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The Support Center for Child Advocates (Child Advocates) and Philadelphia Family Pride (PFP) have moved to intervene in this case as defendants as of right pursuant to Federal Rule of Civil Procedure 24(a)(2) or, alternatively, for permissive intervention under Rule 24(b)(1). Child Advocates and PFP submit this Memorandum of Law in support of their Motion to Intervene.

Background

As the Court knows from the papers that the parties and the proposed intervenors have already filed, Catholic Social Services (CSS) contracts with the City of Philadelphia Department of Human Services (DHS or City) to find families for children in Philadelphia's foster care system.

Earlier this year, after learning that CSS had a policy of refusing to license qualified same-sex couples to be foster parents or place children in the homes of same-sex couples, the City stopped making new foster care referrals to CSS. The City advised CSS that its exclusion of same-sex couples violated CSS's contract with the City.

CSS and some of its foster families brought this lawsuit challenging the suspension of foster care referrals. Plaintiffs claim the City is legally obligated to continue referring foster care cases to CSS despite its refusal to comply with DHS contract provisions.

Child Advocates and PFP seek to intervene as defendants. Both organizations have interests that will be directly and significantly impacted by the disposition of this case. Child Advocates represents individual children in the foster care system as court-appointed counsel or guardian *ad litem* and advocates for public policy to advance the interests of children in the public child welfare system, including children needing foster care placement. Declaration of Frank P. Cervone ("Cervone Decl.") ¶¶ 3, 4. PFP is a membership organization of LGBTQ+ parents and prospective parents, and their members include same-sex couples who seek to foster

children in Philadelphia. Declaration of Stephanie Haynes (“Haynes Decl.”) ¶¶ 2, 3. PFP advocates to protect the interests of same-sex couples and their children, including the right to equal treatment of those seeking to care for children in the public child welfare system. Haynes Decl. ¶ 4. PFP also is committed to helping recruit foster parents from the LGBTQ+ community, and has expended significant resources in that effort. Haynes Decl. ¶ 5.

If Plaintiffs prevail in this lawsuit, it would cause significant harm to proposed intervenors and the constituents they represent. If this Court accepts Plaintiffs’ position that the City is legally required to permit contract agencies to turn away qualified prospective foster families headed by same-sex couples if they have religious objections to such families, the children in the foster care system whose interests Child Advocates represent will be denied access to families who could meet their needs. Cervone Decl. ¶ 23. It would also subject PFP members to discrimination in their pursuit of fostering, and the risk of such discrimination would impair PFP’s efforts to recruit LGBTQ+ foster parents. Haynes Decl. ¶¶ 14-16. Both organizations would have to expend additional resources as a result of a ruling for Plaintiffs. Cervone Decl. ¶ 26; Haynes Decl. ¶ 16. The Court should allow Child Advocates and PFP to intervene as defendants to protect their vital interests in this dispute.

Argument

I. Child Advocates and PFP Are Entitled to Intervene as of Right Under Rule 24(a).

To intervene as of right, a prospective intervenor must establish: (1) the application for intervention is timely; (2) the applicant has a sufficient interest in the litigation; (3) the asserted interest may be affected or impaired as a practical matter by the disposition of the action; and (4) the interest is not adequately represented by an existing party in the litigation. Fed. R. Civ. P. 24(a)(2); *In re Community Bank of N. Va.*, 418 F.3d 277, 314 (3d Cir. 2005). “Rule 24 demands flexibility when dealing with the myriad situations in which claims for intervention arise.”

Kleissler v. U.S. Forest Serv., 157 F.3d 964, 972 (3d Cir. 1998). Proposed intervenors meet each of these criteria.

A. The Motion to Intervene Is Timely.

Courts in this Circuit should consider the “totality of the circumstances” when deciding the timeliness of a motion to intervene. *Wallach v. Eaton Corp.*, 837 F.3d 356, 371 (3d Cir. 2016). Factors to consider include: (1) the stage of the proceedings; (2) whether intervention would result in prejudicial delay to the parties to the case; and (3) the reason for the intervening party’s delay in filing its Motion after it learned or should have learned of its right to intervene. *Id.* at 371, 376-77. A motion to intervene surely is timely when the proceedings have barely begun and the applicant filed its motion promptly after learning of the lawsuit. *See, e.g., Mountain Top Condominium Ass’n v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 369 (3d Cir. 1995). Here, as in *Mountain Top*, Child Advocates and PFP “promptly sought intervention upon learning their interests were in jeopardy.” *Id.* at 370.

Plaintiffs filed their Complaint less than a month ago; the City has not responded to the Complaint; there has been no discovery; and the case has not resolved by court decree or settlement.¹ This motion is timely.

B. Proposed Intervenors Have a Sufficient Interest that Could Be Impaired by the Disposition of this Lawsuit.

Proposed intervenors may intervene as of right because they have a “cognizable legal interest” that “may be affected or impaired[] as a practical matter by the disposition of the action.” *Pennsylvania v. President, United States of America*, 888 F.3d 52, 58-59 (3d Cir. 2018)

¹ Courts have allowed intervention far into litigation. *See, e.g., U.S. v. Alcan Aluminum, Inc.*, 25 F.3d 1174, 1182 (3d Cir. 1994) (holding intervention was timely even four years after the complaint was filed).

(citations omitted) (alteration in original). An interest is “legally cognizable” if it is specific, capable of definition, and “will be affected in a substantially concrete fashion by the relief sought.” *Id.* at 58 (quoting *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998)). When deciding whether that interest is “in jeopardy in the lawsuit,” “[the] focus is on the ‘practical consequences’ of the litigation.” *Pennsylvania*, 888 F.3d at 59 (quoting *Brody ex rel. Sugzdinis v. Spang*, 957 F.2d 1108, 1122-23 (3d Cir. 1992)). Intervention is appropriate when there is a “tangible threat to the applicant’s legal interest.” *Brody*, 957 F.2d at 1123. Courts have routinely recognized that nonprofit organizations have the right to intervene to protect interests that are significant to the organization’s mission.²

Child Advocates and PFP have specific, legally cognizable interests that this action threatens to impair.

