seen this document before.

The Court: Okay. I am going to take a brief recess. I have another matter I have to handle. I will be about ten minutes.

The Clerk: All rise.

(Brief recess.)

The Court: Okay. You may be seated.

Ms. Barclay: May we resume?

Mr. Field: Your Honor, I would ask an offer of proof on this exhibit, is it P-5?

The Court: Yes.

Ms. Barclay, can you identify it first for the record.

Ms. Barclay: This is the certificate granted [Page 48] to Philadelphia DHS to operate Philadelphia county children and youth services and discusses some of the issues that DHS was facing with regard to being able to have enough homes to place children. And it is relevant to another document that we will be discussing that Catholic Social Services provided to DHS to try and assist with this problem.

The Court: Okay.

Mr. Field: Your Honor, I apologize. DHS is a large organization with a long history. This is a document from 2016. I am not clear on the relevance of the entirety of DHS's history of the care with children. This litigation, which I understand to be about this

alleged religious burden and the harms that flow therefrom. I respectfully submit we will be here a long time if we are going into the entirety of DHS's care — even recent years.

Ms. Barclay: Your Honor, there's only one paragraph that I will just briefly read and then —

The Court: I am going to overrule the objection.

By Ms. Barclay:

Q. Mr. Amato, if you can turn with me to the page that is tabbed, and I am just going to read to you. It says: children are staying at DHS overnight in the childcare room and at the CUA without adequate and timely placement. The reported number of children [Page 49] staying overnight at DHS and CUA combined during calendar year 2015 was 84. This number is probably higher as some CUA's did not maintain records of which children stayed overnight and when they stayed overnight. This is an unacceptable practice and at the state's request DHS has submitted a plan to alleviate this concerning issue.

Now, before we recessed, you were discussing the issue of when children stay overnight at the childcare room. And around this time was there anything that Catholic Social Services did to try and assist DHS with this issue?

A. Acting commissioner Jessica Shapiro at that time approached me, knowing our history in providing emergency shelter for children, and asked me for a proposal to resume that shelter.

Ms. Barclay: Your Honor, permission to approach the witness.

The Court: Yes.

By Ms. Barclay:

Q. Mr. Amato, I am approaching you with what has been marked as plaintiff's exhibit number 6.

A. Yes.

Q. What is this document, Mr. Amato?

A. This is the cover letter that accompanied the [Page 50] budget proposal and a brief description of what we could offer to meet that emergent need.

Q. Just describe again for us, what was the need that this shelter was meant to address?

A. An immediate resource - an immediate group care resource for up to 12 children who were in — there was not an immediate foster family available.

Q. And so was this shelter option seeking to make it so that less children would end up staying overnight in that childcare room?

A. Yes.

Q. Are you aware of instances where a foster agency will choose not to perform a home study for a prospective couple for various reasons?

A. Yes. There's a couple of reasons that I am aware of. One would be the geographical location of the foster parent, so that it would be better for them to have the home to be done to an agency closer to them. Another would be a special medical situation, where we would refer a foster parent because we don't have a special medical service, nor do we have a license for that. Another would be behavioral — a specialized behavioral health home, because again, we don't provide specialized behavioral health. It used to be called treatment foster-care. There are also some

agencies [Page 51] that specialize in foster homes for teen pregnant girls and teen mother/babies. Further there are agencies who specialize, and one is in suburban Philadelphia, in home studies for LGBTQ individuals and couples. And finally there are agencies who specialize in providing foster homes for Native American children so they are placed with Native American families.

Q. Are there also agencies who have specialty in, for example, outreach to the Latin American community?

A. Yes. And the two that come immediately to mind are Concilio and APM, which have a deep-rooted history in the Latino community. Almost all staff — I would assume, I think all, are bilingual and have — both have quality foster — and recognized foster-care programs.

Ms. Barclay: Permission to approach the witness, Your Honor.

The Court: Yes.

By Ms. Barclay:

Q. Mr. Amato, I am approaching you with what has been marked as Plaintiff's Exhibit Number 7. This is a document from Concilio's website. It says that: the purpose of this agency is to provide social, educational, cultural prevention and intervention services and programs to underserved young people and families in the Philadelphia region and to serve as a [Page 52] community voice for the diverse Latino community on issues affecting children, youth and family.

This is consistent with your understanding that this is an agency that has targeted outreach to the Latino community.

Mr. Field: Objection, Your Honor, on the basis of hearsay and relevance.

The Court: Sustained, as to relevance.

Mr. Field: I ask that the reading would be stricken from the record.

The Court: It will be stricken.

By Ms. Barclay:

Q. Is it your understanding that there are any agencies who specialize in servicing kin care populations?

A. I think the most renowned agency for that is Second Chance.

Q. And are you aware — any time has there been a time where they exclusively served kin care populations?

A. When they first became —

Mr. Field: Objection.

The Witness: When they first became known to Philadelphia, my understanding is —

The Court: Overruled.

The Witness: — They were rooted in [Page 53] Allegheny County with an expertise in the kin care families, particularly minority kin care families.

By Ms. Barclay:

Q. Thank you.

Have you ever understood it to be a problem for an agency to decline to perform a home study and instead connect a family with a different agency that the agency believed would be a better fit for them?

A. Never saw it as a problem. In fact, it's best practice and widely known in social work is information referral to get a family or an individual connected with the agency that can best serve them.

Q. So you just used the term "information referral," and I just want to clarify. That's not the same thing as when DHS makes a referral to an agency, right?

A. No, that's —

Mr. Field: Objection, leading.

The Court: Overruled.

You may answer.

The Witness: That's information referral directly to a client inquiring about a service that he or she might be interested in.

By Ms. Barclay:

Q. How does that differ from the DHS referral to an [Page 54] agency?

A. A DHS referral is for a particular hard service, foster-care, group home, that kind of thing. The other one is more of a query about where will I be best served.

Q. I want to talk to you now about this particular litigation, Mr. Amato. When did you first learn that the city had concerns about Catholic Social Services' religious beliefs?

The Court: I don't know that that is properly phrased.

Ms. Barclay: I can rephrase it, Your Honor.

The Court: Okay.

By Ms. Barclay:



Q. When did you first learn that the city had concerns about Catholic Social Services' religious beliefs with respect to written certifications that can provide to same-sex couples?

Mr. Field: Objection, Your Honor.

The Court: Again, you are putting in there "religious beliefs." I don't think that that is the issue. The issue is whether or not they were going to be certified.

Ms. Barclay: I can rephrase it again, Your Honor.

The Court: Yes.

[Page 55]

Ms. Barclay: If you can wait one moment.

By Ms. Barclay:

Q. Okay. When did you first learn about the city's concern with the hypothetical situation where Catholic Social Services would be unable to provide written certification for same-sex couples?

A. In mid March following an event, a promotion that the city held, DHS held, for 300 more foster families, I got a call on my cell phone, I think it was a Friday afternoon, from Commissioner Figueroa and First Deputy Shapiro inquiring as to Catholic Social Services' position on providing home studies to same-sex individuals or couples.

Q. And what was Commissioner Figueroa asking you?

A. She was asking me whether we do that.

Q. Whether we do what?

A. Whether we would complete a home study on a same-sex couple or individual.

Q. What was your response?

A. My answer was no, that we would not do that, that it's against the teachings of the Church.

Q. Did they say anything to you then in response?

A. They said to me that you are discriminating. I said that I am following the teachings of the Catholic Church.

[Page 56]

Q. And this was a phone call in mid March?

A. It was a phone call in mid March, yes.

Q. Did you have a followup in-person conversation?

A. There was a meeting the next week with DHS senior management, Catholic Social Services senior management, and archdiocesan legal counsel.

Q. What were the things that DHS senior management communicated to you at that meeting?

A. Their great concerns about us not completing home studies for same-sex individuals and couples, the fact that this had the highest attention, the attention at the highest levels of government in the city, and that—

Mr. Field: Your Honor, hearsay.

The Court: Overruled.

Ms. Barclay: This is an admissible party admission.

The Witness: And an indication that Catholic Social Services should be following the teachings of Pope Francis rather than the Archdiocese — rather than the Archbishop or the Archdiocese.

By Ms. Barclay:

Q. Did the city say anything about times changing?

A. Yes, where they indicated when I —

Mr. Field: Objection. Leading, Your Honor.

[Page 57]

The Court: Overruled.

The Witness: When I indicated that the mission commitment expressed in over 100 years of services, I was advised that times have changed, attitudes have changed, science has changed. It's time for — the implicit message was it's time for the Catholic Church — Catholic Social Services to change.

By Ms. Barclay:

Q. And just to confirm, I apologize you were interrupted before. What did they say about the top city officials?

A. Without naming names, they indicated that it had the attention of top levels of government, which I would assume would be Mayor Kenney and City Council.

Mr. Field: Objection, calls for speculation.

The Court: Sustained.

Ms. Barclay: That's fine, Your Honor.

By Ms. Barclay:

Q. The substance of that meeting, was that inquiring about anything else relevant to Catholic Social Services?

A. No. It was strictly around the matter that we just discussed.

Q. Did they ask about — did they tell you in that meeting that there would be a referral freeze?

[Page 58]

A. Surprisingly, no. And it was kind of odd to get a call five minutes later when we were walking back to the archdiocese from Deputy Commissioner Ali, telling us that we forgot to mention something, your referrals would be frozen.

Q. So that was ten minutes after the in-person meeting?

A. Correct, yes.

Q. So I will go back to that. You mentioned there was some discussion of the Pope from DHS at that meeting. Do you remember exactly what they said about the pope?

The Court: Who said?

By Ms. Barclay:

Q. It was Commissioner Figueroa, correct?

A. It was.

Q. What did Commissioner Figueroa say about the Pope?

A. That we should be listening more to Pope Francis than the Archbishop and the Archdiocese's position on this.

Q. So moving forward again to when you received that follow-up phone call about the referral freeze, who was on the phone 10 minutes later for that follow-up phone call?

[Page 59]

A. Deputy Commissioner Ali.

Q. Just Commissioner Ali?

A. Yes.

Q. And did she explain why there was going to be a referral freeze?

A. No. It was pretty short and to the point, and it was based on the meeting. We forget to mention that, so we are mentioning it to you now.

Q. Did they indicate that there would be any sort of exception for the best interests of children to this referral freeze at this time?

A. No. It was absolute, no referrals and no talk of any exceptions.

Q. So is your — what is your understanding as far as the sole reason for this referral freeze?

A. That Catholic Social Services in its statements had said they would not go forward with the home studies, completing home studies for same-sex individuals and couples.

Q. Before this lawsuit have you ever heard to — services providing a home study described as a public accommodation?

A. Never heard of that before.

Q. Had you ever heard of foster-care generally being described as a public accommodation?

[Page 60]

A. No.

Q. When was the first time you heard of foster-care being described in that way?

A. When I went to that meeting with the Commissioner. She was quoting that from the contract.

Q. What did the Commissioner say about public accommodations in that meeting?

A. Basically a public accommodation is anything that gets public funding. So if you get public funding, you have to follow through with that expectation.

Q. It was their position that you were not complying with the public accommodation requirements?

A. That was their position.

Q. And was their position that you needed to do home study for anyone that applied?

A. Yes.

Q. Commissioner Figueroa's declaration claims that you told her CSS, quote, "could not comply with its contract," end quote. She uses that phrasing twice. Did you say that to her?

A. Not to my knowledge or recollection.

Q. What did you say?

A. I said that Catholic Social Services, due to its religious teachings, would not move forward with a home study for a same-sex couple, but would immediately refer [Page 61]that couple to one of the other 28 or so agencies who would complete such a home study.

Q. When did you first learn that exceptions might be granted for children to be placed with Catholic Social Services in the best interest of the child?

A. I am going to say roughly around March 25 a referral came to our foster-care department, and I was immediately notified that referral is from a CUA. I believe it was an emergency situation where a sibling of two children being in a Catholic Social Services home needed to be placed, and it was that they — the request was that he be placed with his siblings at our CSS-approved home.

Ms. Barclay: Just one moment, Your Honor. Permission to approach the witness, Your Honor.

The Court: Yes.

By Ms. Barclay:

Q. Mr. Amato, I am approaching you with what has been marked as Plaintiff's Exhibit Number 8. Can you tell us what this document is?

A. I didn't hear you.

Q. Can you tell us what this document is?

A. It's an e-mail from me to Commissioner Figueroa, advising her that the referral was made for [redacted]

[Page 62]

[redacted] to be placed in a CSS foster home that now has his siblings.

Mr. Field: Objection. Your Honor, they are talking about the name of the children who are in the city's foster-care. I'd ask that the Exhibit be withdrawn from the record.

The Court: We will redact it.

Mr. Field: And stricken.

Ms. Barclay: No objection, Your Honor?

