

No. 18-2574

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**United States Court of Appeals  
for the Third Circuit**

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SHARONELL FULTON, ET AL.,

*Plaintiffs-Appellants,*

v.

CITY OF PHILADELPHIA, ET AL.,

*Defendants-Appellees.*

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On Appeal from the U.S District Court for the  
Eastern District of Pennsylvania,  
No. 2:18-cv-02075-PBT (Hon. Petrese B. Tucker, U.S.D.J.)

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**Emergency Motion of Sharonell Fulton, Cecilia Paul,  
Toni-Lynn Simms-Busch, and Catholic Social Services for  
Fed. R. App. P. 8 Injunction Pending Appeal**

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**United States Court of Appeals for the Third Circuit**

**Corporate Disclosure Statement and  
Statement of Financial Interest**

No. \_\_\_\_\_

v.

Instructions

Pursuant to Rule 26.1, Federal Rules of Appellate Procedure any nongovernmental corporate party to a proceeding before this Court must file a statement identifying all of its parent corporations and listing any publicly held company that owns 10% or more of the party's stock.

Third Circuit LAR 26.1(b) requires that every party to an appeal must identify on the Corporate Disclosure Statement required by Rule 26.1, Federal Rules of Appellate Procedure, every publicly owned corporation not a party to the appeal, if any, that has a financial interest in the outcome of the litigation and the nature of that interest. This information need be provided only if a party has something to report under that section of the LAR.

In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate shall provide a list identifying: 1) the debtor if not named in the caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is an active participant in the bankruptcy proceedings. If the debtor or the bankruptcy estate is not a party to the proceedings before this Court, the appellant must file this list. LAR 26.1(c).

The purpose of collecting the information in the Corporate Disclosure and Financial Interest Statements is to provide the judges with information about any conflicts of interest which would prevent them from hearing the case.

The completed Corporate Disclosure Statement and Statement of Financial Interest Form must, if required, must be filed upon the filing of a motion, response, petition or answer in this Court, or upon the filing of the party's principal brief, whichever occurs first. A copy of the statement must also be included in the party's principal brief before the table of contents regardless of whether the statement has previously been filed. Rule 26.1(b) and (c), Federal Rules of Appellate Procedure.

If additional space is needed, please attach a new page.

Pursuant to Rule 26.1 and Third Circuit LAR 26.1, \_\_\_\_\_  
makes the following disclosure: (Name of Party)

1) For non-governmental corporate parties please list all parent corporations:

2) For non-governmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock:

3) If there is a publicly held corporation which is not a party to the proceeding before this Court but which has as a financial interest in the outcome of the proceeding, please identify all such parties and specify the nature of the financial interest or interests:

4) In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate must list: 1) the debtor, if not identified in the case caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is active participant in the bankruptcy proceeding. If the debtor or trustee is not participating in the appeal, this information must be provided by appellant.

\_\_\_\_\_  
(Signature of Counsel or Party)

Dated: \_\_\_\_\_

## TABLE OF CONTENTS

	Page
CORPORATE DISCLOSURE STATEMENT .....	CD1
TABLE OF AUTHORITIES .....	ii
EMERGENCY MOTION FOR ENTRY OF AN INJUNCTION PENDING APPEAL UNDER FED. R. APP. P. 8 .....	1
INTRODUCTION .....	2
FACTUAL BACKGROUND .....	5
ARGUMENT .....	14
I. An injunction pending appeal is necessary.....	14
II. Appellants have a reasonable probability of success on the merits.....	15
A. Appellants are likely to succeed on their claims under the Free Exercise Clause.....	15
1. <i>The City’s actions target Catholic in             violation of the Free Exercise Clause.</i> .....	16
2. <i>The City’s actions must face strict             scrutiny under the Free Exercise Clause.</i> .....	19
3. <i>The City’s actions cannot pass             strict scrutiny.</i> .....	25
B. Appellants are likely to prevail on their Free Speech claims.....	27
III. Appellants will be irreparably harmed absent an injunction.....	30
IV. An injunction is in the public interest. ....	31
V. The balance of the equities favors Appellants. ....	31
CONCLUSION.....	32

## TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
<i>AOSI v. All. for Open Soc’y Int’l, Inc.</i> , 570 U.S. 205, (2013).....	27, 29
<i>Awad v. Ziriax</i> , 670 F.3d 1111 (10th Cir. 2012).....	31
<i>Bd. of Cty. Comm’rs v. Umbehr</i> , 518 U.S. 668 (1996).....	25
<i>Blackhawk v. Pennsylvania</i> 381 F.3d 202 (3d Cir. 2004).....	16, 22, 24
<i>Brown v. City of Pittsburgh</i> , 586 F.3d 263 (3d Cir. 2009).....	14-15
<i>Church of the Lukumi Babalu Aye, Inc. v.</i> <i>City of Hialeah</i> , 508 U.S. 520 (1993).....	16, 21, 25
<i>CLS v. Martinez</i> , 561 U.S. 661 (2010).....	18
<i>Colorado Christian Univ. v. Weaver</i> , 534 F.3d 1245 (10th Cir. 2008).....	18
<i>Elrod v. Burns</i> , 427 U.S. 347 (1976).....	30
<i>Fraternal Order of Police v. City of Newark</i> , 170 F.3d 359 (3d Cir. 1999).....	22, 25
<i>Holt v. Hobbs</i> , 135 S. Ct. 853 (2015).....	15
<i>Homans v. City of Albuquerque</i> , 264 F.3d 1240 (10th Cir. 2001).....	1

*Issa v. Sch. Dist. of Lancaster*,  
847 F.3d 121 (3d Cir. 2017)..... 31

*Janus v. AFSCME*,  
138 S. Ct. 2448 (2018)..... 28

*Kos Pharm., Inc. v. Andrx Corp.*,  
369 F.3d 700 (3d Cir. 2004)..... 15

*Legal Servs. Corp. v. Velazquez*,  
531 U.S. 533 (2001)..... 29

*Masterpiece Cakeshop Ltd. v. Colo. Civil Rights Comm’n*,  
138 S. Ct. 1719 (2018).....15, 16, 17, 19

*NIFLA v. Becerra*,  
138 S. Ct. 2361 (2018)..... 28, 29

*In re Revel AC, Inc.*,  
802 F.3d 558 (3d Cir. 2015)..... 14

*Springer v. Henry*,  
435 F.3d 268 (3d Cir. 2006)..... 25

*Teen Ranch v. Udow*,  
389 F. Supp. 2d 827 (W.D. Mich. 2005) ..... 18

*Tenafly Eruv Association, Inc. v. Borough of Tenafly*,  
309 F.3d 144 (3d Cir. 2002)..... 20

*Trinity Lutheran Church of Columbia, Inc. v. Comer*,  
137 S. Ct. 2012 (2017)..... 15, 17, 25

*United States v. Am. Library Ass’n, Inc.*,  
539 U.S. 194 (2003)..... 27

*Ward v. Polite*,  
667 F.3d 727 (6th Cir. 2012) ..... 21

*Whole Woman’s Health v. Smith*,  
No. 18-50484, 2018 WL 3421096  
(5th Cir. July 15, 2018) ..... 15-16

**Statutes**

55 Pa. Code § 3700.64..... 6, 23  
55 Pa. Code § 3700.69..... 6  
11 Pa. Stat. Ann. § 2633..... 12, 31  
Phila. Code § 9-1102..... 23  
Phila. Code § 9-1106..... 23  
Phila. Code § 9-1112..... 17

**Rules**

Fed. R. App. P. 8..... 1

**EMERGENCY MOTION FOR ENTRY OF AN INJUNCTION  
PENDING APPEAL UNDER FED. R. APP. P. 8**

Appellants Sharonell Fulton, Toni Simms-Busch, Cecelia Paul, and Catholic Social Services (“Catholic”) (collectively, “Appellants”) respectfully move for an emergency injunction pending appeal pursuant to Federal Rule of Appellate Procedure 8. On July 13, 2018, the District Court denied Appellant’s motion for a temporary restraining order and preliminary injunction.