1. This Lawsuit Threatens the Interests of Child Advocates.

Child Advocates is a nonprofit organization that provides legal representation and social services to children. Cervone Decl. ¶ 3. Child Advocates is appointed by the Family Court of Philadelphia under the auspices of the Pennsylvania Juvenile Act to serve as counsel and guardian *ad litem* for individual children in various types of court proceedings, including

² See, e.g., *Shipyard Assocs., L.P. v. City of Hoboken*, No. CIV.A. 14-1145 CCC, 2014 WL 6685467, at *2-4 (D.N.J. Nov. 26, 2014) (“nonprofit organization comprised of Hoboken residents focused on issues such as open space preservation and recreation along the Hudson River waterfront in Hoboken” permitted to intervene as of right in lawsuit challenging Hoboken ordinance prohibiting riverside construction); *Am. Farm Bureau Fed. v. Env. Protection Agency*, 278 F.R.D. 98, 111 (M.D. Pa. 2011) (environmental groups satisfied standard for intervention as of right in suit challenging EPA water quality standards); *Associated Dog Clubs of N.Y. State v. Vilsack*, 44 F. Supp. 3d 1, 2 (D.D.C. 2014) (Humane Society permitted to intervene as of right in a lawsuit challenging a rule that extended the licensing requirements of the Animal Welfare Act to online pet dealers in order to protect its interest in preventing animal cruelty); *Herdman v. Town of Angelica*, 163 F.R.D. 180, 186-88 (W.D.N.Y. 1995) (environmental group permitted to intervene as of right to defend a law regulating waste facilities).

dependency proceedings for children in foster care. 42 Pa. Cons. Stat. Ann. § 6300 *et seq.*; Cervone Decl. ¶ 4. In the last fiscal year (ending June 30, 2017), Child Advocates represented 1,100 children. Cervone Decl. ¶ 5. Child Advocates also advocates for public policy that furthers the well-being of children in the foster care system. *Id.* ¶ 3.

Plaintiffs' challenge to the City's enforcement of its contractual provisions barring discrimination against prospective foster parents threatens Child Advocates' interest in ensuring that children in the system have access to the largest and broadest possible pool of qualified foster parents, and that critical decisions about what foster homes are appropriate for individual children are based solely on considerations about what is in the child's best interests, rather than an agency's religious beliefs. *Id.* ¶¶ 17-22. If CSS is permitted to turn away qualified prospective foster parents in same-sex relationships, this will mean that some of the children whose interests are represented by Child Advocates may be denied a loving home with the family that may be best matched to meet the child's needs. *Id.* ¶ 23. If Plaintiffs prevail in this litigation, Child Advocates may have to expend additional resources or divert resources in order to fix the problems that will arise if religious tests can govern child placement decisions and to deal with the damage that may result to children and their well-being. *Id.* ¶ 26; *cf. Wildearth Guardians v. Salazar*, 272 F.R.D. 4, 19 (D.D.C. 2010) (permitting intervenor to intervene as defendant where if plaintiffs prevailed, intervenor would be required "to expend additional time and resources, with the ultimate outcome uncertain"). Accordingly, Child Advocates is entitled to intervene as of right to protect its interests.

2. This Lawsuit Threatens the Interests of PFP.

Philadelphia Family Pride (PFP) is a nonprofit membership organization of LGBTQ+ parents and prospective parents (including foster and adoptive parents), and their children. Haynes Decl. ¶ 2. PFP members include same-sex couples who seek to foster children in

Philadelphia. *Id.* ¶ 3. It is PFP’s mission to protect the interests and rights of LGBTQ+ couples and their families, including the right to equal treatment of those seeking to care for children in the public child welfare system. *Id.* ¶ 4. In addition, in partnership with the City, PFP recruits prospective foster parents from the LGBTQ+ community to help address the significant need for qualified, licensed placement options in Philadelphia’s child welfare system, including more supportive placement options for LGBTQ+ children. *Id.* ¶¶ 5-6. Over the past year, PFP has held five recruitment events attended by approximately 66 prospective foster parents, and has more recruitment events planned for 2018, including one in August. *Id.* ¶ 8.

Plaintiffs’ lawsuit, if successful, would significantly impair PFP’s specific, legally cognizable interests in two ways.

First, a ruling in favor of Plaintiffs would mean that CSS and any other contracting agencies that have religious objections to same-sex couples would be free to turn away same-sex couples seeking to become foster parents or refuse to place children with these families. This would create obstacles for PFP members who wish to welcome foster children into their homes, and subject them and their families to the harm and stigma of discrimination. Haynes Decl. ¶¶ 13-16. PFP is entitled to intervene to prevent such harm to its members.

A ruling in favor of Plaintiffs would also harm PFP by undermining its efforts to recruit foster families from the LGBTQ+ community. If the ruling in this case establishes that contract agencies have the right to exclude same-sex couples based on their religious beliefs, families from the LGBTQ+ community who would be interested in becoming foster parents may be deterred from doing so; understandably, they may decide to avoid subjecting themselves and their families to that kind of discriminatory treatment. Haynes Decl. ¶ 1. PFP will have to expend additional resources on their recruitment efforts in order to overcome the deterrent effect

of a ruling in favor of Plaintiffs. Haynes Decl. ¶ 16. PFP is entitled to intervene to protect its efforts to recruit LGBTQ+ foster families for Philadelphia children.

C. The City Cannot Adequately Represent the Interests of Child Advocates or PFP, or the Children and Families They Serve.

The burden of demonstrating inadequacy of representation is generally “treated as minimal” and requires showing only that the existing party “may” not adequately represent the putative intervenor’s interests. *E.g., Pennsylvania*, 888 F.3d at 60. Although, in the Third Circuit, courts generally presume that a proposed intervenor’s interests are adequately represented if the proposed intervenor is seeking the same outcome as a government entity, *e.g., Kleissler*, 157 F.3d at 972, and courts have recognized a broad range of circumstances that warrant deviation from this presumption and justify intervention on the side of the government. Child Advocates and PFP can easily satisfy this burden of demonstrating that there is “reasonable doubt” as to whether the City will adequately represent their interests or those of the children or families whom the organizations serve. *Kleissler*, 157 F.3d at 967.

First, courts have acknowledged that government entities may not adequately represent the interests of nonprofit organizations seeking to intervene on the government’s side in litigation that implicates a broad range of issues and might require the government to take unpopular opinions or compromise among competing interests. For example, in *American Farm Bureau*, the Court found that the intervenor-defendants, environmental groups, were not adequately represented by the government because the issues in the litigation made it likely that the government might want to compromise among a wide range of affected interests. *Am. Farm Bureau Fed.*, 278 F.R.D. at 111. The Court observed that the government “must consider not only the interests of the public interests groups, but also the possibly conflicting interests from agriculture, municipal stormwater associations, and land developers,” and that this

“incongruence of interests may lead EPA to settle or otherwise resolve this litigation in a matter unfavorable to [proposed intervenors’] interests, or may dissuade EPA from appealing a decision that adversely affects [proposed intervenors’] interests.” For these reasons, the Court concluded that the intervenors’ interests were not adequately represented. *Id.* at 112.

Similarly, in *Wild Equity Institute v. City and County of San Francisco*, No. C11-00958, 2011 WL 2532436 (N.D. Cal. June 24, 2011), the plaintiffs sued the City of San Francisco contending that the City’s operation of a particular golf course violated the Endangered Species Act. A nonprofit organization promoting public golf courses (SFPGA) sought to intervene as a defendant. In ruling that the SFPGA could intervene as of right, the court pointed out that many San Francisco residents might actually agree with the plaintiffs’ position, as a consequence of which “[the City] may not necessarily be willing to make the same arguments as SFPGA would [make].” *Id.* at *3. As a result, SFPGA was permitted to intervene as of right. *See also In re Sierra Club*, 945 F.2d 776, 780 (4th Cir. 1991) (in reversing denial of intervention of environmental organization seeking to help defend environmental regulations, court explained that the organization, unlike the state, “does not need to consider the interests of all South Carolina citizens” or consider the union’s interest).