By Ms. Barclay:

Q. To the extent you are describing this child, would you refer to the child as Doe Foster Child Number 2?

A. I will.

Q. Will you describe again what this document is?

A. An e-mail to the commissioner indicating that it received a net CUA referral on Doe Child 2 to be reunited with his siblings who are in a CSS foster home and that Doe Child 2 needed an emergency placement, with my understanding. I indicated that we accepted the referral as — with the idea that it's in the best interest of the child to be with his siblings and asked if she had any questions.

Q. Now, a few days later in March, there was another e-mail from Commissioner Ali. Were you a [Page 63] recipient of that e-mail?

A. I was.

Q. What did you understand to be the meaning of that e-mail?

A. My understanding was it was a clear and concise and direct order to all of the CUA's to cease and desist any referrals to Catholic or Bethany.

Q. Now who made this referral for Doe Foster Child Number 2 to Catholic Social Services?

A. My understanding is the inquiry was made by the NET or Northeast Treatment CUA to us, and that the necessary — and this is speculation — and that the Central Referral Unit of the city approved of this placement.



Q. I just want to make sure something that you said earlier. You talked about the reason for the referral freeze and what Catholic Social Services' religious objections were, right? Does Catholic Social Services place children with individuals and provide home study for just single parent?

A. For any family who approaches us for —

Q. For a single parent, could they have a home study performed?

A. Yes.

Q. Does it matter what the sexual orientation is of [Page 64] a single individual?

A. A sexual orientation of the individual is not the part and parcel of what the home study process is about.

Q. So an individual single gay person could be a foster parent with Catholic Social Services?

A. Yes.

Q. Is the objection only when Catholic Social Services is being required to evaluate and provide written endorsements of a same-sex relationship?

A. Yes, it is.

The Court: Written endorsements?

By Ms. Barclay:

Q. Do you view the home study and what culminates at the end of the home study as a written endorsement as a relationship to the government?

A. I think so, yes.

Q. Why did you file this lawsuit? Was this your first preference?

A. No. Our first preference was to work out a reasonable accommodation with the city. But upon hearing that subpoenas were soon to be issued, an inquiry coming from the Philadelphia Commission for Human Relations, it seemed like our only recourse was to go this route.

[Page 65]

Q. Well, what were some of the things that you did before filing the lawsuit to see if you could work this out, as you said?

A. Well, we showed an interest in finding some kind of middle ground. We worked with Becket to show that interest, and there was an e-mail to the city indicating that we would like to have a meeting to see if some sort of accommodation could be worked out, but the answer was clear and crisp. And the answer was no, there is no reason for a meeting, either do the home studies or we will be transitioning you gradually out of foster-care.

Q. Did you ask for multiple meetings with DHS?

A. No.

Q. Did you ask on more than one occasion for meetings with DHS?

A. Not to my recollection.

Q. You don't recall?

A. No, I don't recall that.

Ms. Barclay: Permission to approach the Witness, Your Honor.

The Court: Yes.

By Ms. Barclay:

Q. Mr. Amato, I am approaching with you what has been marked as Plaintiff's Exhibit Number 9. Do you recognize this document, Mr. Amato?

[Page 66]

A. I do.

Q. What is the date of this document?

A. May 7, 2018.

Q. Was there something about this document in particular that made you decide that Catholic Social Services would need to file a lawsuit?

A. Well, what I recall of this document is somewhere in the — in the document is Mr. Rienzi asking the city for a meeting to see if we can come up with a solution, and — if I am recalling this as the correct letter.

Q. Let me pause you there. This document is not written by Mr. Rienzi. It's written to Mr. Rienzi by the City of Philadelphia. Do you recall any discussion in this letter about subpoenas?

A. About what?

Q. Subpoenas from the city.

A. What I recall from this letter is, it was — it was a response to Mr. Rienzi's call for a meeting to come up with an alternate solution, and the letter indicated that there is no solution that can be had other than complete the home studies as we have mandated or subpoenas will be forthcoming. So at that point, our best recourse and only recourse was a federal lawsuit.

Q. I want to direct your attention to the last [Page 67] sentence of this letter before the signature. It says: Therefore we reiterate the request for information set

forth in that letter and we ask you to respond within ten days of this letter to avoid the issuance of a subpoena. Did I read that correctly?

A. Yes.

Q. So how long after May 7 was it approximately that you filed your lawsuit?

A. My recollection is about nine days later.

Q. Now, the attorneys for the city have accused you of needlessly making —

Mr. Field: Objection, Your Honor.

The Court: To the term “accuse.”

Ms. Barclay: Yes, Your Honor.

By Ms. Barclay:

Q. Mr. Amato, let me rephrase my question. The attorneys for the city have stated that you needlessly made the Doe Foster Child Number 1 situation part of this lawsuit, that you entangled it in this lawsuit. Why did you decide —

Mr. Field: Objection, Your Honor. This letter is not from an attorney for the city.

Ms. Barclay: Your Honor, I am no longer talking about the letter.

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The Court: Ask your question again, please.

By Ms. Barclay:

Q. The attorneys for the city have accused you of needlessly making Doe Foster Child Number 1 situation part of this lawsuit and entangling that with this lawsuit. Why did you decide that additional facts

relevant to the Doe Foster Child Number 1 situation needed to be communicated to the city through your attorneys and this litigation?

Mr. Field: Your Honor, I object to the characterization of the city's representation. Those words change between litigation counsel and this litigation.

Ms. Barclay: Your Honor, may I pull out the characterization of the brief?

The Court: Well, again, just ask the simple question.

Ms. Barclay: Yes, Your Honor.

By Ms. Barclay:

Q. Why did you decide that the additional facts you learned about the Doe Foster Child Number 1 situation needed to be communicated through litigation counsel to the city?

A. Because on May 25th when it was discovered by our CUA worker that Doe Child Number 2 needed an emergency placement and our — his previous foster home [Page 69] was offered as an emergency placement, the answer from the line worker after checking with his supervisors was that the — the referral would not be allowed because of the case against the Catholic Social Services.

Q. And when you talked about the line worker, you are referring to a DHS worker, correct?

A. Yes, and the CUA.

Q. What does that indicate to you about that denial and why communications needed to be part of this litigation?

A. Well, they tied the denial to the case against Catholic Social Services.

Mr. Field: Objection, Your Honor, this is hearsay.

Ms. Barclay: Your Honor, this is not being offered for the truth of the matter asserted, but because the Catholic Social Services' motives for bringing up the Doe Foster Child Number 1 situation has been called in question, this is relevant to address what his motives were as far as those communications.

The court: Overruled. You started to answer.

By Ms. Barclay:

Q. You can start again, Mr. Amato. What — do you need me to repeat the question?

[Page 70]

A. Please.

Q. So what did that denial by DHS indicate to you as far as why those communications needed to be made as part of this litigation?

A. The denial indicated to me that the sole reason for the lack of what was a very solid plan for Doe Number 1 Child was negated because of the case against Catholic Social Services and the freeze on admission. So I thought it imperative to take this through legal counsel because it was clear to me that it was in the best interests of the child to be reunited with his CSS foster mother.

Ms. Barclay: Just a moment, Mr. Amato. Permission to approach the Witness, Your Honor.

The Court: Yes.

Ms. Barclay: And for clarity I am going to approach the witness with both the redacted and unredacted version of the document.

The Court: Yes.

By Ms. Barclay:

Q. Mr. Amato, I am approaching you with what has been marked as Plaintiff's Exhibits 10 and 11. Mr. Amato, I am going to read to you a redacted version. It says about the 4th paragraph down: DHS told the CUA [Page 71] worker no since DHS is refusing to send referrals to CSS. So is this the denial that you are referring to that led you to arrive at this conclusion?

A. Yes, it is.

Q. Why didn't you route this issue through the normal family court process?

A. Because of the complexity of the action taken against Catholic Social Services, because of the urgent needs of the child to be served, I thought that this matter was outside the realm of what family courts traditionally handles.

Q. Did you think that there were any exceptional circumstances at issue here?

A. Absolutely. We have a very young child [redacted] who was moved from respite home to respite home, [redacted] and a foster mother who direly wanted her back —

Mr. Field: Your Honor, I object to putting details about the foster child in the city's care in the record.

By Ms. Barclay:

Q. If you can limit your response, Mr. Amato, to the limited things without going into detail that were the exceptional circumstances that you thought warranted not routing this through normal family court process.

[Page 72]

Mr. Field: Your Honor, if I can ask that the medical details be stricken.

The Court: Yes, they will be stricken.

The Witness: Then it — absent that, it was the fact that he was in a respite for two days, for a weekend, and he was going to get moved to another respite home. And during that same time, it was clear to many individuals that his CSS foster mother welcomed him back. and later on in the week, we found out had also spoken to her family and had been — [redacted]

By Ms. Barclay:

Q. Was there anything in particular that you thought was exceptional on May 25th about the options that were available at that time and the denial of that foster mother?

A. I thought it was particularly relevant in these situations. The options, grimly, are not much, and it would have been an overnight in the DHS childcare room, an emergency shelter, or what we had offered with the CSS foster home. So that option was just a far better option.

Q. And in your normal experience with placement, would a former foster mother ever be denied in the best interest of a child?

[Page 73]



A. Never, particularly when the foster mother is in such good standing as this foster mother is.

Q. Do you recall when your attorneys first communicated with DHS about those additional facts?

A. I believe early in the following week our attorneys communicated with DHS, indicating clearly the position of our foster mother and the welcome news of her intent and interest in adopting Doe 2.

Ms. Barclay: Permission to approach the Witness, Your Honor.

The Court: Yes.

By Ms. Barclay:

Q. Mr. Amato, I am approaching you with what has been marked as Plaintiff's Exhibit Number 12. This is an e-mail from Lori Windham to Mr. Field. And she says: Ben, thanks for your e-mail. We will take a look at the sources you provided — proposed redactions. In the meantime, though, we still have a child stuck in respite care and kept from a pre-adoptive home. I stated on Monday I would facilitate the necessary conversations with my clients, and I received no outreach regarding that. When will the city be acting on this matter?

So my question to you is prior to receiving — prior to sending this e-mail, were you aware of the city trying to make outreach to communicate [Page 74] with you about this particular situation?

Mr. Field: Your Honor, I object. The Witness did not send this e-mail or wasn't involved in this communication.

By Ms. Barclay:

Q. Was this e-mail sent at your direction, Mr. Amato?

A. Yes.

Q. So prior to this e-mail being sent, were you aware of the city trying to reach out to you to arrange — conversations with you about this child?

A. No.

The Court: Counsel, I am going to interrupt you at this point and ask you what is the relevance of all of this, as it relates to the request for the injunction?

Ms. Barclay: Well, the relevance for all of this is to respond to some of the arguments that the city has made, number one, that the intent of Catholic Social Services was unfounded as far as their need to involve the Doe situation as part of this lawsuit and communicate about the Doe situation as part of this lawsuit and they were being dilatory in their communication about that situation.

The Court: I don't know that it will impact this Court's decision as to whether or not an injunction is appropriate.

[Page 75]

Ms. Barclay: There is also certainly the question as far as the ability of this situation to repeat in the future as long as this referral freeze is in place, and as Mr. Amato has testified, there is no clear instruction to DHS workers or to CUA leadership to ensure these sort of referrals are sent to Catholic Social Services, Your Honor.

The Court: I don't know that this gentleman can testify. He can testify as to what happened, and you can make the argument that it may happen in the

future or you don't want it to happen in the future. But I don't know that we have to go through the whole history of his communication in regard to this one young boy.

Ms. Barclay: The communication — so counsel for the city has offered communication with the attorneys in their own exhibits, Your Honor, and we are providing the complete story about the narrative that they have made at issue in their briefing, and that's number one. And number two, Mr. Amato is able to testify about his concern that this sort of situation could repeat in the future based on the current policy and the current referral freeze.

The Court: He already testified to that.

Ms. Barclay: So that's how this is relevant, Your Honor, as far as the need to grant the TRO.

[Page 76]

The Court: I don't think we have to go any further.

Ms. Barclay: This is the end of my line of questioning on that.

By Ms. Barclay:

Q. Mr. Amato, I would like to speak to you about the viability of the Catholic Social Services foster program moving forward. Do you regularly or do your staff regularly report foster-care vacancies to DHS?

A. Yes.

Q. And is that a contract requirement, as far as you are aware?

A. I think it's a performance expectation. I don't think it's a contract requirement.

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Q. Before the referral freeze, on average how many vacancies would Catholic Social Services have at any given period of time across all of their programs?

A. Four or five.

Q. How many vacancies do you anticipate that you will have by the end of June?

A. 35.

Q. If you continue to not receive referrals, when will you have to start laying off employees?

A. In mid July we will begin a very sad process of staff reduction.

[Page 77]

Q. And that's if you do not continue to receive referrals?

A. Correct.

Q. And on average, how many referrals will Catholic Social Services receive a month from DHS for foster children?

A. Nine.

Q. Is it your experience that after a contract expired with DHS that foster agencies are able to continue operating under the prior contract?

