



children's defense fund

Leave No Child Behind®

August 30, 2019

The Honorable John Lewis
Chairman, Subcommittee on Oversight
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Danny K. Davis
Chairman, Subcommittee on Worker and Family
Support
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Representatives Lewis and Davis,

On behalf of the Children's Defense Fund (CDF), we write to offer our response to your July 11, 2019 letter regarding your investigation into the waivers granted or currently being considered by the Department of Health and Human Services (HHS) for state child welfare systems. We appreciate the opportunity to share our perspective and expertise on such a critical matter. CDF has worked for more than four decades to better support vulnerable children and improve outcomes for children who are at risk of placement in foster care or already in the care of public child welfare systems.

CDF strongly opposes exemptions that allow foster care providers to use federal funds to reject prospective foster parents whose religion, marital status or sexual orientation do not fall in line with the religious beliefs expressed by the provider. As elaborated on below in response to the questions posed in your letter, these exemptions do not promote the best interests of children involved in the child welfare system and do not take into account the needs of vulnerable youth in care including older youth, youth of minority religions, LGBTQ youth, youth of color and disabled youth. We strongly oppose the approval of such waivers in order to help ensure that every young person and parent is connected with a loving, stable family.

We offer the following responses to the questions posed in your July 11, 2019 letter:

Q1: What are best practices in recruiting qualified foster and adoptive parents and making good matches between them and children in need of temporary or permanent homes?

The question of how to recruit foster parents is vitally important, as the child welfare community has long grappled with a shortage of high quality foster and adoptive homes. At a given time, well over 400,000 children remain in foster care in the United States with more than 120,000 waiting to be adopted. These numbers have increased every year for the last five years on a national level, as well as in 39 states, and have been exacerbated, especially, by the opioid crisis which, by some reports, accounts for more than one-third of all new cases entering the child welfare system. Now, with the implementation of the historic *Family First Prevention Services Act of 2018*, the child welfare system is prioritizing moving children out of institutional

settings and placing them with families. This is undoubtedly a positive step that will lead to improved outcomes for youth, but it also increases the need for more high-quality foster homes.

Unfortunately, the number of foster homes is not rising to meet the growing need for them and, in many states, it is declining. According to a survey from the Chronicle of Social Change, at least 15 states saw their number of foster homes decline between 2017 and 2018, with Mississippi, Minnesota and Rhode Island seeing declines of 35, 32 and 32 percent, respectively.¹ With a shortage of foster homes, caseworkers are forced to choose placements for youth simply because the placement is available, not necessarily because it is an ideal placement. This is especially true for youth deemed “hard to place,” including older youth, LGBTQ youth, sibling groups, youth of minority faiths, youth of color and youth with disabilities, who end up being placed in institutional care, seeing worse outcomes and aging out of the system at much higher rates than their peers.

It is crucial that states focus on recruiting not only more foster and adoptive families (or “resource families”), but the right families to meet the diverse needs of youth in their care. It is unconscionable, particularly during a time when so many youth are being denied the safety of a loving, stable family, that, for reasons that have nothing to do with merit, states and agencies are turning away people who want to be those very families. Instead of narrowing the view of what makes a good foster family to a particular demographic or faith, states should be expanding it. Children in foster care are extremely diverse, covering all races and ethnicities, sexual orientations, gender identities and gender expressions (SOGIE), and faiths. As one seeks to find appropriate placements for these youth, it is extremely important to recruit a similarly diverse group of foster parents, both in terms of demographics and attitudes. Recruiting a pool of foster parents of only one faith, background and attitude will make it impossible to meet the needs and affirm the identities of the diverse group of youth who need families. A youth needn't be placed only with a parent who shares their faith or demographic characteristics, but having a diverse array of foster parents increases the likelihood that a placement agency can find a family affirming of all of the aspects of a youth's identity.

The most effective recruitment tool for new foster parents is word of mouth, so making inroads to communities that have not traditionally been seen as target communities can lead to cascading gains. Conversely, a negative or unwelcoming experience can signal to a community that they are not welcome, as has been the case in states that have allowed foster placing agencies to discriminate, as well as those where discrimination is less explicit. For this reason, recruiting diverse foster parents requires a serious look at the barriers, even unintentional ones that signal to foster parents that they are not welcome. This means ensuring websites, brochures and promotional materials are intentionally reflective of a diverse array of families and available in multiple languages. Prominently displayed non-discrimination policies can symbolize to traditionally marginalized communities they, too, are welcome. Agencies can prove their commitment to recruiting and supporting diverse foster and adoptive families by intentionally connecting with these communities and planning recruitment events in locations that specifically target them, such as LGBTQ film festivals and religious minority community events. Targeted outreach has been shown to be more effective in recruiting foster and adoptive parents than general awareness campaigns, so agencies will need to be intentional about reaching an expanded array of target families if they want to build the diverse community of foster and adoptive parents needed to meet growing needs.