In this case, the City may not adequately represent the interests of Child Advocates and PFP because the City has broader and different interests than proposed intervenors, and may have incentives to compromise among those competing interests, which may result in it taking different positions than Child Advocates and PFP would take. While the City has an interest in promoting the well-being of children in the foster-care system and in preventing discrimination against its residents—interests shared by Child Advocates and PFP, respectively—the City has a separate interest in being able to enforce its contracts with contractors such as CSS that is not

shared by the proposed intervenors. The City’s competing contractual, political, and governmental interests could affect its litigation position. *See, e.g., Kleissler*, 157 F.3d at 973-74 (“the government represents numerous complex and conflicting interests . . .” and the “straightforward” interests of intervenors “may become lost in the thicket of sometimes inconsistent governmental policies”).

Moreover, the City’s litigation positions may be subject to change in accordance with changes to the composition, power, and policy views of its officials. *Kleissler*, 157 F.3d at 974 (“it is not realistic to assume that the [government] agency’s programs will remain static or unaffected by unanticipated policy shifts”).

Child Advocates and PFP should be permitted to intervene in order to vigorously defend their interests, without being burdened by the competing pressures on the City, and to protect their organizations’ interests from possible compromise. Cervone Decl. ¶ 27; Haynes Decl. ¶ 19.

Finally, proposed intervenors intend to present the Court with arguments that do not appear to be the main focus of the City’s defense—that if the City were to adopt the policy that Plaintiffs seek, it would violate the Establishment Clause and the Equal Protection rights of PFP members. *See generally* The City of Philadelphia’s Memorandum of Law in Opposition to Plaintiffs’ Motion for a Temporary Restraining Order and Preliminary Injunction, ECF No. 20. Specifically, proposed intervenors would provide the court with a full analysis of why allowing government-contracted agencies to use religious screening criteria in providing public foster care services violates the Establishment Clause. They would explain why it would impermissibly: i) delegate a government function to a religious organization while allowing that government function to be performed using religious standards, *see Larkin v. Grendel’s Den Inc.*, 459 U.S. 116 (1982); ii) use government funds for religious purposes, *see Teen Ranch, Inc. v. Udow*, 479

F.3d 403 (6th Cir. 2007); and iii) privilege religious beliefs to the detriment of third parties. *See Estate of Thornton v. Caldor Inc.*, 472 U.S. 703 (1985).

Proposed intervenors would also provide a full legal analysis of why the City would violate the Equal Protection Clause if it allowed its contract agencies to exclude prospective families headed by same-sex couples based on their religious beliefs. They will address the application of heightened equal protection scrutiny to discrimination based on sexual orientation, *see Whitewood v. Wolf*, 992 F. Supp. 2d 410 (M.D. Pa. 2014); such a policy's violation of equal protection under any level of scrutiny; and the equal protection prohibition against government deference to others' desire to discriminate. *See, e.g. Paltmore v. Sidoti*, 466 U.S. 429 (1984). They would also provide evidence demonstrating the harm of the unequal treatment. *See, e.g., Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525 (9th Cir. 1983) (wildlife organizations met their burden of showing that the government may not adequately represent their interests in light of the risk that the government would not necessarily make all of the wildlife organizations' arguments and the fact that the organizations' perspectives offered "a necessary element to the proceedings that would be neglected").

For all these reasons, Child Advocates and PFP have met the minimal burden of demonstrating that the City may not adequately represent their interests.

II. Alternatively, the Court Should Allow Child Advocates and PFP to Intervene Under Rule 24(b)(1).

If the Court denies Child Advocates' and PFP's motion to intervene as of right under Rule 24(a), the Court should exercise its discretion to permit Child Advocates and PFP to intervene under Rule 24(b). A court may grant permissive intervention on a timely motion where the movants have "a claim or defense that shares with the main action a common question of law or fact" and the intervention will not unduly "delay or prejudice adjudication of the

original parties' rights." F.R.C.P. 24(b)(1)(B), 24(b)(3). In addition, a court should also consider "whether intervention is necessary to protect rights that are not identical to an existing party." *Pa. Gen. Energy Co., LLC v. Grant Twp.*, No. 14-209, 2015 WL 6002163, at *2 (W.D. Pa. Oct. 14, 2015), *aff'd*, 658 F. App'x 37 (3d Cir. 2016) (citation omitted). Where a proposed intervenor's interests "are directly affected by the outcome of [the] litigation and . . . those interests are not identical to [the parties], permissive intervention is appropriate." *Pa. Gen. Energy Co.*, 2015 WL 6002163, at *3.

All of these factors weigh in support of allowing permissive intervention by Child Advocates and PFP under Rule 24(b) if the Court does not grant them intervention as of right under Rule 24(a).

As discussed above, the motion to intervene was filed very early in this litigation. As such, allowing proposed intervenors to intervene in this case would not delay or prejudice the adjudication of the original parties' rights.

Child Advocates' and PFP's defense shares common questions of law or fact with the main action. Significantly, the parties' and the putative intervenors' defenses all ultimately turn on the question of whether CSS has a right to continue its stated policy of rejecting qualified same-sex couples from becoming licensed foster parents and refusing to place children with qualified same-sex couples.

And Child Advocates' and PFP's intervention is necessary to protect rights that, as discussed above, are not identical to the City's rights. Their "participation in litigation critical to their welfare should not be discouraged." *Arizona v. California*, 460 U.S. 605, 615 (1983), *decision supplemented*, 466 U.S. 144 (1984).

Indeed, the Court will benefit from their participation. This is a case of great importance, and Child Advocates' and PFP's participation in this case will ensure that all of the relevant stakeholders' interests and arguments are fully aired before the Court, thus protecting the rights of the original parties as well as the children and same-sex couples whose interests are represented by Child Advocates and PFP. *Cf. Daggett v. Comm'n on Governmental Ethics & Election Practices*, 172 F.3d 104, 113 (1st Cir. 1999) ("The fact that the applicants may be helpful in fully developing the case is a reasonable consideration in deciding on permissive intervention.").

For all of the foregoing reasons, even if the Court denies Child Advocates' and PFP's motion to intervene as of right under Rule 24(a), the Court should permit Child Advocates and PFP to intervene under Rule 24(b).

Conclusion

For the foregoing reasons, Child Advocates and PFP respectfully request that the Court grant their motion to intervene as of right under Rule 24(a), or in the alternative, permit them to intervene under Rule 24(b).