A. Can you repeat that question, please.

Q. Let's talk, for example, if there was no referral freeze going on and this contract with Catholic Social Services has a term ending June 30th. In a typical sense, does that mean that right at June 30<sup>th</sup> you have to enter into another contract, or is it typical for an agency to operate under an existing contract?

A. It's typical —

Mr. Field: Objection. Speculation, Your Honor.

The Court: Overruled.

By Ms. Barclay:

Q. You can answer the question.

A. It's typical that we operate under an existing [Page 78] contract. Many of our — many years of contract with the city are not conformed until well into the fall.

Q. So for an amount of months you can just keep operating under the previous contract?

A. Yes.

Q. How many total staff right now work for this program?

A. 15.

Q. If referrals do not continue, approximately how long will it be until the program is completely closed down?

A. In a matter of months.

Q. If you close the program, how easy would it be to later come back and recruit the same type of staff?

A. Impossible.

Mr. Field: Calls for speculation.

The Court: Yes, sustained.

By Ms. Barclay:

Q. Is one of the hallmarks of our program the continuity of the existing staff?

Mr. Field: Asked and answered, Your Honor.

The Court: Sustained.

By Ms. Barclay:

Q. Would one of the hallmarks of your current program be gone if you later rebuild that without your [Page 79] great staff?

Mr. Field: Objection, calls for speculation, Your Honor.

Ms. Barclay: That's not speculative, Your Honor. If the current staff were gone, would that be relevant to whether or not that strength of Catholic Social Services would be available. And that's relevant to the harm inquiry for a preliminary injunction —

The Court: Overruled.

Ms. Barclay: — Restraining order.

By Ms. Barclay:

Q. Would that hallmark of your program be gone, continuity of the staff?

A. Absolutely.

Q. If you closed your program, how easy do you think it would be to rebuild networks with family and the relationship of trust that you have right now?

A. It would take years.

Ms. Barclay: No further questions, Mr. Amato. Your Honor, I would like to make sure that I formally move all exhibits into evidence that we have discussed during this testimony.

The Court: Very well.

Ms. Barclay: Thank you.

[Page 80]

Mr. Field: Your Honor, before I begin, I would just like to clarify one point. Counsel referred to moving all

exhibits into evidence. I'd just like to clarify that that's the exhibits introduced to the witness and not affidavits and other exhibits that she discussed in the parties' filings.

The court: Yes. It's P-1 through 13 — no, 12.

Mr. Field: Thank you, Your Honor.

(Plaintiff Exhibits 1 through 12 admitted into evidence.)

Cross-Examination

By Mr. Field:

Q. Mr. Amato, thank you for being here today. Would you like me to call you Mr. Amato?

A. Jim would be fine.

Q. Jim would be fine. Thank you. You moved through a lot of territory. We are going to move through a fair amount of territory. I want to start on a fairly discrete point, which is Doe Foster Child Number 1, as we have called him, the lawyers have called him in this litigation, who is a child who is the subject of a May 25th communication and then I believe an e-mail that your counsel showed you on this. [Page 81] When did you first become aware of issues with Doe Foster Child Number 1's placement?

A. Early in the following week, so it would probably be the week of May 28, I think.

Q. So you were not aware of that on May 25?

A. No.

Q. And were you involved in any of the communications on May 25?

A. No.

Q. And how did you learn about those communications?

A. Because Mr. Black reports directly to me, and Mr. Black was having those conversations, texts, and phone calls with Deputy Commissioner Ali.

Q. And what did Mr. Black tell you?

A. Mr. Black indicated that the — that our CUA worker, Catholic Social Services CUA worker, on the night of May 25 had contacted our CSS foster mother who was very willing to take Doe Child 1 back and — into her home and that the — and that the city CUA response was that that would not be permitted due to the case against Catholic Social Services.

Q. And when, to the best of your recollection, did he tell you this?

A. He told me that on Monday, the following Monday.

[Page 82]

Q. Jim, I would like you to refer to an exhibit that has been introduced in an unredacted and redacted form, Exhibits 10 and 11 in front of you. And this is an e-mail from Tabitha Seehousen to Jernard Whitman and Robert Montoro regarding Doe Foster Child Number 1, dated June 1st, 2018. Is that correct?

A. Correct.

Q. Who is Ms. Seehousen?

A. She is a foster-care case manager employed by Catholic Social Services.

Q. And let's digress for a moment, just so I understand. You said earlier that you oversee Catholic Social Services in your position, correct?



A. Yes.

Q. And who do you report to? Who is above you and what is the structure there?

A. I report to Bishop John McIntyre who is the president of our boards.

Q. And is there an oversight structure above Bishop John McIntyre?

A. He reports in the Archbishop.

Q. And within Catholic Social Services, you talked about the different foster-care services it offers. I believe you talked about a CUA, what I believe is called Congregate Care, right?

[Page 83]

A. Yes.

Q. And in-home foster-care placement?

A. Close enough, yeah.

Q. And do the staff of Catholic Social Services work across all of those activities, or are they siloed within activities?

A. Siloed in individual program activities.

Q. Which program activity does Tabitha Seehousen work in?

A. Catholic social services foster-care department.

Q. And who is Mr. Whitman?

A. He is the catholic community services CUA case manager.

Q. And who is Mr. Montoro?

A. He is the administrator of Catholic Social Services foster-care department.

Q. So is this — am I understanding this e-mail correctly that it's now the foster-care services communicating information about this case to the CUA?

A. Correct.

Q. And did Mr. Black have this information before June 1st?

A. Yes.

Q. Okay. He related that information to you at the start of that week?

[Page 84]

A. Yes, to the best of my recollection.

Q. You are presently aware, aren't you, that DHS will grant exceptions in some cases for placements with Catholic Social Services?

A. I only became aware of that because I asked.

Q. And to the best of your recollection, when did you ask?

A. I asked in late March for the exception for Doe Child Number — these numbers — was that 1 — 2. Okay.

Q. And so you have been aware since late March that DHS would grant exceptions?

A. I was only aware of one exception, for Doe Child Number 2.

Q. You are aware that DHS would grant exceptions in certain cases when appropriate?

A. I was aware there was an exception for Doe Child Number 2.

Q. Is your answer no to my question?

Ms. Barclay: Objection, Your Honor, asked and answered.

The Court: He has answered.

Mr. Field: Your Honor, permission to approach the Witness.

The Court: Yes.

By Mr. Field:

[Page 85]

Q. Mr. Amato, I have just handed you an exhibit marked Defendant's Exhibit Number 1. It's an e-mail from James Amato, dated Tuesday, May 1st, to Cynthia Figueroa. Do you recall writing this e-mail?

A. Yes.

Q. And I will note for the record that a portion of the body of this e-mail is redacted. That portion —

Ms. Barclay: Objection, Your Honor. May we see — actually we have never seen this document. May we see an unredacted version for Counsel's context?

The Court: Yes.

Mr. Field: We have no problem with that, Your Honor.

Ms. Barclay: May Mr. Amato be also provided an unredacted version for clarity?

The Court: Do you want to repeat your question?

By Mr. Field:

Q. Mr. Amato, I want to direct you to the penultimate line of that e-mail that starts with: We are prepared. Would you read that, please?

A. We are prepared to accept both children but realize that DHS senior management would have to give the green light to CUA front line staff.

Q. Isn't that true that you understood that CSS [Page 86] senior management could give the green light to CUA front line staff to place children with CSS as of May 1st?

A. That line was based on the fact that there was a freeze on any of our referrals that ended — I needed to contact the Commissioner for approval for any child referred to us.

Q. And is that why you wrote this e-mail, to seek approval for a referral?

A. I did.

Q. Thank you. Did you write a similar e-mail to the Commissioner regarding Doe Foster Child Number 1?

A. Number 1 is the May, yeah.

Q. Correct, the May 25 child?

A. No. My communications with Doe Child Number 1 were phone calls and an occasional text with Deputy Commissioner Ali. At one point in one of the phone calls, the Commissioner was in the car with her returning from Allentown.

Q. Do you recall when those phone calls and texts were?

A. I recall in this context Doe Child Number 2 returned to the CSS foster home on June 12. Remember, that's

17 days after May 25, and the urgency of this [Page 87] child being settled in the home was growing.

The Court: Let's just answer the question.

The Witness: Okay. Give me the question again.

By Mr. Field:

Q. I was asking if you recall when those phone calls were. And just to clarify the record, you said Foster Child Number 2. I believe we are talking about Foster Child Number 1, just so it's clear.

A. The Does are getting me confused. That conversation would have been several days prior to June 12.

Q. So shortly — in broad terms — shortly before the child was, as you said, placed with a CSS household?

A. Correct.

Q. Thank you. Jim, when you were talking about the various programs related to foster children that Catholic Social Services operates, you referenced the Foster-Care Department. You also referenced the Residential Services. Approximately how many children are serviced through the Residential Services program?

A. 260 daily at either St. Gabriel's Hall and St. Francis. And another 85 children served at De La Salle vocational, a day treatment program that is in that [Page 88] contract despite the fact that the children are living at home with their families. These are all kids adjudicated delinquent.

Q. And you also mentioned the CUA, the Community Umbrella Agency?

A. Correct.

Q. How many children are serviced through the Community Umbrella Agency?

A. I get a regular report. My last recollection is about 800.

Q. How many of Catholic Social Services employees are employed by the Community Umbrella Agency or their agreement is with reference to the Community Umbrella Agency?

A. Approximately 50 to 60.

Q. Does that include case workers?

A. That includes all staff employed by the —

Q. What types of staff would that be?

A. From secretaries and support staff on the case, managers, supervisors, case management directors, and senior management.

Q. And you mentioned that there were 1500 kids last year through all across Catholic Social Services?

A. Yes.

Q. Does Catholic Social Services work with any [Page 89] other county other than Philadelphia in the Five-County Area?

A. We have contracts, but very few referrals with the Montgomery/Bucks.

Q. You have contracts with Montgomery and Buck County?

A. Yes.

Q. Do those contracts include foster-care?

A. Yes.

Q. So I would like to turn to the discussion of — I understand to be the core issues of this case, which is Catholic Social Services' refusal to certify same-sex couples for foster-care. You said in your testimony, and I apologize, I want to get your words right, to the extent I wrote them down correctly — so bear with me a moment — that you would not do it, and “it” I take it you meant CSS would not certify same-sex resource parents, I think they are called —

Ms. Barclay: Objection, speculation.

The Court: Overruled.

Mr. Field: I am just trying to make sure I got his words correct, Your Honor.

By Mr. Field:

Q. You said it was against the teaching of the Catholic Church, is that correct?

[Page 90]

A. Can you repeat the question, please?

Q. Is certifying a same-sex — I'm sorry, a foster parent who is in a same-sex relationship against the teaching of the Catholic Church?

A. The Catholic Church asserts its religious belief, a marriage is a sacred bond between a man and a woman. So that certifying a home of the same-sex couple would be in violation of that religious belief.

Q. So — and to be clear, I am not challenging the sincerity of the religious belief or the doctrine you reference regarding same-sex couples or same-sex marriage. But what is it about certifying the home as

resource parents for a foster child that is against the — your beliefs?

Ms. Barclay: I object, Your Honor. This has not arisen. It is calling for speculation.

The Court: I'm sorry.

Ms. Barclay: I'm objecting since he is being asked about a particular resource home, what would cause a problem with the religious beliefs. I am noting this calls for speculation.

The Court: Overruled.

The Witness: Because as I indicated earlier, a home study is essentially a validation of the relationships in that home, and in this case that [Page 91] relationship is — that relationship is not one that is acceptable in terms of church teaching.

By Mr. Field:

Q. Let's talk about home study. What Does CSS do in performing a home study?

A. Well, the home study obviously is done in the potential foster parent's home and that involves a thorough review of the home for safety-related reasons, for the physical plan of the home, the clearances absolutely have to be done for all of the individuals in the home, and an evaluation of the quality of the relationships in that home and — as to how they would best benefit the child who might be placed there.

Q. To your knowledge is there anything in the CSS contract with the City or the state regulations that apply to evaluation of resource parents that refers to the marital structure of the home?



Ms. Barclay: Objection, calling for a legal opinion, Your Honor.

The Court: Overruled.

The Witness: To my knowledge, there is nothing in the state regulations that speaks to the necessity or the requirement that foster parents be married.

By Mr. Field:

Q. So — and I am going to ask again. What is it [Page 92] that CSS is doing, if there is nothing — no marriage requirements that burdens this religious doctrine when you are reviewing a resource parent?

Ms. Barclay: Objection. Asked and answered, Your Honor.

The Court: Overruled.

The Witness: Repeat the question, please.

By Mr. Field:

Q. What is it about CSS's review of a household to be a resource parent or an individual to be a resource parent that burdens your religious belief if that parent happens to be in a same-sex relationship?