Appellants immediately moved for an injunction pending appeal before the District Court, which has not yet ruled. Given the immediacy of the harm and the ongoing violation of the First Amendment, Appellants believe that awaiting a ruling on that motion would be “impracticable.” *See* Fed. R. App. P. 8(a); *see also Homans v. City of Albuquerque*, 264 F.3d 1240, 1243 (10th Cir. 2001) (not requiring the filing of a motion for injunction in the district court due to the “immediacy of the problem and the district court’s legal error concerning the First Amendment”).

Absent an injunction ordering Appellees (together, “the City”) to maintain the status quo that has prevailed for 50 years, Catholic’s

foster care program will close within months, harming foster children and families.

Accordingly, Appellants request an order by August 2, enjoining the City to:

- Continue operating and resume normal operations under Catholic's July 1, 2017 Contract, including making foster care referrals to families certified by Catholic; and
- refrain from conditioning foster care referrals or future contracts on Catholic providing written certifications in home studies that violate Catholic's religious beliefs, or from otherwise penalizing Appellants during this appeal.

Appellants have also notified the City of this motion.

## **INTRODUCTION**

Philadelphia is shutting down Catholic's foster care program, which the District Court found "has benefitted Philadelphia's children in immeasurable ways." Appx.1. Without an injunction from this Court, Catholic's program will be forced to close, award-winning foster families like Appellant Mrs. Paul's will have their homes sit empty, and children

will be kept from loving homes or removed from current homes, all before Appellants can litigate their case.

The City has excluded Catholic and its families from foster care because the City disagrees with the Catholic Church's views about same-sex marriage. Same-sex unions have been recognized in Philadelphia for two decades, and the City is unaware of a single person who has been hurt by Catholic's views. But the City is closing Catholic's program over a hypothetical question: whether the Catholic Church *could* endorse same-sex unions in writing, *if* a same-sex couple approached a Catholic agency seeking its written opinion on their family relationships.

Philadelphia cannot demand that religious groups parrot the City's views as a pre-condition to serving foster children. And it cannot retaliate against Catholic's views by shutting Catholic down. On these grounds alone, the City's inquisition is impermissible under the Free Exercise and Speech clauses of the First Amendment.

Worse yet, the City engaged in unabashed religious targeting. The City admittedly investigated only *religious* foster agencies. Then it punished Catholic for violating supposed policies it has never

announced, much less applied, to secular agencies. The Mayor, City Council, Human Relations Commission, and Department of Human Services (DHS) all targeted Catholic. The City told Catholic to change its religious practices because it is “not 100 years ago” and “times have changed.”

All this would be flagrantly unconstitutional *even if* the City could point to someone who had been harmed by Catholic. But it cannot. The prior “live-and-let-live” status quo—in which same-sex couples are free to become foster parents with dozens of willing agencies and Catholic is free to provide foster services without violating its faith—is not acceptable to the City. Rather than permit respectful disagreement on deeply important issues, the City moved to eliminate Catholic’s foster program unless Catholic embraced the City’s views on same-sex marriage. That is anathema to our pluralistic democracy and forbidden by the First Amendment.

This Court’s intervention is necessary to ensure that Catholic’s foster program lasts long enough to litigate this case and continue serving children in need.

## FACTUAL BACKGROUND

***Catholic's foster program.*** For over a century, the Catholic Church has been caring for foster children in Philadelphia, long before the City's involvement in foster care.<sup>1</sup> Beginning in the mid-twentieth-century, however, the City began requiring foster agencies to contract with the City.<sup>2</sup> Today, "you would be breaking the law if you tried to provide foster-care services without a contract."<sup>3</sup> Catholic has always provided foster care services as a "religious ministry"<sup>4</sup> consistent with its religious beliefs, and its contract makes clear that it operates according to its religious mission.<sup>5</sup>

***Home studies and certifications.*** Foster agencies work with foster families approved by that agency after a home study and written certification. "[T]he home study is a written evaluation" of the

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<sup>1</sup> Appx.222-225, 227. All documents cited in the Appendix were either attached to declarations submitted to the District Court or were admitted as evidence during the preliminary injunction hearing.

<sup>2</sup> Appx.226-27.

<sup>3</sup> Appx.227.

<sup>4</sup> Appx.222-24, Appx.228-29; Appx.66.

<sup>5</sup> Appx.197-98; Appx.111; Appx.113.

“relationships” in the potential foster home.<sup>6</sup> State law mandates that the foster agency “shall consider” and evaluate “existing family relationships” and the “[a]bility of the applicant to work in partnership” with an agency, which results in a “decision to approve, disapprove or provisionally approve the foster family.” 55 Pa. Code §§ 3700.64, 3700.69. Catholic has certified and supported many foster parents, including the individual Appellants—each of whom serves because of their religious beliefs.<sup>7</sup>

***The City has “nothing to do” with home studies and certifications.*** Until March 2018, the City’s contract requirements did not interfere with Catholic’s religious exercise of providing “foster care services consistent with [its] religious beliefs.”<sup>8</sup> The City has renewed Catholic’s contract annually for decades, and frequently operates under the prior year’s contract for several months post-expiration.<sup>9</sup> The contract emphasizes Catholic’s independence: Catholic “shall not in any

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<sup>6</sup> Appx.229-30.

<sup>7</sup> Appx.189, Appx.192; Appx.183-85; Appx.176-77; Appx.182.

<sup>8</sup> Appx.257.

<sup>9</sup> Appx.246-47; Appx.309; Appx.145-49.

way or for any purpose be deemed or intended to be an employee or agent of the City.”<sup>10</sup>

In particular, the City admits it has “nothing to do”<sup>11</sup> with home studies—a process that occurs under State law and for which the contract provides no payment.<sup>12</sup> The City instead tells prospective foster parents that agencies can have “different requirements” and that they should seek out the agency that is “the best fit” for them.<sup>13</sup>

***Referrals.*** Foster agencies routinely refer potential applicants to other agencies for a variety of reasons. “[R]eferrals were done all the time,”<sup>14</sup> and are permitted for geographic proximity, medical expertise, behavioral expertise,<sup>15</sup> specialization in pregnant youth,<sup>16</sup> and language needs.<sup>17</sup> Some agencies “specialize in servicing kin care” (foster placements with extended family or friends) and advertise that they

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<sup>10</sup> Appx.118.

<sup>11</sup> Appx.285-86.

<sup>12</sup> Appx.257; Appx.285-86.

<sup>13</sup> Appx.109

<sup>14</sup> Appx.221; Appx.235; Appx.169-71; Appx.172-173.

<sup>15</sup> Appx.233; Appx.172-74; Appx.195-96; Appx.201-02.

<sup>16</sup> Appx.165-66.

<sup>17</sup> Appx.200; *see also* Appx.202-05.

exclusively serve that population.<sup>18</sup> The City acknowledged that agencies sometimes refer rather than perform a home study.<sup>19</sup>

***The hypothetical religious dispute.*** No same-sex couple has ever approached Catholic seeking its written endorsement to become foster parents.<sup>20</sup> Nor is there any evidence that Catholic's religious beliefs stopped, or even discouraged, *anyone* from becoming a foster parent.<sup>21</sup> But in March, DHS Commissioner Figueroa called "faith-based institutions . . . to ask them their position regarding serving same-sex couples."<sup>22</sup> Figueroa contacted only one non-religious organization, since she was friends with its CEO.<sup>23</sup> She still has not called any other non-religious agencies to inquire about their practices or tell them to conform to the policies being applied to Catholic.<sup>24</sup>

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<sup>18</sup> Appx.234-35; Appx.127.

<sup>19</sup> Appx.200-02.

<sup>20</sup> Appx.231.

<sup>21</sup> Appx.268.

<sup>22</sup> Appx.258-59; *see also* Appx.236.

<sup>23</sup> Appx.297-98.

<sup>24</sup> Appx.297-98.