¹ The Chronicle of Social Change. 2018. “Who Cares: A National Count of Foster Homes and Families,” <https://www.fostercarecapacity.com/>.

To make sure there are enough foster and adoptive homes and the right foster and adoptive homes for all children who need them, it isn't enough to simply recruit families. Agencies need, also, to focus on retaining families, which requires re-examining the ways that they are trained and supported. Studies have shown that 30 to 50 percent of all foster parents step down within the first year, most often citing that they did not feel adequately supported or prepared.^{2,3} Particularly for foster parents who are serving youth with special medical or behavioral needs, training and support are crucial to promote placement stability and prevent burnout among foster parents. This includes not only initial training, but also the availability of continued training and resources that address concerns that arise during a placement. Providing this type of support can help stabilize placements that otherwise might fail.

This improved stability is crucial because studies consistently indicate that stability for youth in out of home care has dramatic impacts on physical and emotional development as well as long term outcomes for foster youth.⁴ Studies show that unnecessary placement changes negatively affect children, severing their connections to their peers and supportive adults, leading to poorer school outcomes and even impacting their ability to cope with stress on a biological level.^{5,6} Alternatively, keeping children in stable placements allows them to build strong relationships with caregivers, offering the felt safety necessary for healthy development.

Focusing on placement stability has the added benefit of aiding in foster parent recruitment. As previously stated, word of mouth is the number one way in which people are convinced to be foster parents. It follows that allocating resources to provide parents the support they need to maintain stable placements would not only reduce the need to recruit new foster placements, by strengthening the current pool, but would also help with recruitment efforts.

Confronting the dramatic shortages of foster parents would go a long way to ensuring good matches are made for youth in the system. Often, the problem is not that case workers don't know how to find the right homes for kids. It is that those homes are simply not available. Having a diverse array of available families who are trained and supported to care for youth would mean that caseworkers would have options to provide the right fit. However, it is important that caseworkers focus on matching youth to families that are prepared to accept and affirm all the myriad aspects of their complex identities. This requires tracking that information, including the SOGIE data that HHS proposed removing from AFCARS earlier this year (Document: 84 FR 16572),⁷ as well as including questions during foster parent screenings that specifically ask how families would respond to having youth with certain demographics or characteristics and what resources they would need to be able to parent those youth well. Providing caseworkers with this information and a robust pool of potential foster homes would be a significant step toward ensuring every youth receives an ideal placement.

² Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services. (2005). Understanding foster parenting: Using administrative data to explore retention. Retrieved from: <https://aspe.hhs.gov/execsum/understanding-foster-parenting-using-administrative-data-explore-retention>

³ Geiger, Jennifer M., Megan J. Hayes, Cynthia A. Lietz. et al. (2013). Should I stay or should I go? A mixed methods study examining the factors influencing foster parents' decisions to continue or discontinue providing foster care. *Children and Youth Services Review*, 35(9), 1356-1365.

⁴ (2010). Promoting Placement Stability (CW360°). Center for Advanced Studies on Child Welfare (CASCW), School of Social Work, College of Education and Human Development, University of Minnesota. Retrieved from the University of Minnesota Digital Conservancy, <http://hdl.handle.net/11299/185439>.

⁵ Rubin, D. M., O'Reilly, A. L., Luan, X., & Localio, A. R. (2007). The impact of placement stability on behavioral well-being for children in foster care. *Pediatrics*, 119(2), 336-344. doi:10.1542/peds.2006-1995

⁶ Fisher PA, Van Ryzin MJ, Gunnar MR. Mitigating HPA axis dysregulation associated with placement changes in foster care. *Psychoneuroendocrinology*. 2011;36(4):531-539

⁷ See CDF's comments on this NPRM here: <https://www.regulations.gov/document?D=ACF-2018-0003-0291>

Q2: *LGBTQ youth are overrepresented in our foster care system and have a longer road to permanent homes. What are some of the most effective approaches to help these youth?*