Ms. Barclay: Objection to the form of the question; compound question.

The Court: Overruled.

The Witness: Catholic teaching, and I will qualify that by the obvious, I am not a theologian, Catholic teaching — it is clear that children are best raised in a home that of — where — with a husband and wife.

By Mr. Field:

Q. Is it your belief that a resource parent in a same-sex relationship is not qualified to raise a foster child?

A. It is my belief that that foster parent is in a lifestyle that cannot be accepted by the — via the [Page 93] teachings of the Catholic Church.

Q. Is that the reason you refused to perform certifications for those households?

Ms. Barclay: Objection, asked and answered, Your Honor.

The Court: Overruled.

The Witness: Yes.

By Mr. Field:

Q. Jim, when you were talking about certifications before, your Counsel asked you about a couple of other circumstances. I believe you did say it's correct that Catholic Social Services works with foster children who are LGBTQ identifying, is that correct?

A. Correct.

Q. And Catholic Social Services works with single parents who are LGBTQ identifying, is that correct?

Ms. Barclay: Objection as to calling for speculation.

The Court: Overruled.

The Witness: Catholic Social Services serves any individual regardless of sexual orientation who request services as a client for Catholic Social Services.

By Mr. Field:

Q. Except for individuals who are in same-sex relationships?

[Page 94]

The Court: How about unmarried couples?

The Witness: Unmarried couples — with an unmarried couple, what Catholic Social Services does in terms of home studies is to immediately refer the unmarried couple to another agency who would complete a home study.

By Mr. Field:

Q. So Catholic Social Services refuses to conduct home studies for unmarried couples?

Ms. Barclay: Objection as to the form of the question.

The Court: Overruled.

The Witness: Catholic Social Services does not complete home studies for unmarried couples but immediately puts the unmarried couple in touch with one of 28 other agencies who would complete that home study.

By Mr. Field:

Q. Does Catholic Social Services complete home studies for married couples who are previously divorced?

A. Yes.

Q. Even if that divorce has not been properly annulled with the Catholic Church?

Ms. Barclay: Objection, Your Honor.

The Court: Overruled.

Ms. Barclay: It is speculation whether or not the divorce has been annulled or not.

[Page 95]

Mr. Field: I can rephrase, Your Honor.

By Mr. Field:

Q. Does Catholic Social Services ask if the divorce has been annulled with the Catholic Church?

A. No. We ask for a letter from the couple's local clergy or pastor.

Q. So you referenced asking for a clergy letter before. Please explain to me what a clergy letter is.

A. A clergy letter can be a reference letter from a pastor who would indicate that he or she knows the couple, is aware of their active participation in religious services, both — regardless of the faith, which we deem is a very good indication of their commitment to their faith and their commitment to raise a child in that faith and that that faith does not have to be and is usually not Catholicism.

Q. Is a clergy letter a requirement of Catholic Social Services' home study to certify prospective foster parents?

A. Yes, we require that letter.

Q. If there is not a clergy letter, will you certify that prospective resource parent?

A. Not to my knowledge.

Q. You mentioned that the faith of that clergy letter does not matter, is that correct?

[Page 96]

A. Correct.

Q. So clergy or a pastor is the term you are using, but it could be a rabbi or an imam?

A. Absolutely.

Q. And is there a letter that an individual who does not participate in religious worship could provide Catholic Social Services to satisfy this requirement?

A. Not to my knowledge.

Q. Would anybody else other than you have that knowledge?

Ms. Barclay: Objection, Your Honor. That is calling for speculation.

The Court: Overruled.

The Witness: The staff that are day-to-day in the foster-care department and are regularly handling the inquiries and the matters that arise would have a better handle on that.

By Mr. Field:

Q. You oversee the staff, correct?

A. I oversee them through Jim Black, who reports to me, and our foster-care administrator reports to him.

Q. And it is your understanding, at the top of that Catholic Social Services hierarchy, that one has to have a — as you call it, a clergy letter in order to become a foster parent through Catholic Social Services, [Page 97] correct?

Ms. Barclay: Asked and answered.

The Court: Overruled.

The Witness: Yes.

By Mr. Field:

Q. Jim, if you can just return quickly to the certification process. You said that there is a written

endorsement, I believe was the word that you used, of the relationship. What is that written endorsement?

A. It's the completed —

Ms. Barclay: Objection; asked and answered again.

The Court: Overruled.

The Witness: It's the final product of the written home study that appears in the foster parent's case record.

By Mr. Field:

Q. And to your knowledge, does that final product — is there a requirement that final product reference the marriage?

A. Yes.

Q. And what is — where is that requirement found?

Ms. Barclay: Objection, Your Honor. The witness has testified that he is aware about the requirement. He Does not need to cite the legal code that [Page 98] requires that.

The Court: Overruled.

The Witness: So ask me that again, please.

By Mr. Field:

Q. Where is that requirement found in reference to the marriage?

A. Our policy — we have a policy and procedure stated on recruitment that indicates that — on foster-care home study that indicates that marriage is required, and that the clergy letter is required.

Q. These are CSS's requirements?

A. Yes.

Q. These are not in the contract with the City of Philadelphia?

A. Not in the contract.

Q. And to your knowledge, not in the state regulations?

A. Not in the state regulations.

The Court: Mr. Amato, I want to ask you a question that I am not quite sure whether or not you answered. Does the CSS consider single parents who are LGBTQ for certification?

The Witness: Yeah. We would complete a home study for a single parent who is living monogamously to be a foster parent.

[Page 99]

The Court: Okay.

By Mr. Field:

Q. So you would not inquire of that single parent anything about their sexual orientation or practices?

A. Sexual behaviors and practices are not a part of any home study.

Q. And if there were a resource parent who was part of an unmarried same-sex couple, would you consider them for to — for certification as a resource parent?

Ms. Barclay: Objection, asked and answered. We've already spoken about unmarried couples.

The Court: Overruled.

The Witness: Can you please ask me that again?

By Mr. Field:

Q. If there was a prospective resource parent seeking certification and came to Catholic Social Services and they were part of an unmarried same-sex couple, would you consider them for certification?

Ms. Barclay: This is also calling for speculation. The situation has not arisen.

The Court: Overruled.

The Witness: I qualify that first by saying that we have not received any interest in foster-care in that profile that you just suggested. Okay? So . . .

[Page 100]

By Mr. Field:

Q. I understand that, but I would like an answer to the question.

A. Give me the question again.

Q. Would Catholic Social Services certify or even move through the process of certification of a prospective resource parent who is in a same-sex unmarried relationship?

A. If that situation arose, and the person that they were in an unmarried relationship with lived in that home, we would not continue to move forward with that.

Q. What if the individuals were monogamous?

A. That's a hypothetical situation. We have never run into that, so . . .

Ms. Barclay: And I am going to object again to speculation, Your Honor. The witness has already testified they don't inquire about specific sexual



practices, and so what the home study process looks at is parents in the home.

Mr. Field: Your Honor, I don't believe it's appropriate for her to testify about the home study process.

The Court: Yes.

Ms. Barclay: It is speculation, Your Honor.

The Court: He has answered the questions.

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Mr. Field: Yes. Can I have a minute with my colleagues, Your Honor, Court indulgence?

The Court: Yes.

(Brief pause in the proceeding.)

Mr. Field: Your Honor, I only have a moment left. I have to just obtain one exhibit.

The Court: Yes.

By Mr. Field:

Q. Jim, just one quick question on the topics we were covering before. Will Catholic Social Services certify a single resource parent who is not celibate?

Ms. Barclay: Objection, Your Honor. The witness has answered they don't inquire as to sexual —

The Court: That is what he stated, so he would not know.

By Mr. Field:

Q. Is that correct, you would not know whether or not they engaged in sexual activities?

Ms. Barclay: Objection again, Your Honor. This has been answered.

Mr. Field: He only said they don't inquire, Your Honor. He might be told that. I don't know the range of situations that occur, but this is all a little outside the box.

[Page 102]

The Court: I am going to sustain the objection.

Mr. Field: Thank you, Your Honor.

By Mr. Field:

Q. So, Jim, in your prior questioning, you talked about communications with the City regarding closure of intake and regarding ongoing contracts with the City. Is it Catholic Social Services' position that it will not sign a full ongoing contract with the City?

Ms. Barclay: Objection, Your Honor, calls for speculation.

Mr. Field: I am asking the organization's position.

The Court: Right. Overruled.

The Witness: To understand the organization's position is to understand the overall contract. In the City terminology, this is a 290 replacement contract that involves not only foster-care but St. Gabriel's and St. Francis and our reintegration program. So we would move forward with that contract because those kids — it's an important mission for us. It's an important contract and the children need to be served.

By Mr. Field:

Q. And St. Gabriel's and St. Francis —

A. St. Gabriel's System, which is St. Gabriel's [Page 103] Hall, is 150 adjudicated delinquent boys. St.

Francis and St. Vincent's is 115 adolescent boys and girls, placed in group homes.

Q. And that is congregate units?

A. Group homes, yes.

Q. Group homes?

A. St. Gabe's is congregate institutional care. St. Francis is small group homes.

Q. For the contract that is terminating on June 30th, those were part of the same contract, is that correct?

A. Yes.

Q. And isn't it true that you have received two separate notice of awards for the coming year's contracts from the City which separated the foster-care services that are at issue in this litigation and what you were just talking about, group homes, congregate care?

Ms. Barclay: Objection to the form of the compound question.

The Court: Yes. Break it down, please.

By Mr. Field:

Q. Did you receive notices of awards for the coming contract year from the City?

A. I received a contract letter with a cover letter [Page 104] from the Commissioner that indicated that the 290 contract would be moving forward, but explicitly noted that would be a transition for CSS foster-care.

Q. Did the City offer — isn't it true that the City offered you a full contract for foster-care if Catholic Social Services would comply with all of its obligations under that contract?

Ms. Barclay: Objection, Your Honor.

The Court: Overruled.

The Witness: I don't recall ever being made that offer.

Mr. Field: Permission to approach the witness, Your Honor.

The Court: Yes.

By Mr. Field:

Q. Mr. Amato, I have just given you a document marked Defendant's Exhibit 2.

A. Right.

Q. This is an e-mail from Jonathan Janiszewski who I'll represent is an attorney with the City of Philadelphia to Lori Windham from Becket Fund, here today, dated June 5th and request that Ms. Windham forward the message to you. Can you take a look at the part that begins, "Dear Mr. Amato"?

A. Okay.

[Page 105]

Q. Have you seen this document before?

A. I have.

Q. Does this refresh your recollection about whether or not the City ever offered you a full contract for foster-care services for the coming year?

Ms. Barclay: I object, Your Honor. The full contract is vague. It's not clear exactly what is being asked of the witness.

The Court: Offered a contract.

Ms. Barclay: There are multiple contracts being offered.

The Court: He said foster-care.

Ms. Barclay: There have been multiple offers  
— two different types of —

The Court: This should be no problem with this exhibit.

The Witness: give that to me again, please.

By Mr. Field:

Q. Does this refresh your recollection about contract discussions with the City?

A. It refreshes my memory about this letter.

Q. Can you read the last paragraph — full paragraph that starts “Please”?

A. Please know that DHS values its historic relationship with CSS and if CSS is able to find a way [Page 106] to approve same-sex foster and adoptive parents consistent with current law and City policy, DHS will offer CSS a new contract that allows CSS to continue to select and recruit now foster parents and continue to receive new referrals. However, if CSS is unable to do so, DHS still sends you — intends to send you an official award letter to prepare for a new contract under the terms described above. You should anticipate receiving DHS official award letter later this week. Please contact me if you wish to discuss the matter.

Q. Will CSS enter into a contract with the City consistent with current law and policy articulated in that paragraph?

Ms. Barclay: Objection, Your Honor.

Mr. Field: For foster-care services.

Ms. Barclay: He is asking for the legal —

The Court: Overruled.

The Witness: The CSS will enter a contract with the City under the 290 contract with the idea that our — that our withdrawal from the contract and the overall — and the contract could be within just a matter of months.

By Mr. Field:

Q. Can you explain that?

A. You can't sustain a contact without referrals. So that ultimately we are going to have to phase out the [Page 107] program and the staff.

Q. I was asking if you would enter into a contract that required you to do the full set of foster-care services.

Ms. Barclay: Objection as to speculation as to what the full contract would entail as far as contract terms.

The Court: To the extent that they have already entered into a contract and they have been — are under contract with the City for a number of years, I'm sure that Mr. Amato understands the provisions, general provisions of the contract, so he can answer.

Ms. Barclay: Your Honor, if I may add, the City has indicated that provisions will be changing in the new contract, which is why it's calling for speculation.

Mr. Field: Your Honor, I don't believe it's appropriate for opposing counsel to be testifying about these matters.

The Court: Overruled. You may answer the question, if you can.

The Witness: Can you please ask the question again?