Catholic's religious beliefs include the belief "that a marriage is a sacred bond between a man and a woman."<sup>25</sup> "[T]o provide a written certification endorsing a same-sex marriage" would "violate the religious exercise of Catholic Social Services."<sup>26</sup> Catholic believes that the written certification pursuant to a home study is an "endorsement."<sup>27</sup> Were a same-sex couple to approach Catholic seeking foster parent certification, Catholic would refer the couple to one of 29 nearby agencies, just as agencies refer couples elsewhere for myriad secular reasons.

***The DHS headquarters meeting and adverse actions.*** Figueroa summoned Catholic's senior management to DHS headquarters.<sup>28</sup> The issue had the attention of the Mayor,<sup>29</sup> who has previously said he "could care less about the people at the Archdiocese," called Archbishop

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<sup>25</sup> App. 222-24; Appx.229-31; Appx.236; Appx.262.

<sup>26</sup> Appx.231.

<sup>27</sup> Appx.257.

<sup>28</sup> Appx.237; Appx.298.

<sup>29</sup> Appx.300-01.

Chaput's actions "not Christian," and exhorted Pope Francis "to kick some ass here!"<sup>30</sup>

At DHS headquarters, Figueroa told Catholic it should follow the City's understanding of "the teachings of Pope Francis," *not* Archbishop Chaput.<sup>31</sup> When Amato noted that Catholic had been serving foster children for over 100 years, Figueroa told him "times have changed," "attitudes have changed," and it is "not 100 years ago."<sup>32</sup>

Minutes after the meeting, the City called to say that it was shutting down foster care intake for Catholic because of its "religious decision."<sup>33</sup> The City also closed Bethany Christian's intake for the same reason.<sup>34</sup> Under an intake shutdown, no children can be placed in the homes of families certified and supported by that foster agency.<sup>35</sup>

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<sup>30</sup> Appx.157-64 (available at <https://www.phillymag.com/citified/2015/07/09/jim-kenney-catholic-archdiocese-charles-chaput/>); Appx.150-56.

<sup>31</sup> Appx.237; Appx.298-99.

<sup>32</sup> Appx.238; Appx.298-99.

<sup>33</sup> Appx.288-89.

<sup>34</sup> Appx.266.

<sup>35</sup> Appx.263-64; Appx.69 (¶13).

DHS was not alone: HRC opened an inquiry into Catholic's practices, and City Council passed a resolution concerning "discrimination that occurs under the guise of religious freedom."<sup>36</sup>

***The claimed violations.*** The City claimed Catholic violated two policies: (1) an unwritten policy that agencies must provide home studies to every applicant and (2) the public accommodations portion of the City's Fair Practices Ordinance ("FPO").

But witnesses had never heard of a policy requiring foster care agencies to perform every home study, or that referrals were inappropriate. No DHS official could identify any written version of this policy.<sup>37</sup> The City claimed this was in the contract, but later admitted that the identified provision (3.21) does not apply to situations where a prospective foster parent approaches Catholic independently.<sup>38</sup> Even the City's website states that foster agencies *can* have "different requirements."<sup>39</sup>

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<sup>36</sup> Appx.136-140; Appx.101.

<sup>37</sup> Appx.214-15; Appx.283-84, 288.

<sup>38</sup> Appx.199.

<sup>39</sup> Appx.109; Appx.116-17.

Nor could any witness provide any example of a situation in which—prior to this litigation—foster care was considered a public accommodation.<sup>40</sup> Figueroa could not recall training staff or even discussing public accommodation laws in the foster care context, nor could she recall doing “anything [as Commissioner] to make sure that people at DHS follow the Fair Practices Ordinance when doing foster care work.”<sup>41</sup> The City acknowledged that it sometimes considers race and disability when making foster care placement decisions.<sup>42</sup>

***Consequences of intake freeze.*** The City’s actions have consequences for both the individual Appellants and Catholic.

First, Philadelphia has a shortage of foster homes and admits it needs to get 250 children out of group homes<sup>43</sup> and into the most “most family-like setting” possible, as required by state law.<sup>44</sup> But under the referral freeze, those children cannot be placed with Catholic’s

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<sup>40</sup> Appx.216-17; Tr., Appx.240-41; Appx.273-74, 277, 282.

<sup>41</sup> Appx.273-74.

<sup>42</sup> Appx.274-79.

<sup>43</sup> Appx.232; Appx.293-95.

<sup>44</sup> 11 Pa. Stat. Ann. § 2633(4).

families.<sup>45</sup> Catholic has over two dozen empty homes ready for children, including that of Mrs. Paul, a former pediatric nurse who has fostered 133 children and whom the City named a foster parent of the year.<sup>46</sup>

Second, due to the intake freeze, reuniting children with siblings or prior foster parents is no longer easy.<sup>47</sup> The City now says it will perform “individualized assessments” and grant case-by-case exceptions to its freeze, but this has not been communicated to lower-level DHS staff, requires intervention by DHS leadership, and permits children to fall through the cracks.<sup>48</sup> Only after Catholic sought a TRO did the City allow an autistic child to be placed with his former foster mother; similar situations continue to occur.<sup>49</sup>

Third, absent relief, Catholic will be forced to lay off staff within weeks and close its foster program within months.<sup>50</sup> Catholic has

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<sup>45</sup> Appx.69.

<sup>46</sup> Appx.245; Appx.183-85.

<sup>47</sup> Appx.243-44.

<sup>48</sup> Appx.305-08.

<sup>49</sup> Appx.79-82; Appx.94-100.

<sup>50</sup> Appx.247-248. While the City has ostensibly offered to allow Catholic to continue, that offer requires Catholic to either violate its religious beliefs or wind down. Appx.76-77; Appx.265-66.

already begun the termination process.<sup>51</sup> Losing experienced staff “would take years” to recover from, if at all.<sup>52</sup>

If Catholic closes, its foster parents must transfer or lose their current foster children, which the City admits can harm children.<sup>53</sup> And the individual Appellants and their children will lose support.

## ARGUMENT

### I. An injunction pending appeal is necessary.

Injunctions pending appeal turn on (1) likelihood of success; (2) irreparable harm; (3) balance of harms; and (4) public interest. *In re Revel AC, Inc.*, 802 F.3d 558, 565 (3d Cir. 2015). Appellants need “a reasonable chance, or probability, of winning” but the likelihood “need not be ‘more likely than not.’” *Id.* at 568-69 (citation omitted). This Court also recognizes “a constitutional duty to conduct an independent examination of the record as a whole when a case presents a First Amendment claim.” *Brown v. City of Pittsburgh*, 586 F.3d 263, 269 (3d Cir. 2009). Injunctions are designed to “maintain the status quo,

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<sup>51</sup> Appx.245; Appx.79-82.

<sup>52</sup> Appx.248.

<sup>53</sup> Appx.290.

defined as the last peaceable, noncontested status of the parties.” *Kos Pharm., Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004).<sup>54</sup>

**II. Appellants have a reasonable probability of success on the merits.**

**A. Appellants are likely to succeed on their claims under the Free Exercise Clause.**

The City’s attempt to force Catholic to provide written endorsements imposes an obvious burden on Catholic’s religious exercise: if it wants to provide foster care, Catholic must violate its faith.<sup>55</sup> The City has violated the Free Exercise Clause in four different ways. First, through outright discrimination, which is unconstitutional *even without* resorting to strict scrutiny. *See Masterpiece Cakeshop Ltd. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719, 1729 (2018); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2022 (2017). *Cf. Whole*

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<sup>54</sup> Appellants raised, and the District Court decided, additional claims not discussed in this motion. Appellants plan to brief those claims on appeal.

<sup>55</sup> “[P]ut[ting] [Appellants] to this choice” between religious exercise and penalties “easily satisfie[s]” the substantial burden test. *Holt v. Hobbs*, 135 S. Ct. 853, 862-63 (2015). The same is true of the burdens on foster parents, which the District Court agreed would be “difficult, uncertain, and emotionally challenging.” Appx.60. Mrs. Paul’s religious exercise of providing foster care is currently prevented altogether. Appx.185-86.

*Woman's Health v. Smith*, No. 18-50484, 2018 WL 3421096, at \*11 (5th Cir. July 15, 2018) (“This looks like an act of intimidation.”).