Supporting LGBTQ youth, particularly in light of *the Family First Prevention Services Act of 2018*, needs to begin when they are still with their families of origin. Family First emphasizes the importance of providing services to families to help them keep children at home, acknowledging that what is generally best for kids is to support their families so they never have to enter the system in the first place. Knowing that a significant reason that LGBTQ youth are overrepresented in care is due to rejection of their sexual orientation, gender identity or gender expression allows the system to be proactive in protecting them. When working with families seen to be at risk of entering foster care, providing resources to help them be more affirming of their child's identity, including education and connection to other parents who have already reconciled their concerns, can help prevent family separation and the trauma that comes along with it.

The most important thing that we can do as a system to support LGBTQ youth when they do enter care is to make sure they are in caring homes that are affirming of their identities. A feeling of safety and belonging is vital for the growth and development of any youth regardless of their SOGIE, and this is something that needs to be a focus in the care of all children. However, studies indicate that LGBTQ youth in care – particularly those who enter the system because of rejection from their families – are unlikely to feel safety and belonging. One study from the Georgetown University Center for Child and Human Development found that as many as 56 percent of LGBTQ youth in care spend at least some time homeless because they feel safer on the streets than in group or foster homes, which puts them further at risk of substance abuse, risky sexual behavior, victimization or criminal justice involvement.⁸

Creating a sense of safety for LGBTQ youth in care requires removing institutionalized discrimination within the system. Conversion “therapy” and all forms of anti-LGBTQ discrimination against youth are unconscionable and contrary to the purpose of a system that is meant to act in their best interest. Even when youth are not the direct targets of discriminatory practices, as in the case of agencies that discriminate against LGBTQ foster parents, they feel the impacts of discrimination. Being placed by an agency that would tell them they could not be a suitable parent in the future or one that requires doctrinal statements denying their gender identity means LGBTQ youth will not feel safe in the placements made for them, even if the resource family itself is affirming. Not only does such a system signal to youth that they aren't valued or wanted as they are, it sends the same signal to the potential foster and adoptive parents who are most equipped to offer LGBTQ youth a safe, loving home.

We do not have enough resource families who are prepared to be, and expected to be, affirming of LGBTQ youth. As a result, these youth are being repeatedly placed in psychologically damaging systems where they are rejected for core parts of their identity, reporting twice the rate of poor treatment in care, longer stays in residential care and significantly more placements than their non-LGBTQ peers. Agencies that recruit and match foster and adoptive parents need to work toward LGBTQ cultural competence and affirmation, including actively supporting families that will be affirming of youths' identities. Since we cannot know or anticipate which children will identify as LGBTQ, we need to be extremely careful, especially when placing young children, to evaluate how a resource family would work with an LGBTQ youth in their care.

⁸ Mallon, Gerald P. *We Don't Exactly Get the Welcome Wagon: The Experiences of Gay and Lesbian Adolescents in Child Welfare Systems*. New York: Columbia University Press, 1998.

In the same way that agencies will screen potential foster and adoptive parents to see whether they would be able to parent children with other backgrounds, experiences and needs (for example, whether they felt they could parent a child of a different race, a child who had been sexually abused, or a child with a developmental disability), these agencies need to talk with potential families to ascertain how they would react to an LGBTQ youth. Understanding what strengths they feel they could bring to supporting a gay child or a transgender or gender-nonconforming child would help caseworkers to make placements in those children's best interest. Understanding a potential family's concerns would help ensure that these families were able to receive the right resources and supports to make sure that they are the best possible parents they can be for vulnerable LGBTQ youth.

However, caring for these youth is not simply a matter of recruiting the right foster parents. It is vital that there is at least a basic level of LGBTQ cultural competency across all systems of care. When LGBTQ youth access services, including health care, mental and behavioral health, mentoring and any other supports that they access, they should be met with professionals who are affirming of their identity. Failing to protect them from discrimination will make it more difficult for them to feel safe in any care context. This extends especially to schools, where LGBTQ youth are far more likely to experience bullying than their non-LGBTQ peers, leading to absenteeism and higher dropout rates.⁹ Foster parents and caseworkers need to be prepared to effectively advocate for the children in their care with school counselors and teachers to keep young people safe.