By Mr. Field:

Q. In the document marked Defendant's Exhibit 2,

The City stated that consistent with current law and [Page 108] City policy, DHS would offer CSS a new contract that allows CSS to continue to select and recruit new foster parents and continue to receive new referrals. Will CSS enter into that contract consistent with law and City policy?

Ms. Barclay: Objection, Your Honor.

The Court: You may answer.

The Witness: For the sake of the children that are currently in our services, foster parents will enter into a new contract with the City, but we will not begin to move forward with doing home study for same-sex couples.

By Mr. Field:

Q. You will enter into a new contract with the City, but will not perform home study for same-sex couples?

A. Correct.

Q. Jim, I have just handed you a document marked Defendant's Exhibit 3. Can you take a minute and look that over. Have you seen this document before?

A. I have.

Q. Is this a notice of award the City sent to you?

A. It is.

Q. And this document, can you read the first paragraph there?

[Page 109]

A. This letter is to provide you with information on the City of Philadelphia DHS herein and after DHS department contract process for fiscal year 2019 beginning on July 1st, 2018. The funding levels referenced above reflect the budget restraints and priorities.

Q. And the next paragraph articulates the City's policy of nondiscrimination, correct?

A. Correct.

Q. And am I reading the sentence there right that says that DHS will continue to make payments to CSS for the administration and maintenance of existing foster homes where children in DHS's care reside?

A. Yes.

Ms. Barclay: Objection, Your Honor. That calls for speculation; also form of the question.

The Court: Overruled.

By Mr. Field:

Q. Can you read the third and fourth paragraphs there for me, please?

A. Additionally, the FY19 contract will allow for referrals of new job foster-care placements only in limited authorized circumstances where CSS placement is in the best interests of the child. Since a child shares a prior relationship with a foster or [Page 110] pre-adoptive parent or where siblings should be placed together. The new contract also provides time



for the orderly transition of services should that become necessary. The contract amount has been adjusted to reflect the volume of services projected under the new scope of the contract.

Q. When you said CSS would enter into a contract with the City for care of children in an orderly transition, is this the type of contract you are referring to?

Ms. Barclay: Objection, Your Honor. May we receive a proffer for the relevance of this line of questioning. We are not having contract negotiations right now as part of the testimony. I don't understand why this is relevant to the matter at hand or with the scope of the direct. This is not something that Mr. Amato discussed.

Mr. Field: CSS has represented they have to start laying off people immediately and that the harm the business will suffer is immediate and extreme, and their willingness to enter into a contract with the City that will mitigate that harm is directly relevant to this litigation.

The Court: Overruled.

The Witness: Last question again.

By Mr. Field:

Q. Previously you had said that CSS would enter [Page 111] into a contract with the City for ongoing care that did not require CSS to do the certifications of same-sex couples, correct?

A. Right.

Q. The notice of award you just read, is that generally the type of contract you were talking about?

Ms. Barclay: Objection, Your Honor, as to speculation.

The Court: Overruled. Can you answer that question?

The Witness: Yes. The way I would answer that question is basically this would be the transition year and we would be — my prediction, we would be out of the foster-care mission within several months.

By Mr. Field:

Q. But you would enter into that contract?

Ms. Barclay: Objection, Your Honor.

The Court: He's answered.

The Witness: Okay.

Mr. Field: Thank you, Your Honor.

Permission to approach the witness, Your Honor?

The Court: Yes.

By Mr. Field:

Q. Mr. Amato, Jim, I have just handed you a letter [Page 112] dated June 11th, addressed to you from Cynthia Figueroa?

A. Um-hum.

Q. It says, Fiscal Year 2019 award letter, trial welfare operations placement services congregate care \$18,505,119. Have you seen this letter before?

A. Yes.

Q. Is this a notice of award for a new contract related to the — what we talked about before, I believe, as group care congregate care?

A. What struck me when I saw this letter —

Q. Can you just please tell me whether this is a notice of award for the contracts or what you were talking about under the group care?

A. Yes, as the short —

Ms. Barclay: Objection to speculation and he is asking to characterize a different type of document.

Mr. Field: I am asking this witness what his understanding of this document is.

The Court: Overruled.

The Witness: My understanding of the document, DHS has continued to be interested in our doing mission as usual in congregate care, but segregating foster-care from that contract.

By Mr. Field:

Q. This is a notice of award for the contract for [Page 113] that congregate portion you were just talking about?

A. That's my understanding.

Ms. Barclay: Asked and answered, Your Honor.

Mr. Field: Thank you. No further questions at this time, Your Honor.

The Court: okay. We will take a brief recess and you can redirect.

Ms. Barclay: Thank you.

(Brief recess.)

The Court: Okay. You may be seated. Redirect.

Ms. Barclay: Yes, Your Honor.

Redirect examination by Ms. Barclay:

Q. Mr. Amato, you were just asked a number of hypothetical questions about the type of foster parents that might ask for home study certifications. I just want to clarify that you were — you understood those types in the prospective foster family approaching Catholic Social Services and requesting home study services; is that correct?

A. That is correct.

Q. Now, there was some discussion about CSS communications the week after May 25th regarding Doe Foster Child Number One, and you mentioned that Mr. Jim [Page 114] Black had some information about that information in the beginning of the week, correct?

A. Well, he actually — he relayed that to me in the beginning of the week.

Q. Right.

A. His information was from the night of the emergency placement.

Mr. Field: Objection. Foundation.

Ms. Barclay: This is related to his witness.

The Court: Overruled.

By Ms. Barclay:

Q. Was your understanding at that point earlier in the week that Mr. Black had all of the relevant details about the situation?

A. I think the only relevant detail that had not emerged but emerged only a day or two later was the wonderful news that the CSS foster mother was adoption — is adoption-minded.

Q. On May 1st there was an e-mail that was discussed, and this is from you to Jessica Shapiro. Do you still have that in front of you, Mr. Amato?

A. Oh, yeah, here it is.

Q. I just want to draw your attention to two different lines in this e-mail. In the first paragraph [Page 115] it says: "cases with CUA, but there are uncertainties about approving this given the freeze." And you also say: "this is in front of CUA with questions for CSS intake freeze." Can you tell us what you meant about this uncertainty?

A. Just so I am clear, I am looking at an e-mail from me to Commissioner Figueroa on May 1st.

Q. That's right.

A. All right. Is that the redacted one that we are looking at?

Q. These lines are not visible in the redacted version.

A. Okay. So can you ask me your question again, please?

Q. Yes. So there's two lines in the e-mail. It says: "the cases with CUA that there's uncertainty about approving this given the present freeze." That's the first paragraph. And the second paragraph, it says: "this is also in front of CUA with questions as CSS intake freeze." Can you describe a little bit what you meant about these questions and uncertainty about the intake freeze?

A. Again, that gets back to the fact that — and [Page 116] the way that I look at it, that we — the exception policy was never articulated by the City. So any time something came up, I thought it was due diligence and

good practice and the right thing to do to get in touch with her, the Commissioner, and tell her that this was going on.

Q. On May 25th, which was after the staff — that's when CUA staff kind of communicated that they were going to deny it because of the case ongoing with Catholic Social Services, correct?

A. Yeah, well that's Doe 2, Doe 1?

Q. Yes, because it was related to Doe 1. They were going to deny that placement?

Mr. Field: Objection, hearsay.

The Court: Overruled.

By Ms. Barclay:

Q. Is that correct, Mr. Amato?

A. Yes, that's correct.

Q. Was part of your concern about the Doe Foster Child situation that that situation could repeat again given the DHS response?

A. Absolutely. Just to get that on the right track, took a number of very complicated and intense follow-ups. If that wasn't there, kids could fall through the cracks easily.

[Page 117]

Q. I want to draw your attention to some of the discussions about additional potential contracts with the City. Now, if the City were offering what they have described as a full contract that allowed Catholic Social Services to continue to provide foster-care, consistent with its religious beliefs, as it has done for

over 50 years, would Catholic Social Services be able to continue providing services?

A. Certainly.

Q. And in fact, if the City agreed to that, would there even be a need for this lawsuit?

A. Absolutely not.

Q. So with the partial contract that they have, drawing your attention to the partial award letter and the e-mail from Jonathan Janiszewski — I apologize if I am saying that wrong, what is your understanding will be —

Mr. Field: Objection to the characterization as it being partial, Your Honor.

The Court: Sustained. Just rephrase.

By Ms. Barclay:

Q. In the e-mail from Jonathan Janiszewski, that at the third paragraph to you it says: “DHS still intends [Page 118] to send you an official award to prepare for a new contract under the terms described above. You should anticipate receiving DHS’s official award letter later this week.” Did you understand that award letter to be the other document that was written by Cynthia Figueroa on June 11th?

A. No. Again, the June 11th went to me. I am going in reverse order here, simply verified that DHS continues to want the contract and need our congregate care services. The June 5th memo, basically, to me in a nutshell is, you either follow according to the provisions that DHS provided, or you are basically going — that mission is going to evaporate over time.

Q. I should clarify. All of my questions are going to be in the context of your foster-care program, and we're not talking about any of the other care programs right now.

A. Oh, okay.

Q. So if you look at this June 11, 2018 letter, it says: "the FY19 contract will allow for referrals of new child and foster-care placement only in limited authorized circumstances where CSS placement is in the best interest of the child, such as for the child shares a prior relationship with foster pre-adoptive parents, or [Page 119] where siblings should be placed together. The new contract will also provide time for the orderly transition of services should that become necessary." Did you understand, this document that the City is calling an award letter, to be the normal type of award letter you would receive for the full contract?

A. Oh, no, it's substantially different.

Q. So under this arrangement, what would be the consequence in a matter — the consequence toward the Catholic Social Services foster program?

A. Sadly, all staff would be laid off, and the program would cease.

Q. Now, I would also like to direct your attention to another letter from the City.

Ms. Barclay: Permission to approach the witness, Your Honor.

The Court: Yes.

By Ms. Barclay:

Q. Mr. Amato, I am approaching you with what has been marked Plaintiff's Exhibit Number 13. I am going



to draw your attention, Mr. Amato, if you turn not to the first page, not the second page, but the third page, and there's a paragraph in the middle?

A. Um-hum.

[Page 120]

Q. It says: "Please also note that CSS's current new contract expires on June 30th, 2018, and the City is under no legal obligation to enter into a new contract for any period thereafter. We are hopeful that we can work out any differences before then, but please be advised that except for in the best interest of the child demands otherwise, the City Does not plan to agree to any further referrals to CSS, and the City intends to assist with the transition of foster families to other agencies absent assurances that CSS is prepared to adhere to contractual obligations, and an implication of City contract to comply with all applicable laws, including those relating to nondiscrimination. We believe our current contract with CSS is quite clear that this is our right, but please be advised that any further contract with CSS will be explicit in this regard." What was your understanding about the meaning of this communication from the City?

A. Quite frankly, they were on a short rope and that referrals — they carry us over until the program basically dried up in a matter of months, and we would have no foster-care program.

Q. This last sentence: "We believe our current contract with CSS is quite clear that is our right, but [Page 121] please be advised that any further contract with CSS will be explicit in this regard." Did this give an indication that potentially future full contracts, as the

City characterizes them, would have different contract terms than you have seen in the past?

A. Yes.

Q. And would you need to review contract terms of a new full contract to ensure that you could continue to provide foster-care services consistent with your religious beliefs, as you have done for the last 50 years?

A. Yes.

Q. Is it your position, Mr. Amato, that the product of a final home study includes a written endorsement of any relevant relationships of the foster parent?

A. It is.

Q. That's your sincere belief, correct?

A. It is.

Q. And the sincere belief of Catholic Social Services?

A. Yes.

Q. Now, is it your understanding that evaluation of the relationships of the parents is required by state law for a home study?

[Page 122]

A. Yes.

Q. I just want to direct your attention to the 3700 Regulations dot 64. You are familiar with the requirement under (a)(3)(b)(1) that an agency evaluate, quote: "existing family relationships added to and expectations regarding the applicant's own children and parent-child relationships, especially that they might affect a foster child." Correct?

A. Yes.

Q. And you also understood that under this state law, Catholic Social Services is entitled and indeed required to evaluate the ability of the applicant to work in partnership with Catholic Social Services, correct?

A. Yes.

Q. And it was your understanding that this state law requirement meant that you, to perform an adequate home study, needed to evaluate the relationships of any foster parent living in the same home, correct?

A. Yes.

Ms. Barclay: Just one moment, Your Honor. Thank you, Mr. Amato. No further questions.

The Court: Any other questions?

Mr. Field: Just two brief questions, Your Honor.

[Page 123]

Recross-Examination

By Mr. Field:

Q. Jim, a minute ago, in talking to your counsel you said that a product of the home study includes a written endorsement of relationships of the parents; is that correct?

A. Yes.

Q. Is that a written endorsement of any relationships that exist in that household that is subject to the home study?

Ms. Barclay: Objection, Your Honor, asked and answered on his direct.