Further, the City’s actions are subject to strict scrutiny for three independent reasons: they (1) are “not neutral,” (2) “not of general application,” and (3) involve “individualized, discretionary exemptions.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993); *Blackhawk v. Pennsylvania* 381 F.3d 202, 209-10 (3d Cir. 2004) (Alito, J.). Any one would necessitate strict scrutiny; here, all three are present.

***1. The City’s actions target Catholic in violation of the Free Exercise Clause.***

Government actions based on “impermissible hostility toward . . . sincere religious beliefs” are *per se* unconstitutional. *Masterpiece*, 138 S. Ct. at 1729. Catholic has been the target of coordinated actions by every branch of City government: City Council passed a resolution targeting “discrimination that occurs under the guise of religious freedom”<sup>56</sup>; the

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<sup>56</sup> Appx.136-140. The Council’s reference to the “guise” of religious freedom is evidence of targeting. *See Masterpiece*, 138 S. Ct at 1729 (“clear and impermissible hostility” where government dismissed religious freedom as “rhetoric”).

Human Relations Commission opened an extra-jurisdictional inquiry and threatened subpoenas;<sup>57</sup> the Mayor prompted inquiries by the Commission and DHS<sup>58</sup>; DHS's commissioner summoned Catholic's leadership to headquarters, accused them of not following "the teachings of Pope Francis," and told them it was "not 100 years ago."<sup>59</sup>

The City then told Catholic that future contracts would "explicit[ly]" require written certifications for same-sex couples, and that the City "has no intention of granting an exception" to Catholic.<sup>60</sup> Furthermore, the City targeted its investigation to religious entities, has never enforced the alleged policies against secular agencies, informed secular agencies of the policies, or even inquired as to whether secular agencies obey them.<sup>61</sup> These targeted and disparaging actions "pass[] judgment upon or presuppose[] the illegitimacy of religious beliefs and practices" in violation of the First Amendment. *Masterpiece*, 138 S. Ct. at 1731; *Trinity Lutheran*, 137 S. Ct at 2019. The Court need go no further.

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<sup>57</sup> Appx.101. The Commission only has power to investigate complaints, *see* Phila. Code § 9-1112; but no one has complained. Appx.268-69.

<sup>58</sup> Appx.101; Appx.300-01.

<sup>59</sup> Appx.237-38; Appx.298-99.

<sup>60</sup> Appx.104.

<sup>61</sup> Appx.297-98

The District Court found no targeting because Bethany was also penalized.<sup>62</sup> But discriminating against *two* religious agencies rather than one hardly cures a Free Exercise violation. *See, e.g., Colorado Christian Univ. v. Weaver*, 534 F.3d 1245, 1260 (10th Cir. 2008) (state program violated Free Exercise Clause by singling out two universities, one Christian and one Buddhist).

The District Court did not apply *Masterpiece* or *Trinity Lutheran*, instead citing an “absence of caselaw,”<sup>63</sup> and looking to *CLS v. Martinez*, and *Teen Ranch v. Udow*. But *Martinez* is a free speech case about the government’s ability to regulate a “limited public forum” with an “all comers” policy, 561 U.S. 661, 683 (2010); *Teen Ranch* is largely an Establishment case that “boil[s] down to the single issue” of whether teens sent to the ranch had “true private choice,” 389 F. Supp. 2d 827, 834-35 (W.D. Mich. 2005), *aff’d as supplemented*, 479 F.3d 403 (6th Cir. 2007). Neither case controls here, where the government targeted religious groups, seeks to foreclose religious conduct that it does not pay for, lacks any actual “all comers” policy, and prospective parents have a

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<sup>62</sup> Appx.29, 34.

<sup>63</sup> Appx.23.

true private choice among 30 providers. Neither case controls over the Supreme Court's much more recent religious targeting precedents.

The Court's reliance on *Martinez* is also incompatible with *Masterpiece's* observation that the Constitution would protect a religious decision not to perform same-sex weddings. Even though marriage is both a civil and religious act and requires a government license and government-sanctioned officiant, a decision to only perform some marriages "would be well understood in our constitutional order as an exercise of religion, an exercise that gay persons could recognize and accept without serious diminishment to their own dignity and worth." *Masterpiece*, 138 S. Ct. at 1727. The same is true of the Catholic Church's religious decisions regarding marriage and parenting, particularly where there is no danger of a "long list" of refusers creating "community-wide stigma," *id.*, because literally every other agency in the City provides the service.

***2. The City's actions must face strict scrutiny under the Free Exercise Clause.***

The City's actions are subject to strict scrutiny for three reasons.

***Not neutral.*** The City targeted only religious agencies for investigation, applying standards that have never been applied to

secular agencies. In *Tenafly Eruv Association, Inc. v. Borough of Tenafly*, this Court invalidated a city’s “invocation of [an] often-dormant Ordinance” to prohibit conduct undertaken for religious reasons, even though it had permitted widespread violations of the ordinance. 309 F.3d 144, 153, 168 (3d Cir. 2002). Here, the City selectively enforced its “must certify” policy and the FPO against Catholic, while never applying those principles to the City’s or non-religious agencies’ foster work.<sup>64</sup>

The City admitted that it investigated only *religious* foster agencies, with a single exception: Figueroa phoned a friend.<sup>65</sup> The City still has not bothered to *ask* whether other secular agencies accept all applicants.<sup>66</sup> To compound this problem, the City is selectively enforcing its newly minted “must certify” policy, continuing to allow other agencies to decline to perform home studies for a range of secular reasons. *See supra* p. 7-8. The City’s decision to shut down Catholic—

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<sup>64</sup> Appx.215-17; Appx.240-41; Appx.273-74, 277, 282, 297-98.

<sup>65</sup> Appx.297 (“Q. When you did that investigation, you only contacted faith-based agencies, correct? A. That’s correct.”)

<sup>66</sup> Appx.297-98.

while not even investigating secular agencies—is textbook selective enforcement.

Worse, the City is penalizing foster parents like Mrs. Paul merely for their religious affiliation with Catholic.<sup>67</sup> Placements with *existing* foster parents are not implicated by the City’s interests in *future* home studies. This punitive action unlawfully “proscribe[s] more religious conduct than is necessary to achieve the[] stated ends.” *Lukumi*, 508 U.S. at 538.

The District Court found the City’s actions neutral because the policies were not “drafted or enacted” to target religion.<sup>68</sup> But the “problem is not the adoption of an anti-discrimination policy; it is the implementation of the policy permitting secular exemptions but not religious ones and failing to apply the policy in an even-handed” manner. *Ward v. Polite*, 667 F.3d 727, 739 (6th Cir. 2012). Both the “must certify” policy and the FPO’s application to foster care were invented post hoc for religious agencies and have not been applied to

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<sup>67</sup> Appx.185.

<sup>68</sup> Appx.27.

anyone else, ever.<sup>69</sup> And the City plans to condition future contracts on a requirement that agencies certify same-sex couples—a requirement admittedly added to prevent a particular religious practice.<sup>70</sup>

***Not generally applicable.*** The City’s actions also trigger strict scrutiny because they are not generally applicable. *Fraternal Order of Police v. City of Newark*, 170 F.3d 359, 365 (3d Cir. 1999); *Blackhawk*, 381 F.3d at 209-10. The City permits agencies to make referrals for a host of secular reasons, but not for religious reasons. *Supra* at 7-8. This undermines any claimed interest the City has. Such actions “trigger strict scrutiny because at least some of the [secular] exemptions available . . . undermine the interests” the City claims to be pursuing. *Id.* at 211. Indeed, the exceptions here are so sweeping that they prove the City’s interests are illusory.

The District Court held the FPO generally applicable because it applies regardless of religious motivation, and that the exemptions did not undermine the FPO. Appx.28-29, 39. First, *any* exemption undermines the purpose of the “must certify” policy, since its purpose is

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<sup>69</sup> Appx.272-74, 297-98; Appx.215-17; Appx.240–41; Appx.172-73.

<sup>70</sup> Appx.105.

uniformity. Second, evidence showed that agencies refer prospective foster parents elsewhere for many reasons. Third, state law requires agencies to decline to certify couples for reasons that conflict with the FPO.