Dated: June 15, 2018



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CERTIFICATE OF SERVICE

I hereby certify that on this date, the foregoing memorandum of law, declarations, and proposed answer in support of the Motion of the Support Center for Child Advocates and Philadelphia Family Pride to Intervene As Defendants were filed electronically and served on all counsel of record via the ECF system of the United States District Court for the Eastern District of Pennsylvania.

Dated: June 15, 2018

/s/ Molly Tack-Hooper

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SHARONELL FULTON, *et al.*

Plaintiffs,

v.

CITY OF PHILADELPHIA, *et al.*

Defendants.

Civil No. 2:18-cv-02075

[PROPOSED] ANSWER OF INTERVENOR-DEFENDANTS

AND NOW, come Intervenors, Support Center for Child Advocates and Philadelphia Family Pride, by their attorneys, and submit the following answer to the Complaint:

1. On information and belief, it is admitted that Catholic Social Services (“CSS”) is a social welfare agency that, among other things, has provided services for children in foster care in Philadelphia through its contracts with the Philadelphia Department of Human Services (“DHS”). It is denied that the City’s actions with respect to CSS are political grandstanding or that the City’s actions in any way sacrifice the needs of children. After reasonable investigation, Intervenors are without information sufficient to form a belief as to the truth or falsity of the remaining averments in this paragraph.

2. Denied.

3. After reasonable investigation, Intervenors are without information sufficient to form a belief as to the truth or falsity of the averments in this paragraph.

4. After reasonable investigation, Intervenors are without information sufficient to form a

belief as to the truth or falsity of the averments in this paragraph.

5. It is denied that the City is “penalizing” CSS or any foster parent who works with CSS or that the City’s decisions are motivated by the agency’s Catholic beliefs. After reasonable investigation, Intervenors are without information sufficient to form a belief as to the truth or falsity of the remaining averments in this paragraph.

6. To the extent the averments in this paragraph constitute conclusions of law, no response is required. To the extent this paragraph purports to make factual averments, they are denied.

IDENTIFICATION OF PARTIES

7. After reasonable investigation, Intervenors are without information sufficient to form a belief as to the truth or falsity of the averments in this paragraph.

8. It is denied that Ms. Fulton’s current foster children will be “immediately” – or ever – “transferred away” if the City terminates or refuses to renew its contract with CSS. After reasonable investigation, Intervenors are without information sufficient to form a belief as to the truth or falsity of the remaining averments in this paragraph.

9. It is denied that the City is denigrating or discriminating against the religious beliefs of Ms. Fulton or any other Plaintiff. After reasonable investigation, Intervenors are without information sufficient to form a belief as to the truth or falsity of the remaining averments in this paragraph.

10. After reasonable investigation, Intervenors are without information sufficient to form a belief as to the truth or falsity of the averments in this paragraph.

11. After reasonable investigation, Intervenors are without information sufficient to form a belief as to the truth or falsity of the averments in this paragraph.

12. After reasonable investigation, Intervenors are without information sufficient to form a

belief as to the truth or falsity of the averments in this paragraph.

13. It is admitted, on information and belief, that CSS has provided services for children in foster care in Philadelphia pursuant to contracts with DHS. After reasonable investigation, Intervenor is without information sufficient to form a belief as to the truth or falsity of the remaining averments in this paragraph.

14. After reasonable investigation, Intervenor is without information sufficient to form a belief as to the truth or falsity of the averments in this paragraph.

15. After reasonable investigation, Intervenor is without information sufficient to form a belief as to the truth or falsity of the averments in this paragraph.

16. After reasonable investigation, Intervenor is without information sufficient to form a belief as to the truth or falsity of the averments in this paragraph.

17. After reasonable investigation, Intervenor is without information sufficient to form a belief as to the truth or falsity of the averments in this paragraph.

18. Admitted.

19. It is admitted that Department of Human Services (“DHS”) is an agency of the City of Philadelphia. Intervenor is without information sufficient to form a belief as to the truth or falsity of the remaining averments in this paragraph.

20. Admitted.

JURISDICTION AND VENUE

21. The averments in this paragraph constitute conclusions of law to which no response is required.

22. The averments in this paragraph constitute conclusions of law to which no response is required.

23. The averments in this paragraph constitute conclusions of law to which no response is

required.

FACTUAL ALLEGATIONS

Foster Care Under Pennsylvania and Federal Law

24. Denied as stated. The text of the cited article speaks for itself.

25. Admitted.

26. The referenced statute speaks for itself. The averments in this paragraph constitute conclusions of law to which no response is required.

27. To the extent the averments in this paragraph constitute conclusions of law, no response is required. To the extent the averments in this paragraph purport to assert that foster care agencies may add religious requirements to the qualifications for foster parents, the averments are denied.

28. To the extent the averments in this paragraph constitute conclusions of law, no response is required. To the extent the averments in this paragraph purport to assert that foster care agencies are legally permitted to add religious requirements to the qualifications for foster parents, the averments are denied.

Philadelphia's Foster Care Program

29. After reasonable investigation, Intervenors are without sufficient information to form a belief as to the truth or falsity of the averments in this paragraph.

30. It is admitted that the City refers children who are unable to remain in their homes for placement in foster care. After reasonable investigation, Intervenors are without sufficient information to form a belief as to the truth or falsity of the remaining averments in this paragraph.

31. After reasonable investigation, Intervenors are without sufficient information to form a belief as to the truth or falsity of the averments in this paragraph.

32. After reasonable investigation, Intervenors are without information sufficient to form a

belief as to the truth or falsity of the averments in this paragraph.

33. The averments in this paragraph constitute conclusions of law, to which no response is required.

34. After reasonable investigation, Intervenors are without information sufficient to form a belief as to the truth or falsity of the averments in this paragraph.

35. After reasonable investigation, Intervenors are without information sufficient to form a belief as to the truth or falsity of the averments in this paragraph.

Catholic Social Services' Foster Care Program

36. After reasonable investigation, Intervenors are without sufficient information to form a belief as to the truth or falsity of the averments in this paragraph.

37. After reasonable investigation, Intervenors are without sufficient information to form a belief as to the truth or falsity of the averments in this paragraph.

38. After reasonable investigation, Intervenors are without sufficient information to form a belief as to the truth or falsity of the averments in this paragraph.

39. After reasonable investigation, Intervenors are without sufficient information to form a belief as to the truth or falsity of the averments in this paragraph.

40. It is admitted that CSS has provided services for children in foster care in Philadelphia. After reasonable investigation, Intervenors are without information sufficient to form a belief as to the truth or falsity of the remaining averments in this paragraph.

41. After reasonable investigation, Intervenors are without information sufficient to form a belief as to the truth or falsity of the averments in this paragraph.

42. After reasonable investigation, Intervenors are without information sufficient to form a belief as to the truth or falsity of the averments in this paragraph.

The City Targets Catholic Social Services and Breaches Its Contract

46. The texts of the City Council Resolution and news article speak for themselves. After reasonable investigation, Intervenors are without information sufficient to form a belief as to the truth or falsity of the remaining averments in this paragraph.