The Court: Overruled.

The Witness: Yes.

By Mr. Field:

Q. And your counsel just read you a portion of the 3700 Regulations. Are you familiar with those?

A. Yes.

Q. And I believe the quote she read you in her words was ability of applicant to work in partnership with Catholic Social Services. Is it correct to say the rights – say the ability of the applicant to work in partnership with an agency?

[Page 124]

A. Yes.

Q. They don't specifically refer to Catholic Social Services, right?

A. No.

Q. Does anywhere in the regs talk about the ability of the agency to work with the applicant, to your knowledge?

Ms. Barclay: Objection, Your Honor. It's asking for a legal question, and as far as quoting from regs, he may not be aware of.

Mr. Field: I am asking, to his knowledge, is it in the regulations, and not asking him to interpret the legal meaning of that.

The Court: Overruled.

The Witness: can you please ask me that again?

By Mr. Field:

Q. Do the regulations anywhere, to your knowledge, refer to or discuss the ability of the agency to work with the applicant or an agency to work with an applicant?

A. Not to my knowledge.

Mr. Field: Thank you. I have nothing further, Your Honor.

The Court: Okay. Any other questions?

[Page 125]

Ms. Barclay: Nothing further, Your Honor.

The Court: Okay. Thank you, Mr. Amato. Does the plaintiff have any further witnesses?

Ms. Windham: Your Honor, we do not have any further witnesses. However, we do want to make two motions. One motion first to move the admission of the documents that were attached to the James Amato declaration. We have about 20 different documents, which were attached to that declaration, and he authenticated those documents within that declaration. Defendant did have the opportunity to respond or object to those through their briefing, and we believe those should be allowed in at this time. We also would move for the admission of all of plaintiffs' declaration, including the declarations of James Black, Bishop McIntyre, and Doe Foster Mother Number 1.

Mr. Field: Your Honor, we would oppose both of those motions. There is an opportunity here to introduce documents, and obtain testimony from Jim Amato regarding any matters that plaintiffs believe relevant to this, and we have already opposed the introduction and trial of this by affidavit in the introduction of

affidavits of witnesses who are not present at this hearing.

[Page 126]

Ms. Windham: Your Honor, with regard to Doe Foster Mother Number 1, defendants did not object to the admission of her testimony yesterday. She was actually here yesterday. And we understood that they were planning to object to the admission of her declaration if we would have had her on the stand. She was not able to go here today. We asked her to be here today. So we feel that this would be an unfair bait and switch by the defendants, and now that she is not here, move to exclude her when they did not move so yesterday.

Mr. Field: Your Honor, I don't believe defendants' motion yesterday to exclude the affidavits — affidavits of witnesses whose testimony was not taken was at all ambiguous. It was across all of the evidence that plaintiffs wish to introduce in this hearing.

Ms. Windham: Your Honor, yesterday they specifically listed James Amato, James Black, and Bishop McIntyre. They did not mention Foster Mother Number 1. We would have put her on the stand, if we had known.

Mr. Field: Your Honor, those were examples of affiants that they were not introducing.

The Court: Since Doe Foster Mother Number 1 was present yesterday, and could not be present today, I'm going to permit the affidavit. However, the other exhibits, I'm not going to permit.

[Page 127}

Ms. Windham: Your Honor, to clarify, are you speaking about the other affidavits, or are you speaking —

The Court: Exhibits and the affidavits. The exhibits, my understanding is they were attached to the affidavit of Mr. Amato, who has testified here today.

Ms. Windham: Yes, Your Honor. Those were attached to his declaration, and they were properly authenticated in his declaration. We did not walk through and introduce every single one of those today in order to save time.

The Court: Well, time is not a problem. If you want to have them admitted, then you need to do it since Mr. Amato is here.

Ms. Windham: Your Honor, may we have a quick recess to look at those documents and determine which we need to admit?

The Court: Okay. You can have discussion with counsel.

(Brief recess.)

The Court: Are we ready?

Ms. Cortes: Just one more moment, Your Honor.

Mr. Field: Your Honor, can we approach for sidebar concerning this matter?

The Court: Yes.

[Page 128]

(Sidebar occurred.)

Ms. Barclay: We can tell you which attachments to Jim Amato's declaration we have agreed to, Your Honor. It is Attachment B, Attachment C.

The Court: B, C?

Ms. Barclay: B as in boy, C as in cat, D as in dog, and Attachment I as in igloo. There are some additional documents that we would like to admit. They are website or news reports that are frankly judicially noticeable, but for ease of reference, so they are part of the record, we would like to admit them as well. Would you like us to put Mr. Amato on the stand for those, Your Honor?

Mr. Field: Your Honor, our objection to those and the reason I asked for the sidebar is that I don't think we necessarily need to do this on stand. We can resolve this that would be both relevant and foundation as to Mr. Amato's actual knowledge of those documents, and I leave it to the Court. I don't think they are appropriate and relevant to this.

The Court: What they are are news reports?

Ms. Barclay: Here is an example of one report, Your Honor, the one talking about some of Mayor Kenney's comments with regard to the Archdiocese that are relevant to concerns about hostility of religious officials, [Page 129] and these have all been authenticated to the declaration.

The Court: Whether they are relevant, that's clearly an opinion piece.

Ms. Barclay: It Does have some quotes from him.

The Court: I am sure, but it's from the Philadelphia Magazine, and that's an opinion piece.

Ms. Barclay: We would agree that all of the awkward words are not particularly relevant. It is the quotes that they have collected from Mayor Kenney that we think are relevant.



Ms. Cortes: And, Your Honor, again, it would be our position that that is irrelevant to these proceedings. It is irrelevant to this particular matter. This article was written in 2015. We are talking about contract negotiations of 2018, three years later.

Mr. Field: Your Honor, they are not an authentication, the quotes.

Ms. Cortes: Or the full context, Your Honor.

Ms. Barclay: There is also, Your Honor, web pages that we have been talking about, some of the specialties of some agencies and programs like the behavioral health specialty or the special medical specialty that are relevant to the types of needs and populations that foster-care agencies serve and we believe that also would be [Page 130] relevant to these proceedings.

The Court: Well, you have testimony in that regard.

Ms. Barclay: We can, Your Honor.

The Court: I mean, you have already had testimony.

Ms. Barclay: I see.

The Court: We have had more than enough testimony as far as the specialization.

Mr. Rienzi: Your Honor, may I make a suggestion? One possibility would be these are items that — you know, they are websites and news articles that I am sure you have had litigants cite to you in briefs and things like that and ask you to take judicial notice of anyway. One possibility would be you don't necessarily need to rule either way on whether they come now. People can just make arguments from them and you can do with them what you will, which of course is your prerogative anyway. It seems like it would be

unnecessary and wasteful of Court time to put him back on the stand to have him say stuff that everybody knows what he is going to say just to draw a ruling or your consideration.

Ms. Cortes: Your Honor, we would agree with that part. We don't think it is necessary for him to go on the stand. Again, our objections are more so to the [Page 131] relevance as to the various websites of the different specialty needs. I would agree with Your Honor that there has been plenty of testimony on that. I think the objection is more so that they are duplicative of the testimony that Your Honor has already taken notice of. As to the articles regarding Mayor Kenney's words regarding the Archdiocese, it's our position that those are irrelevant.

Mr. Rienzi: We would strongly disagree as to the relevance of Mayor Kenney's statements about the Archdiocese, and as to whether or not some of them are duplicative, I would simply say I can't see or imagine any harm for the court or anybody else to simply letting them in.

Ms. Barclay: And there's another article we can present that I believe is this year, one of those articles so in as far as the concern is about the timeline, and given Mr. Amato's testimony today, that he was told by DHS officials that this had the eyes of the top officials in the City, this issue, we think that Mayor Kenney's comments are relevant to the type of motivation and hostility, if any, at issue in this case, regarding Catholic Social Services' religious beliefs.

The Court: I am not going to permit it. I don't think it's relevant. I don't think it's admissible. [Page 132] It is an opinion piece, it's somebody's opinion. The

interpretation is somebody else's interpretation. And so I'm not going to permit the article. As far as the specialization, he has already testified to that and I don't think you will be prejudiced as necessary to bring in the articles.

Ms. Barclay: Thank you, Your Honor.

Mr. Rienzi: Thank you, Your Honor.

Mr. Field: Thank you, Your Honor.

(Sidebar concluded.)

The Court: Okay. Does the plaintiff rest?

Ms. Windham: Yes, Your Honor, plaintiffs rest.

The Court: Okay. Does the City have any witnesses?

Ms. Oliver: Yes, Your Honor. At this time I call Kimberly Ali. Ms. Ali.

The Court: Okay.

Ms. Oliver: Thank you, Your Honor.

By Ms. Oliver:

Q. Ms. Ali, you heard the testimony of Mr. Amato today wherein he indicated that Doe Foster Child Number 1, former foster parent, Doe Foster Parent Number 1 desired to have him back in her care?

[Page 133]

A. Yes.

Q. First of all, would you inform the court, as to your knowledge, why Doe Foster Child Number 1 was removed from Doe Foster Parent Number 1's care?

A. Yes, Doe Foster Child Number 1 was removed from

Doe Foster Mother Number 1's home because the foster parent did not want to adopt Doe Foster Child Number 1, so he was moved —

Ms. Barclay: Objection to speculation, Your Honor.

The Court: On what do you base this?

The Witness: I base that on telephone conversations with the CUA case manager, the Catholic Social Services CUA case manager.

Ms. Barclay: Objection as to hearsay, Your Honor.

The Court: Overruled.

By Ms. Oliver:

Q. And when did you learn that Doe Foster Mother Number 1 desired to have Doe Foster Child returned to her care?

A. I learned that on the evening of May 25th at approximately 10:16 p.m.

Q. 2018?

A. Yes.

[Page 134]

Q. And how did you learn that?

A. I learned that via a text from Jim Black.

Ms. Oliver: Your Honor, may I approach the witness?

The Court: Yes.

Ms. Oliver: Your Honor, I have handed the witness what has been marked as Defense Exhibit Number 5. For the Court's information, we filed an unredacted copy under seal, and I have handed the witness a redacted copy for the purpose of today's hearing.

The Court: Yes.

By Ms. Oliver:

Q. Ms. Ali, will you please take a look at this exhibit?

A. Yes.

Q. Do you recognize it?

A. Yes.

Q. What is it?

A. It's a text message between Jim Black and myself.

Q. I wouldn't have you read the exhibit in its entirety, but with respect to page 1, will you please read the content of that text into the record?

A. "Friday, May 25th, 10:16 p.m. Hi Kim, sorry to bother you on a Friday night of a holiday weekend, but [Page 135] we have a boy who was moved earlier this month from one of CSS foster homes to a pre-adoptive home of another agency. For some reason the placement has not worked out, and CUA 4 contacted our foster mother who will take the child back. But DHS supposedly just told the case manager the child could not go back to our home. Wanting to do the best thing for the child of course. I'll follow your lead."

Q. And did you send a reply to that text message to Mr. Black?

A. Yes, I did.

Q. And what was the content of your reply?

A. Would you like me to read it?

Q. Please.

A. "Hey Jim, is the placement move an emergency for tonight? If not we can make the move on Tuesday after

getting the approval due to judicial rules that placements must be approved. Only time can make the move without Court approval, as you know, is if it is an emergency. Let me know.”

Q. Okay. And finally, did Mr. Black reply?

A. Yes.

Q. Please direct your attention to page – the third page of this exhibit. And why don’t you read only after the second redaction where it begins “But the good [Page 136] news is”?

A. That was Friday, May 25th at 11:58 p.m. “But the good news is I just learned that is now safely in another Devereux foster home, so no need to involve CSS Foster Child 1. Sorry to have bothered you. I really appreciate your help. Have a terrific holiday. Jim.”

Q. Thank you. And subsequent to having this correspondence with Mr. Black, did it then come to your attention that Doe Foster Child 1 needed to be removed from the Devereux foster home?

A. No. Prior to Jim Black’s outreach is the question? What is the question?

Q. No. My question is in this text message, isn’t it correct that Mr. Black indicated that “no need to include CSS in this issue anymore, it’s been resolved” essentially?

A. Yes.

Q. But did you then come to learn that the child needed to move from the Devereux foster home, where he was?

A. He was moved from the Devereux foster home into a respite home, where he has remained ever since.

Q. Did it come to your attention again that Doe Foster Mother Number 1 once again desired to have the child returned to her care?

[Page 137]

A. Yes.

Q. And how did that come to your attention?

A. That came to my attention on June 5th after a conversation that I had with First Deputy Commissioner Shapiro.

Q. Okay. And essentially what was the substance of that conversation?

A. The substance of the conversation was that she was bringing me up to speed in reference to the litigation, the pending litigation, she told me the scenario, and I told her —

Ms. Barclay: Objection as to hearsay, Your Honor.