The FPO prohibits discrimination on the basis of “race”; “marital status”; “familial status”; or “disability,” which includes “mental impairment.”<sup>71</sup> But state law governing home studies *requires* subjective consideration of factors including “stable mental and emotional adjustment,” possibly including a “psychological evaluation”; a family’s “[s]upportive community ties”; certifications approving “[e]xisting family relationships, attitudes and expectations”; and the “[a]bility of the applicant to work in partnership with” the foster care agency.<sup>72</sup> Foster care home studies and certifications are not a “service . . . extended, offered [] or otherwise made available to the public,”<sup>73</sup>—their purpose is to be selective. None of these assessments would be remotely permissible reasons for denying someone a train ticket, a cup

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<sup>71</sup> Phila. Code §§ 9-1102(d), 9-1106.

<sup>72</sup> 55 Pa. Code § 3700.64.

<sup>73</sup> Phila. Code § 9-1102(w).

of coffee, or any other actual public accommodation. Indeed, the City admitted to considering *race* and *disability* when making foster care placements.<sup>74</sup>

Thus the FPO is not even applicable—much less “*generally* applicable”—to foster care.

***Discretionary exemptions.*** When a law gives the government discretion to grant case-by-case exemptions based on “the reasons for the relevant conduct,” such a “waiver mechanism . . . create[s] a regime of individualized, discretionary exemptions that triggers strict scrutiny.” *Blackhawk*, 381 F.3d at 207, 209-10. Here, the contract provision on which the City relies allows exceptions in the Commissioner’s “sole discretion.”<sup>75</sup> City officials also grant case-by-case exemptions to its intake freeze—based on “individualized assessments”—but not for Catholic’s religious exercise.<sup>76</sup> These discretionary exemptions trigger strict scrutiny.

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<sup>74</sup> Appx.274-79.

<sup>75</sup> Appx.104; Appx.116-117.

<sup>76</sup> Appx.305; Appx.104

Finally, the City cannot rely upon its contract to escape the First Amendment; courts frequently apply the First Amendment to contractors, grantees, and even employees. *See, e.g., Trinity Lutheran*, 137 S. Ct. at 2018 (grantee); *Fraternal Order*, 170 F.3d at 365 (employee); *Bd. of Cty. Comm'rs v. Umbehr*, 518 U.S. 668, 684 (1996) (independent contractor whose annually renewed contract was terminated); *Springer v. Henry*, 435 F.3d 268, 275 (3d Cir. 2006) (same).

***3. The City's actions cannot pass strict scrutiny.***

***No compelling interest.*** A compelling interest is an interest “of the highest order.” *Lukumi*, 508 U.S. at 546. The District Court never held that the City has a compelling interest, finding instead that the interests were only “legitimate.”<sup>77</sup> Finding a compelling interest would be impossible, given Deputy Commissioner Ali’s concession that the City’s interest in requiring home studies is “no stronger or no weaker than enforcing any other policy,”<sup>78</sup> the City’s failure to notify agencies about (much less enforce) the policy,<sup>79</sup> its failure to apply FPO

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<sup>77</sup> Appx.29.

<sup>78</sup> Appx.213.

<sup>79</sup> Appx.280-81, Appx.297-98.

standards to its own or anyone else's foster care practices,<sup>80</sup> the City's own suggestion that agencies can have "different requirements," and controlling state law.<sup>81</sup> The City's actions contravene its interest in caring for children: Mrs. Paul's home and dozens of others remain empty despite the fact that 250 children currently in congregate care could move into family homes.<sup>82</sup> The City can have no compelling interest in contravening state law and keeping children from loving homes.

***Failure to use least restrictive means.*** The City's chosen means—stopping placements with even existing foster families—does not further its alleged interests. The City is punishing current foster families over a dispute about hypothetical future home studies.

Further, the longstanding status quo was a tested, workable, less restrictive alternative. Allowing religious referrals the way the City allows secular referrals maximizes the number of (1) foster parents, (2) foster agencies, and (3) foster children placed in loving homes.

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<sup>80</sup> Appx.272-77.

<sup>81</sup> Appx.270, 287.

<sup>82</sup> Appx.128.

The absence of even a single complaint against Catholic shows that the diverse group of 30 foster agencies is meeting the needs of prospective foster parents. And the City has identified, and is pursuing, another less restrictive alternative through its ongoing direct recruitment of LGBTQ foster families.

**B. Appellants are likely to prevail on their Free Speech claims.**

The City seeks to impose an unconstitutional condition—forced speech—on Catholic’s ability to provide foster care services. The City’s restriction is not limited to funding, as Catholic cannot provide foster care services to Philadelphia children *at all* without a City contract.<sup>83</sup> Catholic is thus unlike the libraries in *United States v. American Library Ass’n, Inc.*, 539 U.S. 194, 212, (2003) (plurality opinion) who were “free to [offer unfiltered access] without federal assistance.”

Even in the funding context, however, the First Amendment circumscribes the government’s ability to leverage funding to control speech. *See AOSI v. All. for Open Soc’y Int’l, Inc.*, 570 U.S. 205, 214-5 (2013) (government cannot “leverage funding to regulate speech”

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<sup>83</sup> Appx.227.

outside of the funded program).

Here, despite admitting that it has “nothing to do” with home studies (which are governed by State law and not paid for by the City), the City insists on controlling Catholic’s speech. In particular, Catholic must “certify” or “approve” same-sex couples, providing “written endorsements” of such couples, regardless of Catholic’s actual views.<sup>84</sup> Catholic is not free to disagree with the City’s views on same-sex marriage and parenting: it *must* adopt the City’s preferred view, in writing, or it will lose its foster program.

But the First Amendment protects speakers when governments seek to “compel[] them to voice ideas with which they disagree.” *Janus v. AFSCME*, 138 S. Ct. 2448, 2464 (2018). It is “always demeaning” when speakers are “coerced into betraying their convictions,” and forced “to endorse ideas they find objectionable.” *Id.* Such laws are treated as “content-based” because they necessarily “alter[] the content” of the speaker’s message. *NIFLA v. Becerra*, 138 S. Ct. 2361, 2371 (2018) (citation omitted).

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<sup>84</sup> Appx.211, Appx.250-51, Appx.271, Appx.291-92, Appx.229-30, Appx.242, Appx.76.

The District Court believed Catholic’s speech to be the City’s “governmental speech.” But the City has “nothing to do” with home studies, which are not designed to “promote a governmental message.” *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 541-43 (2001). Catholic does not speak for the City when it considers the factors for certification, and is not “in any way or for any purpose” acting as the City’s agent,<sup>85</sup> particularly for an uncompensated activity.

The City therefore cannot force Catholic to embrace the City’s views. *Id.* *AOSI* is instructive. There, “[b]y demanding that funding recipients adopt—as their own—the Government’s view on an issue of public concern” and forcing recipients “to pledge allegiance to the Government’s policy,” the government violated the First Amendment. *AOSI*, 570 U.S. at 218, 220. And even if the City imposed a licensing requirement for foster care, the Court has been clear that even in licensed activities governments cannot engage in “invidious discrimination of disfavored subjects.” *NIFLA*, 138 S. Ct. at 2375.

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<sup>85</sup> Appx.118.

Of course, the City remains free to speak its own message, and to place children with same-sex foster parents. Catholic has never interfered with either endeavor. But the City cannot coerce Catholic to publicly promote the City's views.

**III. Appellants will be irreparably harmed absent an injunction.**

“[L]oss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Furthermore, without an injunction, Catholic will likely close before litigation is complete.<sup>86</sup> This loss is more than monetary; it would be extremely difficult, if not impossible, for Catholic to rebuild after the loss of employees, connections to foster families, and its institutional knowledge and experience built over decades of service.<sup>87</sup> And the immeasurable benefits of Catholic's work would be lost to the individual plaintiffs and to unnamed and unknown foster children who could be living with Catholic's foster families today.

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<sup>86</sup> Appx.249, 252-55, 256.

<sup>87</sup> Appx.248.