Further, it is important that services be available that are specifically designed for LGBTQ youth. Having groups and organizations in the community focused on offering services to LGBTQ youth provides support, connection and a place to belong for youth who all too often are denied those very basic things. In many communities these groups end up being a resource for other organizations in the community, particularly in regards to training those working with youth to be culturally competent. There is a significant learning curve when it comes to serving LGBTQ youth, especially transgender and gender non-conforming youth. Having education and professional development available is extremely important because even while intending to provide support for these youth, one can unintentionally act in ways that cause harm.

Lastly, the focus on these questions overall is on LGBTQ youth in foster and adoptive families, but we would be remiss in our duties if we did not acknowledge that LGBTQ youth are overrepresented in institutional care. Policies to ensure their safety and healthy development need to also ensure cultural competency and affirmation in these settings. This involves mandating policies that support these youth, such as placing transgender and gender-nonconforming youth based on the gender with which they identify, not the one they were assigned at birth, and strict non-discrimination policies. The staff in these facilities should be screened for bias in the same way we would ask foster and adoptive families to be and offered training to ensure cultural competency.

Q3: Some states currently allow faith-based foster care providers to discriminate against qualified prospective parents on the basis of religion or sexual orientation using their non-federal dollars. How does that affect the state's ability to make a placement in the best interest of the child, including respecting the child's religious beliefs? How would it affect the likelihood of appropriate foster care placements if these policies were expanded?

⁹ Kann L, McManus T, Harris WA, et al. Youth Risk Behavior Surveillance - United States, 2017. *MMWR Surveill Summ.* 2018;67(8):1–114. Published 2018 Jun 15. doi:10.15585/mmwr.ss6708a1

Ten states (AL, KS, MI, MS, ND, OK, SC, SD, TX, VA) currently permit state-licensed child welfare agencies to refuse to place and provide services to children and families if doing so conflicts with their religious beliefs. Additional states have introduced bills recently to allow faith-based care providers to discriminate against qualified prospective parents in the name of religious freedom including Georgia Senate Bill 375¹⁰ and Colorado Senate Bill 241.¹¹

Georgia's SB 375 claims to allow more agencies to act in the interests of children and broaden opportunities for children to achieve permanency. However, this bill and the similar bills in other states actually close the door on qualified parents of faiths or with beliefs that differ from the faith-based agencies and prevent them from serving as resources for children in need of homes.

While extensive research has not been conducted on the impacts of discrimination on prospective foster parents, anecdotal evidence from multiple partners on the ground indicates that some qualified prospective foster parents^{12,13,14,15} – including LGBTQ foster parents, foster parents of minority religions and single foster parents – are discouraged or delayed from finding a successful placement when discriminatory practices are in place. Qualified prospective foster parents may be permanently deterred from trying to foster or adopt or may choose other avenues to creating a family because of experiences of discrimination. This especially harms Black prospective parents as Black foster and adoptive parents are more likely to be single and therefore likely to be discriminated against in the name of religious beliefs.¹⁶ When agencies turn away otherwise qualified foster parents because of differences in religious beliefs, they are turning away potential families for children and leaving children in their care without a supportive family longer than necessary or even leaving them to age out having never found a loving, stable family.

Rather than increasing adoptions for children and adolescents in foster care, these state laws and policies limit the pool of qualified foster parents and potentially cause serious negative impacts on children and adolescents in the child welfare system. By exacerbating the existing shortage of foster parents, these discriminatory laws and policies are delaying and preventing children from being placed with loving, stable families and placing them at higher risk of homelessness, involvement with the criminal justice system and future unemployment. Shortages of potential foster parents are detrimental to all children and adolescents in the child welfare system but are especially harmful for hard-to-place children including sibling groups, older youth, youth with disabilities, LGBTQ youth and youth of minority religions. Prospective parents of minority religions may be more likely to adopt or foster youth with the same religion,

¹⁰ Georgia. Legislature. Senate. *Keep Faith in Adoption and Foster Care Act*. SB 375. 2017-2018 Reg. Sess. *Georgia General Assembly*.

¹¹ Colorado. Legislature. Senate. *Colorado Children First Act*. SB18-241. 2018 Reg. Sess. *Colorado General Assembly*.

¹² Adoptions Together. "Using Faith to Discriminate: How Faith-Based Adoption Laws Hurt Us All." Adoptions Together, March 1, 2018. <https://www.adoptionsitogether.org/blog/2018/03/01/faith-based-adoption-laws-hurt-everyone/>.