The Court: Well, she said — she didn't say what she told her. She brought her up to speed. And as a result of what she said, what did you do?

The witness: I told her that I was familiar — I thought that I was familiar with Doe Foster Child Number 1.

By Ms. Oliver:

Q. And did you — ultimately, was Doe Foster Child Number 1 returned to — strike that. Ultimately, was Doe Foster Child Number 1 returned to Doe Foster Mother 1's care?

[Page 138]

A. Yes.

Q. How did that come about?

A. That came about on June 7th. I had a conversation with the CUA case management team. I spoke to the CUA case manager, the CUA supervisor, the CUA case director to get a better understanding as to the permanency for Doe Foster Child Number 1 and the foster parent's willingness now to adopt Doe Foster Child Number 1. After I spoke to the CUA case management team later on in the afternoon, I had a conversation with Doe Foster Parent Number 1, as well as counsel for Doe Foster Parent Number 1, Mrs. Barclay, to get a sense of her commitment in reference to the permanency and adoption of Doe Foster Child Number 1.

Q. Okay.

A. After hearing both sides, I felt that it was in the best interest to place Doe Foster Child Number 1 back into the home of Doe Foster Mother Number 1. However, I explained to both the CUA case management team, as well as Doe Foster Parent Number 1, that we needed to get judicial approval because this was not an emergency move, therefore the Court would have to approve the move.

Q. And to your knowledge, did the Court ultimately [Page 139] sign an order authorizing the child to return to Doe Foster Mother Number 1's care?

A. Yes.

Q. Do you recall what date that occurred?

A. June 12th.

Q. 2018?



A. Yes.

Q. And that was the date that the Court signed the order?

A. Yes.

Q. And the child returned to her care on that date?

A. Yes.

Q. Okay. And just briefly, one other thing. In his text message, Mr. Black indicated that — and again, I quote: “but DHS supposedly just told the case manager the child could not go back to our home.” Did you have an opportunity to verify that? Did you have any conversation with the Catholic CUA case manager?

A. Yes, I talked to the Catholic CUA case manager, Mr. Whitman, about —

Ms. Barclay: Objection as to hearsay.

The Court: Overruled.

The Witness: — about what happened the evening of May 25th. Number one, who did he speak to at [Page 140] DHS? He indicated that he could not remember, however, it was a female that he spoke to. I asked him the conversation that he had, and he indicated to me that the DHS staff person told him that she would have to get approval in order to place Doe Foster Child Number 1 back into the home of Doe Foster Child Number 2. He indicated that he communicated that information to Doe Foster Parent Number 1, that approval needed to occur before the foster child could be placed back in her home.

Ms. Oliver: Thank you, Ms. Ali. Your Honor, I have no further questions.

The Court: Any cross-examination?

Ms. Barclay: Yes, Your Honor, very briefly.

Cross-Examination

By Ms. Barclay:

Q. Good afternoon, Ms. Ali.

A. Good afternoon.

Q. On May 25th, did anyone from DHS communicate to you the need for that approval that you discussed on your direct examination?

A. No.

Q. Now, when did — the additional issues about Doe Foster Parent Number 1 and Doe Foster Child Number 1, when were those communicated to your attorneys?

[Page 141]

A. I'm not sure. I was actually on vacation or returning back from vacation on June the 5th.

Ms. Barclay: Your Honor, may I have permission to approach the witness?

The Court: Yes.

Ms. Barclay: This is 3e of the defendant's filing.

By Ms. Barclay:

Q. Can you turn with me to the back of this document, the very first e-mail on the chain, page 7. Have you ever seen this e-mail from Ms. Windham to Mr. Benjamin Field?

A. Yes.

Q. What is the date of this e-mail?

A. Friday, June 1st, 2018, at 9:14 p.m.

Q. And this is the e-mail that I will first be bringing to your attention, to DHS's attention some of these additional facts about Doe Foster Parent Number 1 and Doe Foster Child Number 1, correct?

Ms. Oliver: Objection, Your Honor, in that this document was sent to Mr. Field from Ms. Windham.

By Ms. Barclay:

Q. Ms. Ali, did you — you said you were familiar with this e-mail. Is this e-mail the way that you learned [Page 142] about additional facts from Doe Foster Child Number 1 and Doe Foster Mother Number 1?

A. No. I learned about the additional facts by way of our conversation with First Deputy Commissioner Shapiro on June the 5th.

Q. Okay. Was she relaying her understanding about that correspondence on June the 5th, is that your testimony?

Ms. Oliver: Objection. Calls for speculation.

The Court: I don't know how she can answer that. Sustained.

By Ms. Barclay:

Q. Do you know what the basis was for deputy Commissioner Shapiro's information about Doe Foster Mother Number 1?

A. I don't know the basis.

Q. You don't know the basis for her?

A. No.

Q. When you spoke with Mr. Black on May 25th, you knew that he was — he did not know the specifics of the case, right?

A. He knew some specifics of the case in that his text said that he was moved earlier this month from one of CSS's foster homes to a pre-adoptive home from another [Page 143] agency; that the placement has not worked out; that CUA 4 contacted our foster mother who would take the child back. So he knew some information.

Ms. Barclay: Your Honor, permission to approach the witness.

The Court: Yes.

Ms. Barclay: And this is her declaration.

By Ms. Barclay:

Q. Ms. Ali, I am reading from your declaration, if you turn to page 11. On paragraph 52, this begins your conversation that began Friday, May 25th at 10:16 p.m., correct?

A. Yes.

Q. And on paragraph 55, you said: "I subsequently called him to discuss whether it was an emergency, and he did not know the specifics of the case." Did I read that correctly?

A. Yes.

Q. Ms. Ali, you also had determined that it was in the best interest of Doe Foster Child Number 1 to be placed with Doe Foster Mother Number 1, correct?

A. Yes.

Q. And the judge made that determination as well?

A. Yes.

[Page 144]

Q. And if it weren't for the referral stoppage that you placed, he wouldn't have been placed with Doe Foster Mother Number 1 on the evening of the 25th, correct?

Ms. Oliver: Objection. Calls for speculation.

The Court: Overruled. You can answer.

The Witness: no.

By Ms. Barclay:

Q. He would not have been placed with the placement in his best interest where there is an emergency situation?

A. On May the 25th when I spoke to Jim, he could not answer whether or not it was an emergency move or not.

Q. I'm talking about before you spoke to Jim, because you would not have needed to get involved or speak to Jim at all if the placement had not already been denied at that point, correct?

Ms. Oliver: Objection, Your Honor. The question calls for speculation.

Ms. Barclay: It Does not call for speculation, Your Honor. Those are facts that are already in evidence.

The Court: Can you answer the question?

[Page 145]

The Witness: Can you repeat it?

By Ms. Barclay:

Q. By the time you spoke to Mr. Black, the – he was communicating with you because the placement by the CUA worker had already been denied, correct?

A. Mr. Black's text says, "DHS supposedly."

Q. And so if DHS had not denied the placement and said that, quote: "the case manager" — "just told the case manager the child could not go back to our home," if that had not have happened, James Black would not have been texting you at all that evening, would he?

Ms. Oliver: Your Honor, objection, based on speculation.

The Court: Sustained.

By Ms. Barclay:

Q. Mr. Black was texting you because a denial had happened according to his text message to you, correct?

Ms. Oliver: Objection.

The Court: Overruled.

The Witness: Repeat it again, I'm sorry.

By Ms. Barclay:

Q. Mr. Black was texting you that evening because DHS had denied the child being sent back to the Catholic Social Services home, correct?

Ms. Oliver: Objection. That's a [Page 146] mischaracterization. The text says "supposedly."

The Court: Well, if she knows.

The Witness: He said, "DHS supposedly," so I went by the basis of his text.

By Ms. Barclay:

Q. And so he is only texting you because he is saying, quote: "DHS just told the case manager the child could not go back to our home." Did I read that correctly?

A. Yes, you did.

Q. And so if that was true and if there was not that denial, Mr. Black would not have needed to text you about that situation that evening, would he?

A. True.

Ms. Barclay: No further questions, Your Honor.

The Court: Any other questions?

Ms. Oliver: No, Your Honor.

The Court: Okay. Thank you.

Ms. Cortes: Your Honor, can we see you briefly at sidebar?

The Court: Okay.

(Sidebar occurred.)

Ms. Cortes: Your Honor, we have two more witnesses. I understand from your law clerk that he said [Page 147] that you would be willing to go until 5:30. However, given that there are two witnesses and I don't think that either of them will be able to finish.

Mr. Field: If next witness would be Commissioner Figueroa, we would do our best to be focused, but it's a substantial amount of testimony.

The Court: Well, you can do the direct. That would be good to get it started.

Ms. Barclay: Your Honor, Ms. Windham has a plane ticket purchased to leave tomorrow morning and we

just are not in a position for this to continue again until tomorrow.

The Court: Well, I don't know how long you want me to stay, but . . .

Ms. Cortes: There is no way for us to finish.

Ms. Barclay: Can we discuss it?

Mr. Rienzi: Your Honor, if we continue tomorrow, what time tomorrow?

The Court: In the morning.

The Law Clerk: Actually, Judge, you are booked up fully tomorrow.

The Court: So it would be Thursday.

Ms. Windham: And I apologize, Your Honor, this is a trip that I booked before this case even arose. [Page 148] Did not realize this case might bleed into a third day.

The Court: Okay. Well, let's get started.

Mr. Field: Thank you, Your Honor.

(Sidebar concluded.)

The Court: Okay. Well, let's get started.

Mr. Field: Thank you, Your Honor.

The Court: City, call your next witness.

Mr. Field: The City calls Cynthia Figueroa to the stand.

(Witness sworn.)

The Witness: Cynthia Figueroa, first name is C-y-n-t-h-i-a. Last name Figueroa, F-i-g-u-e-r-o-a.



Mr. Field: Your Honor, may we clean up the exhibits that are from prior witnesses?

The Court: Yes.

Direct Examination

By Mr. Field:

Q. Commissioner Figueroa, thank you for being here today. Can you just state your current position with the City?

A. I am the Commissioner of the Department of Human Services for Philadelphia.

Q. Thank you. And before we get into the meat of this [Page 149] case, I want to start by having you tell us a little bit about your educational and professional background and how you came to the position you are currently in. Where did you go to college?

A. I went to Spring Hill College. It's the third oldest Jesuit institution in the nation.

Q. And when did you graduate from Spring Hill?

A. I graduated in 1995.

Q. Where was Spring Hill?

A. It's in Mobile, Alabama.

Q. What did you do to start your career after graduation?

A. Certainly. So I was just by the nature of my family history, we are first generation – first generation immigrants. Social justice was a big call, and a huge reason why my parents were very interested in making sure that I pursued an education, and really looked very fondly on the Jesuit education. So through college I did the Jesuit Volunteer Corp, where I

worked in Detroit, Michigan, in a domestic violence shelter, and I also worked with women who were incarcerated, who were up for parole.

Q. And where did you go after that position?

A. So I then moved to Philadelphia, and I have had over a 20-year career working with in social services with [Page 150] women and children, mostly supporting the needs and rights of children and families.

Q. Briefly — and we don't need to spend a lot of time — what are some of the organizations you've worked with and positions you've held?

A. Sure. So my first job in Philadelphia was Congreso de Latinos Unidas. I then worked at Women Against Abuse. I had the honor of serving in Mayor Nutter's administration as the Deputy Commissioner of the Department of Human Services. I was there for a time before I became the CEO of Congreso de Latino Unidas, and then subsequently, most recently, was appointed to serve as Commissioner of the Department of Human Services.

Q. And were some of those jobs, shall we say, hands-on with the communities, and some of those jobs supervisory?

A. Yes. So certainly the earlier part of my career was direct case management work with individuals. Early on when I moved to Philadelphia, I recognized the capacity and ability to handle and do more administrative and leadership work, but a huge portion of my work, both at Women Against Abuse and Congreso was directly connected to work in the community and with direct clients. [Page 151] My

office when I — the majority of the time that I ran Women Against Abuse was actually in the physical shelter where the women and children resided, so I was in daily contact with the women and children that we served. At Congresso, a community that I served for a number of years, my office was located in north Philadelphia. I went to community meetings. I participated in community events. I frequented the businesses in North Philadelphia, and worked very closely with the community.

Q. And you mentioned having worked for DHS during the Nutter administration?

A. That's correct.

Q. When did you work there and what position did you have?

A. So from 2008 to 2011, I was a Deputy Commissioner of Prevention.

Q. And what were your responsibilities in that position?

A. So my responsibilities were to oversee all of the prevention services that were for families and children who were not formally engaged in the child welfare system, so truancy, domestic violence, after school services, housing services, and in-home case management where there wasn't an acceptor for services [Page 152] cases.

Q. Thank you.

So I would like to shift and talk about your time at DHS currently and DHS's and your — DHS's responsibilities and your responsibilities as Commissioner. When did you become commissioner at DHS?