47. After reasonable investigation, Intervenors are without information sufficient to form a belief as to the truth or falsity of the remaining averments in this paragraph.

48. The text of the referenced letter speaks for itself.

49. To the extent this paragraph claims that the Commission could not investigate claims of discrimination without the enumerated steps, those averments are conclusions of law as to which no response is required. After reasonable investigation, Intervenors are without sufficient information to form a belief as to the truth or falsity of the remaining averments in this paragraph.

50. After reasonable investigation, Intervenors are without sufficient information to form a belief as to the truth or falsity of the averments in this paragraph.

51. To the extent this paragraph claims that the City has wrongfully “suspended” or “terminated” its contract with CSS by ceasing to refer children to CSS for foster placement, those averments are conclusions of law as to which no response is required. Intervenors are without sufficient information to form a belief as to the truth or falsity of the remaining averments in this paragraph.

52. The averments in this paragraph constitute conclusions of law to which no response is required. To the extent a response is required, Intervenors are without sufficient information to form a belief as to the truth or falsity of the averments in this paragraph.

53. The averments in this paragraph constitute conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

54. The text of the referenced letter speaks for itself.

55. After reasonable investigation, Intervenor is without sufficient information to form a belief as to the truth or falsity of the averments in this paragraph.

56. Denied.

57. The averments in this paragraph constitute conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

58. The averments in this paragraph constitute conclusions of law to which no response is required. To the extent a response is required, the averments are denied.

59. The averments in this paragraph constitute conclusions of law to which no response is required. After reasonable investigation, Intervenor is without sufficient information to form a belief as to the truth or falsity of the remaining averments in this paragraph.

60. The averments in this paragraph constitute conclusions of law to which no response is required. To the extent a response is required, Intervenor is without sufficient information to form a belief as to the truth or falsity of the averments in this paragraph.

61. To the extent this paragraph claims that the City has targeted or penalized any Plaintiff because of that Plaintiff's religious beliefs, the averment is denied. After reasonable investigation, Intervenor is without sufficient information to form a belief as to the truth or falsity of the remaining averments in this paragraph.

62. The texts of the referenced news articles speak for themselves. It is denied that the City has targeted CSS because of its religious beliefs. After reasonable investigation, Intervenor is without sufficient information to form a belief as to the truth or falsity of the remaining averments in this paragraph.

63. The text of the letter speaks for itself.

64. The text of the letter speaks for itself.

65. After reasonable investigation, Intervenor is without sufficient information to form a

belief as to the truth or falsity of the averments in this paragraph.

66. After reasonable investigation, Intervenors are without sufficient information to form a belief as to the truth or falsity of the averments in this paragraph.

67. The text of the letter speaks for itself.

68. The text of the letter speaks for itself.

69. The first averment in this paragraph relates to the text of a letter, which speaks for itself.

The second averment in this paragraph is denied.

70. Denied as stated. The text of the letter speaks for itself.

71. The text of the letter speaks for itself.

The City's Unlawful Actions Harm Catholic Social Services and the Children of Philadelphia

72. After reasonable investigation, Intervenors are without sufficient information to form a belief as to the truth or falsity of the averments in this paragraph.

73. After reasonable investigation, Intervenors are without sufficient information to form a belief as to the truth or falsity of the averments in this paragraph.

74. After reasonable investigation, Intervenors are without sufficient information to form a belief as to the truth or falsity of the averments in this paragraph.

75. Denied that the City's suspension of referrals to CSS was "unlawful." After reasonable investigation, Intervenors are without sufficient information to form a belief as to the truth or falsity of the remaining averments in this paragraph.

76. The text of the City's letter speaks for itself. The remainder of this paragraph poses a future hypothetical, as to which neither Intervenors nor anyone else can form a belief as to the truth or falsity of the averment.

77. It is denied that the City's suspension of referrals to CSS was "unlawful." After reasonable investigation, Intervenors are without sufficient information to form a belief as to the

truth or falsity of the remaining averments in this paragraph.

78. After reasonable investigation, Intervenors are without sufficient information to form a belief as to the truth or falsity of the averments in this paragraph.

CLAIMS

Count I

Violation of Religious Freedom Protection Act, 71 Pa. Stat. Ann. § 2404

79. Intervenors re-allege all responses set forth above and incorporate them herein.

80. The averments in this paragraph constitute conclusions of law to which no response is required.

81. To the extent the averments in this paragraph constitute conclusions of law, no response is required. To the extent this paragraph purports to make factual averments, they are denied.

82. To the extent the averments in this paragraph constitute conclusions of law, no response is required. To the extent this paragraph purports to make factual averments, they are denied.

83. To the extent the averments in this paragraph constitute conclusions of law, no response is required. To the extent the extent this paragraph purports to make factual averments, they are denied.

84. The averments in this paragraph constitute conclusions of law as to which no response is required.

85. Denied.

Count II

42 U.S.C. § 1983: Violation of the First Amendment to the U.S. Constitution Free Exercise Clause, Not Neutral

86. Intervenors re-allege all responses set forth above and incorporate them herein.

87. The averments in this paragraph constitute conclusions of law to which no response is required.

88. To the extent the averments in this paragraph constitute conclusions of law, no response is required. To the extent this paragraph purports to make factual averments, they are denied.

89. Denied.

90. Denied.

91. To the extent the averments in this paragraph constitute conclusions of law, no response is required. To the extent this paragraph purports to make factual averments, they are denied.

92. Denied.

Count III

42 U.S.C. § 1983: Violation of the First Amendment to the U.S. Constitution Free Exercise Clause, Not Generally Applicable

93. Intervenors re-allege all responses set forth above and incorporate them herein.

94. The averments in this paragraph constitute conclusions of law to which no response is required.

95. Denied.

96. After reasonable investigation, Intervenors are without sufficient information to form a belief as to the truth or falsity of the averments in this paragraph.

97. Denied.

98. After reasonable investigation, Intervenors are without sufficient information to form a belief as to the truth or falsity of the averments in this paragraph.

99. To the extent the averments in this paragraph constitute conclusions of law, no response is required. To the extent this paragraph purports to make factual averments, they are denied.

100. Denied.

Count IV

42 U.S.C. § 1983: Violation of the First Amendment to the U.S. Constitution Free Exercise Clause, System of Individualized Assessments

101. Intervenors re-allege all responses set forth above and incorporate them herein.

102. The averments in this paragraph constitute conclusions of law to which no response is required.

103. Denied.

104. Denied.

105. Denied as stated. The City has not sought to control CSS's expression of its beliefs, only how CSS performs its contractual duties. After reasonable investigation, Intervenors are without sufficient information to form a belief as to the truth or falsity of the remaining averments in this paragraph.

106. The averments in this paragraph constitute conclusions of law to which no response is required.

107. To the extent the averments in this paragraph constitute conclusions of law, no response is required. To the extent this paragraph purports to make factual averments, they are denied.