¹³ Bewkes, Frank J., Shabab Ahmed Mirza, Caitlin Rooney, Laura E. Durso, Joe Kroll, and Elly Wong. "Welcoming All Families: Discrimination Against LGBTQ Foster and Adoptive Parents Hurts Children." Center for American Progress. <https://www.americanprogress.org/issues/lgbt/reports/2018/11/20/461199/welcoming-all-families/>.

¹⁴ Oakley, Cathryn. "Disregarding the Best Interest of the Child: Licenses to Discriminate In Child Welfare Services". Washington, DC: Human Rights Campaign Foundation, 2017.

¹⁵ "Trump's Anti-LGBTQ Agenda Will Keep Foster Children From Having a Loving Home." American Civil Liberties Union. <https://www.aclu.org/blog/lgbt-rights/lgbt-parenting/trumps-anti-lgbtq-agenda-will-keep-foster-children-having-loving>.

¹⁶ Gates, Gary, M.V. Lee Badgett, Jennifer Ehrle Macomber, and Kate Chambers. *Adoption and Foster Care by Gay and Lesbian Parents in the United States*. The Williams Institute and the Urban Institute. March 2007.

and LGBTQ individuals are more likely to adopt or foster sibling groups, older youth, youth with disabilities and youth of color.^{17,18} Allowing agencies to discourage or ban these prospective parents from fostering and adopting reduces the chances of these hard-to-place children finding permanent, stable homes and undermines the best interest of these children.

Within the child welfare system, states are responsible for making provisions for the religious needs of those in their care. In the New York case, *Wilder v. Sugarman*, the Second Circuit concluded that the state is required to make “reasonable efforts” to accommodate the religious preferences of foster children and their families of origin.¹⁹ Studies support the positive impacts and increased resilience that can result from connecting children with their religious communities and providing opportunities for them to practice their faith as religious involvement is associated with reductions in substance abuse, mental health concerns and antisocial behavior among adolescents in foster care.²⁰ Although children of specific faiths do not necessarily need to be placed with parents of the same faith to feel supported and have their religious beliefs respected, allowing agencies to create religious litmus tests limits the pools of prospective parents available to provide loving and supportive homes to these children. In the case of South Carolina’s Miracle Hill, for instance, prospective foster parents are required to be followers of Jesus Christ, to be active in and accountable to a Christian church and to agree to the ministries’ doctrinal statement before being considered. For prospective parents like Aimee Maddonna, this means that being Catholic, Jewish, Muslim, a less-active Christian or a different faith is enough to turn away otherwise qualified and loving foster care placements. By allowing foster care providers to turn away qualified foster parents if they do not meet the providers’ religious requirements, states are prioritizing the preferences of foster care providers over the needs of the children they are meant to serve and are failing to make reasonable efforts to accommodate the religious preferences of families of origin and foster children that do not have the same religion as faith-based providers.

By limiting the pool of loving and supportive foster parents, states are also failing to prioritize the best interests of their LGBTQ youth – who are already overrepresented in the foster care system. These discriminatory laws and policies make it more difficult to find supportive, permanent placements for LGBTQ youth and put these youth at even greater risk of hostility, religious conversion, sexuality conversion “therapy” and other abuses.²¹ Returning to the example of South Carolina’s Miracle Hill, when agreeing to the required doctrinal statement, prospective foster parents must agree that marriage should only be between one man and one woman, that God only creates each person as either male or female and that these two sexes are distinct and complementary. In addition to turning away LGBTQ prospective parents, religious litmus tests like that of Miracle Hill are turning away prospective parents that would be supportive to LGBTQ youth and youth that are gender non-conforming or may be questioning their gender or sexuality. This lack of safe and supportive placements can be significantly detrimental to the health and well-being of LGBTQ youth in foster care as it often leads to mental health concerns, more frequent placements, academic concerns and homelessness.

¹⁷ Brodzinsky, David, and Abbie Goldberg. “Practice Guidelines Supporting Open Adoption n Families Headed by Lesbian and Gay Male Parents: Lessons Learned from the Modern Adoptive Families Study,” May 2016, 31.

¹⁸ Brief for Amici Curae Family Equality Council and COLAGE in Support of Appellees, *Fulton v. City of Philadelphia*, 922 F.3d 140, 2019.