A. I was appointed in July of 2017.

Q. Was that appointment effective in July, or did your tenure start —

A. My tenure started in September of 2016.

Q. If you could, as Commissioner, what does DHS do? What is its mandate? What are its set of responsibilities?

A. Well, it's a huge job where I have had a number of counseled members and other individuals remind me it's probably the hardest job in the City of Philadelphia. But on a daily basis, I am responsible for 1,500 employees, a budget of well over 600 million, and I am charged as the county administrator to oversee the responsibility of the child welfare institution, so the responsibility is ensuring that we meet the state mandates, as well as federal mandates related to child welfare.

Q. And so how are those child welfare activities [Page 153] organized within DHS? What do they consist of, and how does DHS manage them?

A. We have multiple divisions, because it is a very large piece of work, so I have deputies that lead various divisions in the Department. You heard earlier from Deputy Commissioner Ali. She oversees what is called Child Welfare Operations, and that's everything from the very front end of our service, from the hotline, intake, and investigation to the work of the umbrella agencies, as well as the investigation piece that I mentioned, all the way through adoption and permanency. We also have other divisions, including Prevention. We have a Performance Management and Technology. We have a Finance and Contract division.

We have Juvenile Justice, and Administration and Management.

Q. So the foster-care services and foster-care children that are at issue in the litigation, what division do those fall under?

A. Child Welfare Operations.

Q. Does that include foster-care children who are single family placements and other children in the City's custody as well?

A. Yes.

[Page 154]

Q. Can you explain the full monopoly of children you have a responsibility there for, please?

A. Sure. When we refer to a child being in placement, that placement could be a foster-care home, a resource home that is kin, as well as congregate, so the residential placement.

Q. And so how many children overall — and I apologize if you said it, I am not sure — are in foster-care in the City's custody?

A. So currently, there are 6,000 kids in placement, and there are about another additional 4,000 who receive in-home case management services who are considered placement. So on any given day, we have a responsibility of over 10,000 kids in our system, and that's not including the juvenile justice part of the word.

Q. Understood. Thank you. Are some of the kids placed with relatives and some of those kids placed with foster-care families they don't previously have relationships with?

A. Yes. So one of the things that we have been very committed to is families first, and kinship first is the number-one priority, and that's a well-understood culture norm in the department. So I am happy to report in terms of the placement services that are home-based, [Page 155] so if you remove the residential, over 50 percent of our kids are with kin.

Q. And are you able generally to give numbers for how the remaining 50 percent of the children are placed?

A. They are placed in general foster-care. I don't have the breakdown of specialized.

Q. And you heard Ms. Ali's testimony yesterday regarding the structure of Community Umbrella Agency and foster-care agencies?

A. Yes.

Q. To your understanding, was that generally accurate?

A. Yes, that was accurate.

Q. So CSS foster-care agency is one of how many foster-care agencies in the City?

A. 30.

Q. Approximately how many children, to your knowledge, do they take care of?

A. In CSS foster-care?

Q. Correct.

A. I believe as of this month it's around 107.

Q. So let's shift for a moment — actually, let's just come back. We were talking about the children who are in the City's custody. When they — how do they first come into [Page 156] the City's custody?

A. So generally, they come to our attention through the hotline, and there is safety determined about whether or not the child can remain safely at home. If not, then there has to be an order of protective custody as a result of the investigation. We would make a determination of the placement needs of that child based on the level of care that has been determined by the Central Referral Unit.

Q. Can you explain what the Central Referral Unit is, and what it does?

A. So it's aptly named for its role that it plays, which it plays a central role in our department to manage any of the placement decisions for children in the child welfare system on the dependency side.

Q. So when a child first comes into the City custody, the Central Referral Unit does what?

A. So the Central Referral Unit would be able to determine through, as Ms. Ali outlined, the level of care tool that is used to determine the best and most accurate placement for that youth, and then we work to determine what placement that child would then fall into.

Q. And as Commissioner, what is your understanding? What guides those determinations?

[Page 157]

A. There are a host of issues. If the child has special medical needs, the child has acute intellectual disability issues that we have to consider in placement, if the child has a sibling that is already in the system, the age of the child.

Q. And we have heard the term throughout the past two days, “the best interest of the child.” What, as Commissioner, do you understand that to mean?

A. To us the best interest of the child is — you know, it’s a direct connection to our transformation effort, which our children are in homes with kin in their community in the least restrictive environments.

Q. So I would like to turn to the foster parent side of things, or what is sometimes called resource parents. Who are they, and how do they come to be available to the City to take care of the children who are in the City’s custody?

A. Well, they are everybody and anybody who expresses and has a capacity and interest in serving as a resource family in Philadelphia.

Q. And how does the City become aware of them such that they can offer children through the Central Referral Unit placements?

[Page 158]

A. There is an — on the City side, we have actively been involved in recruitment and engagement efforts with the community, so that we can expand the number of families. A number of foster-care agencies hire and have their own recruitment staff who actually work to identify their own families as well.

Q. Is recruiting or — and certifying foster-care parents a responsibility of all of the foster-care agencies that contract with the City?

A. It is.

Q. So you mentioned the City’s recruitment efforts.

A. Yes.



Q. What are those recruitment efforts, and why is the City engaged in them?

A. So we have been on a quest to — for a few things; one is to ensure that we have more kids in their communities in the least restrictive environments, and so we have been looking to reduce the congregate care numbers. And then we have been looking to make sure that we have all and as many options for our children in the system. So we believe the best way to do that is to ensure we can have more homes available, as well as make sure that we were identifying the fact that we had a large number of older youth that identified as LGBTQ, [Page 159] and we wanted to ensure that we had homes that were affirming to that youth, to that group.

Q. Is that group more difficult to find placements for than some other groups, in your experience?

A. It has, yes.

Q. Why do you understand that to be?

A. So that the child knows going into that home that there aren't any issues or challenges in regard to their own sexual identity or identification, and that they can behave freely and be who they are as an individual in that home with those resource parents.

Q. And what is the result of the City's recent recruitment efforts?

A. We have been highly successful. We are thrilled. We have identified and certified 75 homes since that recruitment effort, and we have also really expanded the network of individuals who have stepped forward to express an interest in becoming a resource parent.

Q. And you mentioned that there are children also in congregate care?

A. Yes.

Q. What is congregate care?

A. Congregate care is a residential placement that I might refer to as a shelter, a group home, or an [Page 160] institution.

Q. And is it — could all of those children be placed with families, or are there children —

A. No.

Q. — who are not appropriate to place with families?

A. There are a number of children that are in a residential setting for a number of factors that would not have them be an appropriate placement in foster-care.

Q. Outside of those circumstances, are there occasions where a child can be immediately placed with a foster family?

A. Yes, that's correct. There's a host of reasons, whether it's the young child's history; if there is acute, as I said before, behavioral health issue; if there are — unfortunately, there's oftentimes sexual, acting-out behavior, and the child has to be placed completely alone, so if there is another sibling or another child in the home, we cannot place that child right away. It is an incredibly complex system. The responsibility of managing over 6,000 kids, and the number of hotline calls and referrals and investigations that happen. We are always trying to ensure that we are [Page 161] making the best determination for that child.

Q. Is it DHS's responsibility, to the best of its ability, to review all of the information about child — children before making a placement?

A. Yes. We don't like to rush to make a determination that could further place a child in harm's way.

Q. Thank you. So I want to turn to talk about Catholic Social Services, the plaintiff here today, and more concretely the issues in this litigation. In your understanding, what does Catholic Social Services do for DHS?

A. They have to do a host of services for us, both on the child welfare, the delinquent, and the prevention services side of that, so it's — I am happy to talk about all of those individuals services that — almost everything I have highlighted that we have some capacity to have a contract with, we engage in contracts with Catholic Social Services.

Q. And in terms of broad foster-care activities, just generally, what do those include, not in details?

A. So they are a general foster-care provider, and so their responsibilities, as with all foster-care agencies, are to recruit, train, and certify foster-care [Page 162] homes and families.

Q. And were you involved in the last year's contracting process with Catholic Social Services for their foster-agency activities?

A. I sign all contracts for the Department.

Q. And you are familiar with the contract?

A. I am familiar with the contract.

Q. Does that contract, in your view as Commissioner assigned for the City, include the recruitment and certification of new foster-care families?

A. Yes. It clearly defines that as services rendered by the contractor.

Mr. Rienzi: Objection, Your Honor. It calls for legal conclusions.

The Court: Overruled.

By Mr. Field:

Q. And does the — and in your view, does the compensation under the contract compensate Catholic Social Services for those activities?

A. Yes.

Mr. Rienzi: Objection.

Ms. Barclay: Objection.

The Court: Overruled.

By Mr. Field:

Q. And Catholic Social Services also has a [Page 163] Community Umbrella Agency?

A. They do.

Q. What role do they play?

A. So all of the Community Umbrella Agencies, as with Catholic Social Services, are the case management component of the child welfare system, so that's the reform effort that was talked about yesterday. So all of the coordination of services who — of children who are in our care, whether in-home or placement in foster-care or a congregate-care setting, they

coordinate and support the work of that case to move it towards timely permanency.

Q. And are they responsible for working specifically with Catholic Social Services foster-care agency, or with any foster-care agency?

A. They are required to work with all foster-care providers.

Q. Thank you. So I would like to move to CSS's – to the closure of CSS's intake and the issues that are central to this litigation today. How did — what aspect of this matter first came to your attention?

Mr. Rienzi: Objection, vague.

By Mr. Field:

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Q. What aspect of CSS's referral policies that are at issue in this litigation first came to your attention?

The Court: Overruled.

The Witness: So what specifically came to my attention as I got a call from — we got a — DHS got a call from the Philadelphia Inquirer regarding knowledge that they had that two organizations, Catholic Social Services and Bethany Christian Services, were denying to serve same-sex couples.

Mr. Rienzi: Objection, and move to strike, Your Honor. It's hearsay.

The Court: Overruled. This is not for the truth of the matter.

By Mr. Field:

Q. And what did you do when you learned that?

A. Upon hearing that, both myself and First Deputy Commissioner Jessica Shapiro actually called a number of our faith-based institutions, and we started by calling Bethany Christian Services, as well as Catholic Social Services, to ask them their position regarding serving same-sex couples and serving their homes.

Q. What did you learn from the phone calls?

Mr. Rienzi: Objection, hearsay.

The Court: Overruled.

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The Witness: I was on the phone with Jessica and James Amato and he indicated that they would not, based on the religious position, certify same-sex homes, or do homes for adoption.

By Mr. Field:

Q. What did you learn from Bethany?

A. They had a similar statement. They indicated that they actually had same-sex homes that were certified, but their statement said that they were — they were unclear about their ability to serve same-sex couples.

Q. And did you — you said you contacted other foster-care agencies as well?

A. I did. I called a number of faith-based institutions that same day, and asked them what their position was.

Q. What did you learn from any of them?

Mr. Rienzi: Objection, hearsay.

Mr. Field: She is not offering for the —

The Court: Sustained.

By Mr. Field:

Q. Did any of the other agencies tell you that they would not certify same-sex couples?

Mr. Rienzi: Objection, hearsay.

The Court: Sustained.

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By Mr. Field:

Q. Are you aware of any other agencies that – in foster-care for the City that will not certify same-sex couples?

A. No.

Q. So what did you do after your conversation with Jim Amato that you just referenced?

A. So after my conversation with Jim Amato, I was immediately concerned because it would put the City in a position of discriminating against one particular community. I knew that that actually had to be explored further, and I made the determination that we would have to meet with them to discuss these matters further, and we would have to do an analysis, too, of how many children are we talking about, what is the impact on the kids that we served. I ultimately decided that it was in the best interest to close intake, so that I could look more deeply into this issue.

Q. Best interest of the home?

A. The best interest of the children.

Q. And why, in your view, was it in the best interest of the children to close intake at that time?

A. So I make determinations around closure regarding best interest, even if they are administrative [Page 167] or programmatic, in order to make sure that any additional children that we're putting there were not going to either be put in harm's way, or cause any sort of disruption. In this particular circumstance, adding additional children to the caseload could be problematic.

Q. And what — just so we are clear on what we are talking about, what does “close intake” mean to you?

A. So “close intake” is that we would not provide any — we would not send in the way of a referral any new children to be placed in a Catholic Social Services foster-care home.

Q. Is that any new children in all circumstances, or are there exceptions that DHS observes to those circumstances?

Mr. Rienzi: Objection, leading.

The Court: Overruled. You can answer.

The Witness: So exceptions as it related, yes, always since it is in the culture of the agency to look at kin, so, absolutely, the placement of siblings, the ability to also look to see the history of the child, if they had a recent placement with that provider.

The Court: Okay. Perhaps this would be an appropriate time to recess until Thursday at 9:30.

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Mr. Field: Thank you, Your Honor.

(All rise.)

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