**IV. An injunction is in the public interest.**

“[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” *Awad v. Ziriox*, 670 F.3d 1111, 1132 (10th Cir. 2012). Here, the public interest is best served by ensuring that empty foster homes are filled and at-risk children are placed with loving foster parents in accordance with state law. *See* 11 Pa. Stat. Ann. § 2633(4).

**V. The balance of the equities favors Appellants.**

In balancing the equities, this Court looks to “the potential injury to the plaintiffs without this injunction versus the potential injury to the defendant with it in place.” *Issa v. Sch. Dist. of Lancaster*, 847 F.3d 121, 143 (3d Cir. 2017). Here, Appellants—along with dozens of foster parents and an untold number of children—will be harmed if this Court does not act to restore normal foster care operations.

The City’s alleged harms are hypothetical. No same-sex couple has ever even asked Catholic to assess their home life for foster care purposes. If the situation ever arises, the couple would simply be referred to one of 29 different agencies nearby, and that couple—just

like any other family referred for secular reasons—would not be blocked from fostering children. As Figueroa admitted, regardless of the outcome of this litigation, the same number of foster care agencies will be available to serve same-sex couples in Philadelphia.<sup>88</sup> The City’s failure to adduce a scintilla of evidence of harm confirms that the balance tips in favor of preliminary relief to allow Catholic to continue serving foster children while the appeal proceeds.

### CONCLUSION

The Appellants respectfully request that this Court grant their motion for an injunction pending appeal.

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<sup>88</sup> Appx.267-68.

Date: July 16, 2018

Respectfully submitted,

/s/ Mark L. Rienzi

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### CERTIFICATE OF SERVICE

I certify that on the date indicated below, I filed the foregoing document with the Clerk of the Court, using the CM/ECF system, which will automatically send notification and a copy of this motion to the counsel of record for the parties.

Executed this 16th day of July, 2018.

/s/ Mark L. Rienzi

Mark L. Rienzi

**CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF  
APPELLATE PROCEDURE 32(A) AND  
LOCAL RULES 25 AND 32**

I hereby certify that the following statements are true:

1. This brief complies with the type-volume limitations imposed by Federal Rules of Appellate procedure 29(d) and 32(a)(7)(B). It contains 5,184 words, excluding the parts of the brief exempted by Federal Rule 32(a)(7)(B)(iii) and by Local Rule 32.
2. This brief complies with the typeface and typestyle requirements of Federal Rule 32(a)(5) and 32(a)(6). It has been prepared in a proportionally-spaced typeface using Microsoft Office Word 2016 in 14-point Century Schoolbook font.
3. This brief complies with the electronic filing requirements of Local Rule 25. The text of this electronic brief is identical to the text of the paper copies, and Windows Defender Antivirus Version 1.271.1085.0 has been run on the file containing the electronic version of this brief and no virus has been detected.

Executed this 16 day of July, 2018.

/s/ Mark L. Rienzi

Mark L. Rienzi

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

<b>SHARONELL FULTON, et al.,</b>	:	
	:	
<b>Plaintiffs,</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	<b>NO. 18-2075</b>
	:	
<b>CITY OF PHILADELPHIA, et al.,</b>	:	
	:	
<b>Defendants.</b>	:	

**MEMORANDUM**

**Tucker, J.**

**July 13, 2018**

The gratitude we owe to all those working to better the lives of Philadelphia’s most vulnerable children is too great to convey in words. While our gratitude is ultimately ineffable, the Court still begins by recognizing the Parties in this case for their many years of sacrifice and labor. The Court thanks Sharonell Fulton, Cecelia Paul, Toni Lynn Simms-Busch, Catholic Social Services (“CSS”), the City of Philadelphia, the Department of Human Services (“DHS”), and the Commission on Human Relations for their individual sacrifices and contributions in service of Philadelphia’s children and its families. As witnesses called to testify in this case have made clear, fostering children is challenging work, but challenging work that can form part of a full and good life.

Until recent events, the Parties have had a fruitful relationship; a relationship that has benefited Philadelphia’s children in immeasurable ways. For this reason, the Court would prefer that the Parties seek out some compromise to their current dispute without court intervention. Creative problem solving through concerted and thoughtful discourse without court intervention is often the best method to avoid what may appear to the parties, or to other persons in the public, to be harsh legal results. Still, when parties place a matter before the Court, the Court

must act pursuant to its obligations under the law. Accordingly, the Court turns to the legal matter presented in this case.

Before the Court are Plaintiffs' Motion For A Temporary Restraining Order And Preliminary Injunction ("Injunction Motion") (ECF No. 13),<sup>1</sup> The City Of Philadelphia's Memorandum Of Law In Opposition To Plaintiffs' Motion For Temporary Restraining Order And Preliminary Injunction (ECF No. 21), Proposed Intervenors' Memorandum of Law, Or, In The Alternative, Amicus Brief, In Opposition To Plaintiffs' Motion For A Temporary Restraining Order And Preliminary Injunction ("Amicus Brief") (ECF No. 34);<sup>2</sup> Defendants' Proposed Findings Of Facts And Conclusions Of Law (ECF No. 45), and Plaintiffs' Proposed Findings Of Fact And Conclusions of Law (ECF No. 46). Upon careful consideration of the foregoing and all the evidence presented by the Parties in their written submissions and the evidentiary hearing held on June 18, 2018, June 19, 2018, and June 21, 2018, for the reasons explained below, Plaintiffs' Injunction Motion (ECF No. 13) is **DENIED**.

## **I. PROCEDURAL BACKGROUND**

On May 17, 2018, Plaintiffs asserted sixteen causes of action against Defendants related to, among other things, Defendants' suspension of referrals of new children to Plaintiffs' care and Defendants' alleged violations of Plaintiffs' religious and free speech rights. *See generally*

<sup>1</sup> On June 7, 2018, Plaintiffs filed an Amended Motion for Temporary Restraining Order and Preliminary Injunction because of the Parties' concern that the initial Motion may not have adequately protected the privacy interests of certain minor children identified in the initial Motion. *See* Jun. 20, 2018 Order, ECF No. 32 (dismissing as moot and sealing the initial Motion). Accordingly, unless otherwise noted, the Court's references to the Injunction Motion are references to Plaintiffs' Amended Motion for Temporary Restraining Order and Preliminary Injunction (ECF No. 13).

<sup>2</sup> On June 18, 2018, the Court accepted the Intervenors' Opposition Brief as an amicus brief. The Court's acceptance of the Amicus Brief is memorialized by order dated June 20, 2018. Jun. 20, 2018 Order, ECF No. 33.

Compl., ECF No. 1; *but see* Mem. of Law Supp. Pl.s’ Injunction Mot. 8 (asserting that CSS “filed a complaint in this Court on May 16, 2018”). Nineteen days later,<sup>3</sup> on June 5, 2018, Plaintiffs filed their Injunction Motion seeking a court order to compel Defendants to resume referrals of children to Plaintiffs’ care in advance of the June 30 expiration of Plaintiffs’ current services contract with Defendants under which Plaintiffs provide various professional services in exchange for public funds. In view of the urgency of the matter, the Court set an expedited briefing schedule and ordered an evidentiary hearing. Jun. 6, 2018 Order, ECF No. 11. Less than two weeks later, on June 18, 2018, the Court held an evidentiary hearing. The hearing concluded on June 21, 2018.<sup>4</sup>

<sup>3</sup> If the Court accepts Plaintiffs’ asserted date of May 16, 2018 as the filing date for the Complaint, then Plaintiffs’ Injunction Motion was filed twenty days after first filing suit.