¹⁹ *Wilder v. Sugarman*, 385 F. Supp. 1013 (S.D.N.Y. 1974)

²⁰ Collins, Mary Elizabeth & Scott, Judith C., 2019. “*Intersection of race and religion for youth in foster care: Examining policy and practice*,” *Children and Youth Services Review*, Elsevier, vol. 98(C), pages 163-170.

²¹ Maxwell, Larisa. “Fostering Care for All: Towards Meaningful Legislation to Protect LGBTQ Youth in Foster Care” 1 (n.d.): 21.

Not only does discrimination against qualified foster parents have negative impacts on the children and adolescents in the child welfare system, it also creates unnecessary financial burdens for states. By limiting the pool of qualified foster parents, these discriminatory laws and policies cost state and federal governments significant resources to keep children in care rather than moving them to qualified, loving families.²² A 2007 Williams Institute report, for example, found that if the federal government were to ban LGBTQ individuals from acting as foster parents, it would cost the US between \$87-\$130 million per year (\$107-\$160 million per year when adjusted for inflation).²³ Similarly, in 2009, when Kentucky was considering Senate Bill 68, The Child Welfare Adoption Act – which would have prohibited same-sex and different-sex unmarried couples from fostering or adopting – the Williams Institute estimated the impact it would have had on foster children and the state government. They found that prohibiting unmarried couples from fostering or adopting would have resulted in 630 foster children (11.2 percent of those care) being removed from their current homes or placement in the first year, an additional 85 children not being adopted or remaining in foster care longer (12.1 percent of all Kentucky adoptions that year), all at a cost of more than \$5.3 million to the state of Kentucky in the first year (\$6.3 million when adjusted for inflation).²⁴

Q4: Other states have laws prohibiting discrimination against qualified potential parents, which apply to non-federally-funded placements. How do those laws affect the ability of those states to make placements in the best interest of the child?

There continues to be a shortage of qualified individuals willing to adopt or foster children in the child welfare system. As of 2017, there were over 440,000 children in foster care and over 120,000 waiting to be adopted. Although some argue nondiscrimination laws will result in the closure of faith-based agencies and further shortages in foster care providers, this has not been the case in the states that have already enacted nondiscrimination requirements. In a recent Amicus Brief regarding *Fulton v City of Philadelphia*, seventeen states and D.C. used their positive experiences with nondiscrimination enforcement to advocate for the Third Circuit Court of Appeals to uphold the District Court’s decision not to issue a preliminary injunction requiring Philadelphia to allow discrimination against same-sex couples in the provision of foster care services.²⁵ In the experiences of the Amici States, nondiscrimination requirements have not caused shortages in foster care providers – including faith-based providers. Instead, in the few instances where faith-based agencies have chosen to discontinue their foster care or adoption services, the states were successfully able to fill any gaps by drawing on a diverse group of contractors to serve prospective parents and children in a nondiscriminatory manner and finding other ways to collaborate with the faith-based agencies.

According to the *Every Child Deserves a Family Act of 2017*, adoption is often the first choice for LGBTQ individuals and couples when considering building a family.²⁶ Although this makes LGBTQ individuals highly motivated resources for the child welfare system, prospective foster and adoptive parents are often discouraged or delayed by experiences of discrimination or fear

²² U.S. Congress, House, Committee on Ways and Means, Subcommittee on Human Resources, *Increasing Adoptions from Foster Care*, 130th Cong., 1st sess., February 27, 2013.

²³ Gates, Gary, M.V. Lee Badgett, Jennifer Ehrle Macomber, and Kate Chambers. "Adoption and Foster Care by Gay and Lesbian Parents in the United States." 2007..

²⁴ Williams Institute to Senator Kathy W. Stein, memorandum, February 24, 2009. "Kentucky Senate Bill 68 Cost Estimate".

²⁵ Brief for Massachusetts, California, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Iowa, Maine, Maryland, Minnesota, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington as Amici Curiae in Support of Philadelphia, *Fulton v. City of Philadelphia*, 922 F.3d 140, 2019.

²⁶ U.S. Congress. Senate. *Every Child Deserves a Family Act*. S. 1303. 115th Cong., 1st sess. Introduced in Senate June 7, 2017 <https://www.congress.gov/bill/115th-congress/senate-bill/1303/text>

of hostility. On the other hand, inclusive and explicitly nondiscriminatory environments encourage same-sex couples to foster and adopt.²⁷ Currently, five states (CA, MI, NJ, NY, RI) and the District of Columbia explicitly prohibit foster care discrimination based on sexual orientation and gender identity and an additional four states (MA, MD, OR, WI) explicitly prohibit foster care discrimination based on sexual orientation alone.²⁸ By prohibiting discrimination against qualified potential parents, these states are working to address the shortage of prospective parents by reducing barriers to fostering or adopting and opening more homes to children in the child welfare system. In Massachusetts, for example, between 15 and 28 percent of adoptions of foster children have involved same-sex parents over the past 10 years.