108. To the extent the averments in this paragraph constitute conclusions of law, no response is required. To the extent the extent this paragraph purports to make factual averments, they are denied.

109. Denied.

Count V

42 U.S.C. § 1983: Violation of the First Amendment to the U.S. Constitution Free Speech Clause, Compelled Speech

110. Intervenors re-allege all responses set forth above and incorporate them herein.

111. Denied.

112. Denied.

113. To the extent the averments in this paragraph constitute conclusions of law, no response is required. To the extent this paragraph purports to make factual averments, they are denied.

114. Denied.

Count VI

**42 U.S.C. § 1983: Violation of the First Amendment to the U.S. Constitution
Free Speech Clause, Retaliation for Protected Speech**

115. Intervenors re-allege all responses set forth above and incorporate them herein.

116. The averments in this paragraph constitute conclusions of law to which no response is required.

117. To the extent the averments in this paragraph constitute conclusions of law, no response is required. To the extent this paragraph purports to make factual averments, they are denied.

118. Denied.

119. Denied.

120. Denied.

Count VII

**42 U.S.C. § 1983: Violation of the First Amendment to the U.S. Constitution
Free Exercise and Establishment Clauses, Denominational Preference and Discrimination**

121. Intervenors re-allege all responses set forth above and incorporate them herein.

122. The averments in this paragraph constitute conclusions of law to which no response is required.

123. Denied.

124. To the extent this paragraph claims that Defendants have penalized CSS, that is denied. After reasonable investigation, Intervenors are without sufficient information to form a belief as to the truth or falsity of the remaining averments in this paragraph.

125. It is denied that Defendants prefer some religious beliefs and practices and that Defendants discriminate against Plaintiffs' beliefs and practices. The remaining averments in this paragraph constitute conclusions of law to which no response is required.

126. To the extent the averments in this paragraph constitute conclusions of law, no response is required. To the extent this paragraph purports to make factual averments, they are denied.

127. Denied.

Count VIII
42 U.S.C. § 1983: Violation of the Fourteenth Amendment to the U.S. Constitution
Equal Protection

128. Intervenors re-allege all responses set forth above and incorporate them herein.

129. The averments in this paragraph constitute conclusions of law to which no response is required.

130. Denied.

131. Denied as stated. It is admitted that other DHS contract agencies have not had their referrals suspended, but denied that the differential treatment is based on the beliefs they espouse.

21. It is denied that Defendants prefer one set of religious beliefs over Plaintiffs' religious beliefs. The remaining averments in this paragraph constitute conclusions of law to which no response is required.

132. Denied.

Count IX
Violation of the Pennsylvania Constitution Article I, § 3 Religious Freedom

133. Intervenors re-allege all responses set forth above and incorporate them herein.

134. The averments in this paragraph constitute conclusions of law to which no response is required.

135. To the extent the averments in this paragraph constitute conclusions of law, no response is required. To the extent this paragraph purports to make factual averments, they are denied.

136. To the extent the averments in this paragraph constitute conclusions of law, no response is required. To the extent this paragraph purports to make factual averments, they are denied.

137. To the extent the averments in this paragraph constitute conclusions of law, no response is required. To the extent this paragraph purports to make factual averments, they are denied.

138. Denied.

Count X

Violation of the Pennsylvania Constitution Article I, § 7 Freedom of Press and Speech

139. Intervenors re-allege all responses set forth above and incorporate them herein.

140. The averments in this paragraph constitute conclusions of law to which no response is required.

141. Denied.

142. Denied.

143. Denied.

144. Denied.

145. To the extent the averments in this paragraph constitute conclusions of law, no response is required. To the extent this paragraph purports to make factual averments, they are denied.

146. Denied.

Count XI

**Violation of the Pennsylvania Constitution Article I, § 26
Discrimination by the Commonwealth and its political subdivisions**

147. Intervenors re-allege all responses set forth above and incorporate them herein.

148. The averments in this paragraph constitute conclusions of law to which no response is required.

149. The averments in this paragraph constitute conclusions of law to which no response is required.

150. Admitted.

151. To the extent the averments in this paragraph constitute conclusions of law, no response is required. To the extent this paragraph purports to make factual averments, they are denied.

152. The averments in this paragraph constitute conclusions of law to which no response is

required.

153. Denied.

154. Denied as stated. It is admitted that other DHS contract agencies have not had their referrals suspended, but denied that the differential treatment is based on the beliefs they espouse.

155. Denied.

156. Denied.

Count XII

Violation of the Philadelphia Charter Article X, § 10-111 Discrimination by the City

157. Intervenors re-allege all responses set forth above and incorporate them herein.

158. The averments in this paragraph constitute conclusions of law to which no response is required.

159. Admitted.

160. Denied.

161. Denied.

Count XIII

Breach of Contract

162. Intervenors re-allege all responses set forth above and incorporate them herein.

163. Admitted on information and belief.

164. Denied. The contract is a writing that speaks for itself.

165. To the extent the averments in this paragraph constitute conclusions of law, no response is required. To the extent this paragraph purports to make factual averments, Intervenors are without information sufficient to form a belief as to the truth or falsity of those averments.

166. Denied.

167. Denied.

Count XIV
Equitable Estoppel

168. Intervenors re-allege all responses set forth above and incorporate them herein.

169. After reasonable investigation, Intervenors are without sufficient information to form a belief as to the truth or falsity of the averments in this paragraph.

170. To the extent the averments in this paragraph constitute conclusions of law, no response is required. To the extent this paragraph purports to make factual averments, Intervenors are without information sufficient to form a belief as to the truth or falsity of the averments in this paragraph.

171. To the extent the averments in this paragraph constitute conclusions of law, no response is required. To the extent this paragraph purports to make factual averments, Intervenors are without information sufficient to form a belief as to the truth or falsity of those averments.

172. Denied.

Count XV
42 U.S.C. § 1983: Violation of the First and Fourteenth Amendments of the U.S. Constitution
Free Exercise and Due Process Clauses: Parental Association

173. Intervenors re-allege all responses set forth above and incorporate them herein.

176. The averments in this paragraph constitute conclusions of law to which no response is required.

177. Intervenors are without sufficient information to form a belief as to the truth or falsity of the averments concerning Plaintiff's decision to work with CSS. It is denied that Defendants are in any way infringing upon Plaintiff's liberty interests.

178. Intervenors are without sufficient information to form a belief as to the truth or falsity of the averments concerning Plaintiff's decision to work with CSS. It is denied that Defendants are in any way infringing upon Plaintiff's liberty interests, or preventing her from fostering children.

179. Denied that Ms. Fulton’s current foster children will be “immediately” – or ever – “transferred away” if the City terminates or refuses to renew its contract with CSS. It is further denied that Defendants are in any way infringing upon Plaintiff’s liberty interests. After reasonable investigation, Intervenors are without information sufficient to form a belief as to the truth or falsity of the remaining averments of this paragraph.