<sup>4</sup> During the evidentiary hearing, testimony by James Amato, Secretary and Executive Vice President of CSS, revealed that it is CSS policy to refuse to certify any prospective foster parent without a “clergy letter” from a religious minister. *See* Jun. 19, 2017 Hearing Tr. 34–35 (Amato) (testifying to Amato’s title and responsibilities at CSS); Jun. 19, 2017 Hearing Tr. 95–96 (Amato) (explaining that a clergy letter is required for certification by CSS because the letter “is a very good indication of [a prospective foster parent’s] commitment to their faith” and explaining that CSS will not, to Amato’s knowledge, certify a prospective resource parent without a clergy letter). While the religious affiliation of the minister writing the clergy letter does not matter, Amato explained that the receipt of a clergy letter on behalf of a prospective foster parent is an absolute condition to CSS’s certification of that prospective foster parent. Jun. 19, 2017 Hearing Tr. 95:12–16, 95:21–23 (Amato). It appears, therefore, that CSS will not certify prospective foster parents who are religious but whose religious exercise does not include a relationship with a minister, prospective foster parents who choose not to associate with any religious tradition, or prospective foster parents who associate with a religious tradition that does not have religious ministers willing or able to provide a clergy letter. This evidence is disconcerting to the Court because it raises serious constitutional as well as contractual questions. Among other things, this policy appears to contravene CSS’s contractual obligations under its contract with DHS under Section 4.1(k). Section 4.1(k) prohibits CSS from discriminating against individuals based on the individuals’ religious beliefs. Section 4.1(k) provides that CSS:

shall inform all individuals to whom Services are provided, whether directly or indirectly, of the following: “The Philadelphia Department of Human Services’ selection of a faith-based provider

## II. FACTUAL BACKGROUND<sup>5</sup>

### A. CSS's Services Contract With DHS And Philadelphia

It is an intractable tragedy that children in our community are sometimes unable to remain in their own homes. Pennsylvania has, in response to this tragic reality, charged individual county agencies with the duty of establishing a system to address the well-being of these children consistent with the best interests of each child. Jun. 19, 2018 Hr'g Tr. 152:18–24 (Figueroa). In Philadelphia County, the county agency charged with this duty is DHS. In performing its duty, DHS contracts with a number of private foster care agencies. Jun. 18, 2018 Hr'g Tr. 87:2–4 (Ali). Presently, DHS has contracts with thirty private foster care agencies. Jun. 19, 2018 Hr'g Tr. 155:14–16 (Figueroa). Each of these private foster care agencies is expected to provide foster care services consistent with a services contract with DHS. *See, e.g.*, Jun. 19, 2018 Hr'g Tr. 162:2 – 12 (Figueroa) (indicating that CSS's services, as a foster agency, are provided under contract with DHS and Philadelphia); Jun. 21, 2018 Hr'g Tr. 12:15–16

of social services is not an endorsement of the Provider's religious character, practices or beliefs. No Provider of social services may discriminate against you on the basis of religion, a religious belief or your refusal to actively participate in religious practices.”

Decl. of James Amato Ex. B, ECF p. 29 of 39, ECF No. 13-4. Indeed, on June 25, 2018, Counsel for CSS delivered a letter to the Court representing that CSS “will agree not to require pastoral letters.” Letter from Mark Rienzi, Attorney for Plaintiffs, to Chambers of Judge Petrese B. Tucker (Jun. 25, 2018), ECF No. 40.

Still, as the questions CSS's pastoral letter requirement poses are not squarely before the Court, the Court will, for purposes of the Injunction Motion, refrain from further discussion of the matter.

<sup>5</sup> The following findings of facts are set forth pursuant to Fed. R. Civ. P. 52(a)(2) (requiring that “[i]n granting or refusing an interlocutory injunction, the court must [] state the findings and conclusions that support its action.”).

(Figuroa) (indicating that Bethany Christian Services, another foster agency, has a contract similar to the services contract between DHS and CSS).

In November 2015, DHS and CSS entered into Contract Number 16-20030 (“Services Contract”) for certain professional services. Decl. of James Amato Ex. A, ECF p. 13 of 52, ECF No. 13-3 (showing that the original contract was executed in November 2015 and recounting the various amendments since initial execution); *see also* Decl. of James Amato Ex. A, ECF p. 39 of 52, ECF No. 13-3 (identifying the Services Contract as a “Professional Services Contract . . . for Department of Human Services Contracts”). As provided in the Statement of Purpose section of the Services Contract, the Services Contract was:

made and entered into between Catholic Social Services (the Provider) and the Philadelphia Department of Human Services (DHS), and sets forth the services for general, kinship, and teen parent/baby resource home care.

Decl. of James Amato Ex. A, ECF p. 27 of 52, ECF No. 13-3. Under the Scope of Services section of the Services Contract, CSS was to ensure that, among other things, resource caregivers (foster parents) would be “screened, trained, and certified by the Provider [CSS].”<sup>6</sup> Decl. of James Amato Ex. A, ECF p. 28–29 of 52, ECF No. 13-3. The Services Contract reiterates that “[t]he specific issue to be addressed by [CSS] is to recruit, screen, train, and provide certified resource care homes.” Decl. of James Amato Ex. A, ECF p. 28 of 52, ECF No. 13-3.

CSS was to provide the services set forth under the Scope of Services section of the Services Contract in accordance with certain criteria, including criteria under Section 3.21 of the

<sup>6</sup> Certification of prospective foster parents requires a licensed foster family care agency to evaluate prospective foster parents using the criteria set forth under 55 Pa. Code § 3700.64. *See e.g., Hinnerschitz v. Dep’t of Pub. Welfare*, No. 1977 C.D.2014, 2015 WL 5457824 (Pa. Commw. Ct. 2015) (not precedential) (concluding that Berks County Children and Youth Services’ denial of prospective foster parents’ application to become kinship foster parents was appropriate given the lower administrative courts’ proper consideration of the § 3700.64 factors).

Services Contracts’ General Provisions and Article XV: Additional Representations and Covenants of Provider Relating to Certain Applicable Laws.

Section 3.21 limits the reasons that CSS may refuse to provide the services required under the Services Contract. Section 3.21 provides that CSS:

shall not reject a child or family for Services based upon the location or condition of the family’s residence, their environmental or social condition, or for any other reason if the profiles of such child or family are consistent with Provider’s Scope of Services or DHS’s applicable standards as listed in the [Services Contract], unless an exception is granted by the Commissioner or the Commissioner’s designee, in his/her sole discretion.

Decl. of James Amato Ex. B, ECF p. 14 of 39, ECF No. 13-4.

Article XV of the Services Contract further limits the reasons that CSS may refuse to provide the services required under the Services Contract by incorporating into the Services Contract various laws, ordinances, regulations, and executive orders. In particular, Article XV incorporates provisions of the Philadelphia Fair Practices Ordinance relating to non-discrimination and serving all-comers who might seek services from CSS. Article XV stipulates that:

. . . Provider further represents, warrants and covenants that . . . Provider is in compliance with the laws, ordinances, regulations and executive orders described below.

15.1 Non-Discrimination; Fair Practices. This Contract is entered into under the terms of the Charter, the Fair Practices Ordinance (Chapter 9-1100 of the Code) . . . Provider shall not discriminate or permit discrimination against any individual because of race, color, religion or national origin. Nor shall Provider discriminate or permit discrimination against individuals in . . . public accommodation<sup>7</sup> practices whether by direct or indirect practice of

<sup>7</sup> The term “public accommodation” is defined under the Philadelphia Fair Practices Ordinance as:

exclusion, distinction, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person on the basis of . . . sex, sexual orientation, gender identity, marital status, familiar [sic] status . . . or engage in any other act or practice made unlawful under the Charter . . . .

Decl. of James Amato Ex. C, ECF p. 18–19 of 39, ECF No. 13-5 (emphasis added). In the event of CSS’s breach of its covenant under Article XV, DHS and Philadelphia would be permitted “in addition to any other rights or remedies available under this Contract, at law or in equity, [to] suspend or terminate this Contract forthwith.” Decl. of James Amato Ex. C, ECF p. 19 of 39, ECF No. 13-5.