Through enacting laws and policies that prohibit discrimination, states fulfill their legal obligation to act in the best interests of the children they serve by maximizing the number of potential homes available and ensuring the children have the best chances of finding safe and supportive placements. The more than 440,000 children in foster care have diverse experiences, identities and needs, making it crucial for foster care providers to recruit broad and diverse pools of parents that can best meet each child's needs and provide stable and supportive homes. For instance, because of adversities they may have faced, LGBTQ foster and adoptive parents, as well as those of other traditionally marginalized groups such as religious minorities, are more likely better able to relate to foster or adopted children's feelings of isolation or differentness and are more likely to be affirming of LGBTQ foster youth and youth with other marginalized identities.

By prohibiting discrimination on religious grounds, states are not only banning explicit discrimination against prospective parents with different faiths and LGBTQ parents, they are also banning implicit discrimination that is often related. A third of single adoptive parents are Black and half of single foster parents are Black (compared to 12 percent of all adoptive parents and 26 percent of all foster parents), which means that religious litmus tests that discriminate against single parents disproportionately harm Black prospective parents.²⁹ Banning discrimination against qualified parents therefore limits agencies' ability to implicitly discriminate on the basis of race, leads to more diverse placements and lessens the disproportionate negative impact on children of color, especially Black children.

Q5: What further information would your organization like to share with members of Congress and HHS in order to guide further policy discussions about foster and adoptive parent selection and its role in ensuring that we act in the best interest of the child?

In the South Carolina waiver, there was an alarming omission of any mention of the well-being of children. It is important never to forget that the purpose of the child welfare system is to act in the best interest of vulnerable children. While the needs of foster parents, placement organizations and other adults involved in the system are important – especially in so much as supporting their needs helps to support the best interests of children – the well-being of children *must* be paramount. Anything less is tantamount to forgetting, or, worse, neglecting, our duties.

²⁷ Brief for Amici Curiae Family Equality Council and COLAGE in Support of Appellees, *Fulton v. City of Philadelphia*, 922 F.3d 140, 2019.

²⁸ Movement Advancement Project, "Foster Care Laws & Regulations." http://www.lgbtmap.org/equality-maps/foster_care_laws.

²⁹ Gates, Gary, M.V. Lee Badgett, Jennifer Ehrle Macomber, and Kate Chambers. *Adoption and Foster Care by Gay and Lesbian Parents in the United States*. The Williams Institute and the Urban Institute. March 2007.

In every decision made within the child welfare system, all involved parties must constantly be evaluating the impact those actions and decisions have on the vulnerable children we serve. The *only* thing we should be asking ourselves when considering a placement is whether that placement is the best option for the child. As we strive to recruit more foster parents for children, we should always be asking ourselves how we can find the best placements for the most kids, not what is most comfortable for us. When we consider policy changes to how we fund and regulate agencies that are tasked with recruiting and supporting foster parents, the only thing we should consider is how we recruit safe, loving, supportive families for every single child that needs them.

We are all responsible for the well-being of children who have experienced neglect and abuse. By providing this waiver and offering a federal stamp of approval for taxpayer-funded discrimination, HHS has ignored that the role and the profound responsibility of federally funded foster placement agencies is to act in the best interest of children. By placing the comfort of foster placing agencies over the needs of children who need safe, supportive, loving homes, we are doing a profound disservice and neglecting the sacred duty we have to these children.

The Children's Defense Fund strongly supports the investigation by the House Ways and Means Committee into the waivers granted or currently being considered by HHS. We appreciate the opportunity to respond to your request for input. We share your fears that these efforts by HHS will exacerbate the current foster parent shortage, leading to worse outcomes for youth who have already suffered abuse and neglect. The decision to grant these waivers stands in direct opposition to the cardinal rule of the child welfare system, to always act in the best interest of the child.

Thank you for your diligence in helping to ensure every child has the safe, loving, stable home they deserve. We would be happy to discuss any of our comments in more detail with you or others on your staff.

Sincerely yours,



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