180. To the extent the averments in this paragraph constitute conclusions of law, no response is required. To the extent this paragraph purports to make factual averments, they are denied.

181. Denied.

Count XVI

42 U.S.C. § 1983: Violation of the Fourteenth Amendment of the U.S. Constitution Due Process Clause: Sibling Association

182. Intervenors re-allege all responses set forth above and incorporate them herein.

183. The averments in this paragraph constitute conclusions of law to which no response is required.

184. After reasonable investigation, Intervenors are without sufficient information to form a belief as to the truth or falsity of the averments in this paragraph.

185. To the extent the averments in this paragraph constitute conclusions of law, no response is required. To the extent this paragraph purports to make factual averments, they are denied.

186. Denied.

DEFENSES

FIRST DEFENSE

Plaintiffs have failed to set forth a claim upon which relief may be granted.

SECOND DEFENSE

The relief requested by Plaintiffs is barred by the Establishment Clause of the First Amendment of the United States Constitution.

THIRD DEFENSE

The relief requested by Plaintiffs is barred by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Intervenors, Support Center for Child Advocates and Philadelphia Family Pride, demand judgment in their favor and against Plaintiffs, together with reimbursement of all costs.

Respectfully submitted,

Dated: June 15, 2018



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

| | | |
|---------------------------------------|---|-------------------|
| SHARONELL FULTON, <i>et al.</i> , | : | |
| | : | |
| Plaintiffs, | : | No. 2:18-cv-02075 |
| | : | |
| v. | : | |
| | : | |
| CITY OF PHILADELPHIA, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |

**DECLARATION OF FRANK P. CERVONE,
EXECUTIVE DIRECTOR OF
SUPPORT CENTER FOR CHILD ADVOCATES**

I, Frank P. Cervone, declare as follows:

1. I am an attorney and have been licensed to practice law in Pennsylvania since 1982.
2. I have served as a staff member of the Support Center for Child Advocates (“Child Advocates”) since 1990, and I have served as the agency’s Executive Director since 1992.
3. The Support Center for Child Advocates is a nonprofit organization that provides legal representation and social services advocacy to children in addition to training lay and professional caregivers of children and advocating for public policy that supports children’s well-being. The mission statement of Child Advocates is “to advocate for victims of child abuse and neglect with the goal of securing safety, justice, well-being and a permanent, nurturing environment for every child.” Child Advocates seeks to advance the interests of children involved with the child welfare system, including children in or needing foster care placement.
4. Child Advocates is appointed by the Family Court of Philadelphia under the auspices of the Pennsylvania Juvenile Act to serve as counsel and guardian ad litem for individual children in

various types of court proceedings, including dependency proceedings for children in foster care.
42 Pa. Const. Stat. Ann. § 6300 *et seq.*

5. The agency represented 1,100 children in the fiscal year that ended June 30, 2017. We are representing a similar number of children in the current fiscal year, and we are in court every day advocating in matters involving our clients' safety and well-being.

6. For decades, Child Advocates has also been active in litigation and advocacy aimed at bringing about changes to Philadelphia's public child welfare system to improve the system's ability to serve the best interests of children.

7. I have served as a member of the Pennsylvania Supreme Court Juvenile Court Procedural Rules Committee, which serves as an advisory body to the Supreme Court for developing and evaluating the rules and standards governing procedure and practice in dependency and delinquency cases.

8. I served as Chair of the Advisory Committee on Children and Youth Services for the Joint State Government Commission, the research arm of the Pennsylvania General Assembly.

9. In the early 1990s, on behalf of Child Advocates, I served as Next Friend to the plaintiff class of children in the federal class action lawsuit, *Baby Neal v. Ridge et al.* The decade-long litigation brought about sweeping reforms to the child welfare and Family Court systems in Philadelphia.

10. From 2010 to 2014, I served on the Steering Committee for the Philadelphia Department of Human Services' (Phila-DHS) reform initiative "Improving Outcomes for Children," which created, *inter alia*, the network of case management organizations known as Community Umbrella Agencies, or CUAs, including the CUA operated by the plaintiff Catholic Social Services

(CSS). Child Advocates is knowledgeable about the operations manuals, policies, and procedures currently in use by Phila-DHS and the CUAs.

11. From 2016 to the present, I have served as a member of the Pennsylvania Department of Human Services' (PA-DHS) Child Welfare Council, a statewide leadership body providing guidance and oversight for all child welfare services, including foster care placements, licensing, and adoptions.

12. Child Advocates has received several awards for our work, including four Glaxo Community Health Impact Awards and the Please Touch Museum's Great Friend to Kids Award, and was named the 2012 Non-Profit of the Year by the Greater Philadelphia Chamber of Commerce.

13. The Pennsylvania child welfare system pursues four fundamental priorities for the children and families it serves: protecting children; promoting strong families; promoting child well-being; and providing timely permanency. Pennsylvania Dependency Benchbook, 1-1, 2014.

14. As a child-centered system of care, this public child welfare system sets the best interests of the child standard as paramount to all decision-making; for example, the Juvenile Act sets forth its purpose as "to provide for the care, protection, safety and wholesome mental and physical development of children coming" under its jurisdiction. 42 Pa. Cons. Stat. Ann. § 6301 (b)(1)(1.1).

15. Placement in the legal custody of a county children and youth agency and placement in foster care is a form of disposition under the Juvenile Act. 42 Pa. Cons. Stat. Ann. § 6351(a)(2)(ii). All dispositions must be "best suited to the safety, protection and physical, mental, and moral welfare of the child," a legal standard that is colloquially summarized as "in the best interests of the child." *Id.*

16. Catholic Social Services (“CSS”) has declared that it has a policy of refusing to license qualified same-sex parents to be foster parents based on CSS’s religious objections.

17. Turning away qualified foster parents based on religious criteria conflicts with professional and accepted child welfare practice standards that exist to protect children.

18. Achieving a foster care placement in the best interests of a particular child requires having as large a pool as possible of qualified, licensed foster parents to choose from to optimize the “fit” between the child and the home.

19. Achieving a foster care placement in the best interests of a particular child also requires having a diverse a pool of qualified, licensed foster parents, including LGBT parents. Indeed, for some LGBT youth, having an LGBT foster parent may be vital to the child’s wellbeing.

20. There is a shortage of qualified, licensed foster parents in Philadelphia.

21. In order for the public child welfare system to properly serve the best interests of children, critical decisions about what home a child should be placed in, in either the short- or long-term, must be based on considerations about what is in the child’s best interests, and the City’s subcontracting agencies must not refuse to work with qualified parents for reasons unrelated to the best interests of children.

22. Child Advocates has a long and positive history of cooperation and collaboration with CSS and its several service programs, and we bear no hostility to the mission or character of their programs. However, the religious criteria that CSS seeks to use to exclude qualified prospective foster parents have nothing to do with the best interests of the children whom we serve together.

23. As a result, CSS's policy of rejecting qualified prospective foster parents or refusing to place children in loving homes with qualified same-sex foster parents based on religious considerations may result in harm to children.

24. When an agency ceases to provide care under contract with the City, which can happen for a variety of reasons, it is important for the City to ensure that processes are put in place to maintain the stability of existing child placements. Accordingly, Child Advocates has an interest in participating in this litigation to ensure that neither party is permitted or forced to take unnecessary action that would disrupt the lives of children currently under the care of CSS.

25. Relevant to the present case, we believe that our mission statement compels Child Advocates to advocate for the best interests of the children, and each of them, and to seek the most inclusive approach possible in order to finding loving and stable homes appropriate for them.

26. Child Advocates seeks to intervene to protect the children it represents from damage as a result of the outcome or conduct of this litigation, as well as to protect the organization's own interests. Child Advocates expends resources to advocate for the best interest of children and the improvement of the system, and will have to expend additional resources or divert resources to fix the problems that will arise if religious tests can govern child placement decisions and deal with the damage that may result to children and their well-being.

27. Because the relief sought by CSS in this case would undermine the proper functioning of the public child welfare system designed to protect the best interests of children, and may harm the children that Child Advocates serves and represents, and in order to ensure that decisions made in the context of this litigation do not have a deleterious effect on children in placement, I respectfully ask the Court for leave for the Support Center for Child Advocates to intervene in the above-captioned case as a Defendant.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 6/14/18

A handwritten signature in black ink, appearing to read "F. Cervone", written over a horizontal line.

Frank P. Cervone

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

| | | |
|---------------------------------------|---|-------------------|
| SHARONELL FULTON, <i>et al.</i> , | : | |
| | : | |
| Plaintiffs, | : | No. 2:18-cv-02075 |
| | : | |
| v. | : | |
| | : | |
| CITY OF PHILADELPHIA, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |

**DECLARATION OF STEPHANIE HAYNES,
EXECUTIVE DIRECTOR OF
PHILADELPHIA FAMILY PRIDE**

I, Stephanie Haynes, declare as follows:

1. I am the Executive Director of Philadelphia Family Pride (“PFP”). I have worked with PFP since 2008 and have served as Executive Director since 2014. Since 2017, I have also served on the Philadelphia Mayor’s Commission for LGBT Affairs.
2. PFP is a nonprofit membership organization, founded in 1993, of LGBTQ+ parents and prospective parents (including foster and adoptive parents) and their children.
3. PFP’s members include same-sex couples who seek to foster children in Philadelphia.
4. PFP seeks to protect the interests and rights of same-sex couples and their families, including the right to equal treatment of those seeking to care for children in the public child welfare system.
5. PFP is also committed to recruiting foster parents from the LGBTQ+ community in order to help meet the need for families for children in Philadelphia’s foster care system.

PFP's Work to Recruit LGBTQ+ Foster Parents

6. PFP has been holding foster parent recruitment events since 2015, and in partnership with the City of Philadelphia since 2017, in an effort to help address the shortage of qualified, licensed foster parents in Philadelphia.

7. In particular, PFP has worked with the City at their request to address the need for more supportive foster care placements for LGBTQ+ youth in Philadelphia by recruiting prospective foster parents from within the LGBTQ+ community.

8. Over the past year, PFP has held five events designed to recruit LGBTQ+ people to serve as foster parents in Philadelphia, and we have more events planned for later in 2018, with the next event scheduled for August. Sixty-six prospective foster parents attended PFP's recruitment events between September 2017 and April 2018. Among the prospective foster parents who attended were a married gay male couple who live in Philadelphia and who both work in the medical field. They expressed interest in fostering kids with special medical needs.

9. The concerns of many LGBTQ+ people about whether or not they will be welcomed as foster parents in the system is already an impediment to PFP's efforts to recruit foster parents.

10. While the idea of helping children is an easy one to embrace, actually becoming a foster parent is not a snap decision or a quick process for most families. Many parents have shared with me that becoming a foster parent is something that often takes months or years of thinking, planning, and discussing before even making that first call or attending that first information meeting. Nor is becoming a foster parent a quick or easy process. The foster care system is hugely complex, and it can be difficult to understand and navigate the bureaucracy.

11. In addition to these hurdles faced by everyone considering becoming a foster parent, in PFP's experience, same-sex couples who are considering becoming foster parents often have additional concerns about the risk of discrimination in the foster and adoption process. News of codified discrimination in other states, knowledge of past inequity in the system, and often first-hand experience of being treated differently in public spheres because of their sexual orientation or relationship already give some same-sex couples pause.

12. As a known and trusted LGBTQ+ organization, PFP works to help overcome LGBTQ+ people's hesitancy about whether or not they and their families would be accepted in the system and treated with respect and fairness. At PFP's recruitment events, we answer same-sex couples' many questions to help remove some of the mystery surrounding the public child welfare system. We connect prospective parents to current LGBTQ+ foster parents and local foster agencies to give them a realistic but motivating view of what life as a foster family would be like.

Impact of a Ruling for Plaintiffs

13. A ruling in favor of Plaintiffs would send the message to PFP's members that the City's contractors are free to reject them as foster parents because of religious objections to their sexual orientation and relationships.

14. Rejecting same-sex couples because they are same-sex couples—and not for any reason related to their qualifications to be foster parents—would subject those couples and their families to harm and stigma.

15. A ruling in favor of Plaintiffs would also deter many qualified people from the LGBTQ+ community from attempting or completing the foster parent licensing process. If people left one of our events and then contacted an agency in their neighborhood that turned

them away, that sting of rejection could be enough to keep them from making a second or third call.

16. PFP would likely have to expend additional resources on recruiting prospective LGBTQ+ foster parents in order to overcome the additional deterrent effect of a ruling in favor of Plaintiffs. With already a severe need for additional homes for children, we should be doing more to remove hurdles that keep people from becoming foster parents, not adding additional ones.

17. If Plaintiffs prevail, many families headed by same-sex couples may ultimately decide not to seek to become foster parents at all in light of the risk that they will be turned away. Understandably, many LGBTQ+ people may not want to subject themselves and their families to unequal treatment. In particular, same-sex couples with children who have been involved in discussions about the possibility of fostering additional children may especially want to protect their families from possible discrimination during the foster care licensing process.

18. As a result, children in need of good foster homes, including LGBTQ+ youth in need of affirming homes, may lose the chance to be placed with qualified families from the LGBTQ+ community—placements that could be in those children's best interests.

19. Therefore, I respectfully request that the Court grant leave for Philadelphia Family Pride to participate in this litigation as an intervenor-defendant so that we may present evidence and argument to the Court demonstrating that the relief sought by CSS would harm PFP's members and undermine PFP's efforts to recruit foster parents.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 6/14/18


Stephanie Haynes