In exchange for “the Services and Materials being provided under” the Services Contract, DHS and Philadelphia agreed to “set the amount of compensation payable to [CSS] for the current contract term at [\$19,430,999.00].” Decl. of James Amato Ex. A, ECF p. 15 of 52, ECF No. 13-3. Despite this lump sum amount, as a matter of practice, payment to CSS was made on a per diem basis pegged to the number of children under its care. *See* Jun. 21, 2018 Hr’g Tr. 11:4–7 (Figueroa) (testifying that many contractors are paid on a per diem basis); Jun. 21, 2018 Hr’g Tr. 139:20–24 (same) (Figueroa). That CSS was receiving significant public funds to perform its public service functions under the Services Contract is underscored by Section 3.30 of the General Provisions that provides “[CSS] shall identify the Department as a funding source in all literature, documents[,], reports or pamphlets which Provider publishes develops or

Any [] provider, whether licensed or not, which solicits or accepts patronage or trade of the public or whose . . . services, facilities . . . are extended, offered [] or otherwise made available to the public; including all . . . services provided by any public agency or authority; any agency, authority or other instrumentality of . . . the City, its departments, boards and commissions.

Philadelphia Fair Practices Ordinance § 9-1102 (Definitions) at 4, Chapter 9-1100 of the Philadelphia Code.

produces in connection with this Contract.” Decl. of James Amato Ex. B, ECF p. 21 of 39, ECF No. 13-4.

CSS and DHS proceeded under the Services Contract without dispute until March 2018, when DHS learned that it is CSS policy to not serve all-comers. In particular, it is CSS policy to refuse service to same-sex couples CSS services under the Services Contract.

**B. March 2018: DHS Learns Of CSS’s And Another Foster Agency’s Refusal To Comply With Services Contract’s All-Comers Provisions**

On or about March 9, 2018, DHS Commissioner Figueroa came to believe that two of the foster care agencies with which DHS contracts, CSS and Bethany Christian Services, have policies that deny their publicly-funded services to married same-sex couples. Jun. 21, 2018 Hr’g Tr. 3 (Figueroa) (testifying that on March 9, 2010, a reporter contacted Figueroa and that Figueroa’s discussions with the reporter led Figueroa to believe that CSS and Bethany Christian Services had certain policies of refusing service to same-sex couples). Jun. 19, 2018 Hr’g Tr. 164 (Figueroa). Commissioner Figueroa formed this belief after discussions with a *Philadelphia Inquirer* reporter who called Figueroa seeking comment ahead of the publication of an article on two DHS foster care agencies that reportedly maintained policies that would effectively permit these agencies to refuse services to same-sex couples. Jun. 19, 2018 Hr’g Tr. 164 (Figueroa). After Commissioner Figueroa’s discussion with the reporter, Figueroa contacted Bethany Christian Services, CSS, various DHS’s faith-based foster care agencies, and a nonfaith-based agency to determine what those agencies’ policies are in connection with serving same-sex couples. Jun. 19, 2018 Hr’g Tr. 164:16–165:4 (Figueroa); Jun. 21, 2018 Hr’g Tr. 103:6–9 (testifying that Figueroa contacted a nonfaith-based foster care agency).

Commissioner Figueroa’s phone call with James Amato at CSS provided greater clarity regarding what services CSS refused to provide to same-sex couples and why CSS refused to

provide those services. Jun. 21, 2018 Hr'g Tr. 3:18–24 (Figueroa). James Amato explained that there were two services that CSS would not provide to same-sex couples: (1) CSS would not certify same-sex couples as prospective foster parents even if the couples were otherwise eligible foster parents under state regulations, and (2) CSS would not provide a same-sex couple with a home study as part of a same-sex couple's application for adoption. Jun. 21, 2018 Hr'g Tr. 3:18–24 (Figueroa); *see also* Jun. 19, 2018 Hr'g Tr. 55:7–20 (Amato) (testifying that Commissioner Figueroa and another DHS officer asked Amato whether CSS would complete a home study for “a same-sex couple or individual” and that Amato confirmed that CSS would not complete such a home study for a couple and would only provide a home study for an individual if that individual was committed to living single). Amato explained that CSS would not provide these services on religious grounds. Jun. 21, 2018 Hr'g Tr. 3:18–24 (Figueroa). Amato recalled that DHS “said to me that you are discriminating. I said that I am following the teachings of the Catholic Church.” Jun. 19, 2018 Hr'g Tr. 55:22–25 (Amato).

On March 13, 2018, the *Philadelphia Inquirer* published an article titled Two Foster Agencies in Philly Won't Place Kids with LGBTQ People.<sup>8</sup> The article recounted an incident in which a married same-sex couple traveled to a Bethany Christian Services informational event for prospective foster parents. On arrival, a Bethany Christian Services employee told the couple their attendance at the event would be a waste of time because Bethany Christian Services maintained a policy of refusing to serve same-sex couples. *See also* Jun. 19, 2018 Hr'g Tr. 164:5–10 (Figueroa). In the same story, the *Inquirer* reported that a representative for CSS confirmed that CSS maintained similar policies of refusing to serve same-sex couples.

<sup>8</sup> Julia Terruso, Two Foster Agencies in Philly Won't Place Kids with LGBTQ People, Philly.com (Mar. 13, 2018, 9:05 AM), <http://www.philly.com/philly/news/foster-adoption-lgbtq-gay-same-sex-philly-bethany-archdiocese-20180313.html>.

On March 15, 2018, after meeting with James Amato and CSS’s legal counsel in person, Commissioner Figueroa “decided that it was in the best interest [of children] to close intake, so that [Figueroa] could look more deeply into” CSS’s and Bethany Christian Services’s policies. Jun. 19, 2018 Hr’g Tr. 166:6–21 (Figueroa); Figueroa Decl. ¶ 32, ECF No. 20-6; *see also* Jun. 18, 2018 Hr’g Tr. 96:2–3 (Ali) (testifying that, to Ali’s knowledge, Commissioner Figueroa herself decided to close CSS’s intake of new referrals). That day, Philadelphia City Council separately passed its own resolution authorizing the Committee on Public Health and Human Services to “investigate [DHS] policies on contracting with social services agencies that either discriminate against prospective LGBTQ foster parents and allow non-LGBTQ foster parents to discriminate against children.” City Council Resolution No. 180252 at 2, ECF No. 10-9.

On March 27, 2018, Deputy Commissioner Ali emailed various community umbrella agencies—responsible for case management activities—to communicate that foster agencies should “refrain from making any foster care referrals to Bethany Christian Services and [CSS],” but “[i]f you have questions about a case, please contact me by phone or email.” Ex. 1-E 3, ECF No. 10-12. Deputy Commissioner Ali further communicated that DHS is:

Committed to the safety and stability of children in our care and must consider the needs of the children and youth *currently* served by foster families licensed by these organizations. Our goal is to minimize placement disruptions, and to ensure that a child’s ability to reunify or to continue an adoption process is not delayed because of placement disruption.

Ex. 1-E 3, ECF No. 10-12.

**C. Doe Foster Child #1**

Plaintiffs spent some time at the evidentiary hearing exploring a situation involving a minor child identified as Doe Foster Child #1. Plaintiffs point to the situation involving Doe Foster Child #1 as an “example of the harm that has resulted from the City’s intake closure.”

Pls.’ Proposed Findings of Fact and Conclusions of Law 27, ECF No. 46. The circumstances surrounding Doe Foster Child #1 are, as is often the case for children in foster care, complex. The Court notes, however, that by the time of the evidentiary hearing, DHS and CSS, working together, successfully obtained a Philadelphia Family Court order permitting Doe Foster Child #1’s removal from a different living situation and then placement with a CSS-certified foster parent. Ali Decl. ¶ 60, ECF No. 20-1. Through the concerted efforts of DHS and CSS staff, the situation involving Doe Foster Child #1 is now resolved.

Still, Plaintiffs contend that the situation with Doe Foster Child #1 would not have occurred but for DHS’s closure of CSS’s intake of new referrals, while DHS and Philadelphia contend that Doe Foster Child #1’s unique situation was resolved in a timely manner considering the complexity of the case. As a factual matter, the situation with Doe Foster Child #1 is unlikely to occur again given that DHS and CSS are both now fully aware that exemptions from the intake closure have been and continue to be granted consistent with the best interests of individual children. *See, e.g.*, Jun. 19, 2018 Hr’g Tr. 84:2–9 (Amato) (testifying that he is aware that DHS will grant exceptions in some cases for placements with Catholic Social Services when such placements are in the best interests of the child); Jun. 19, 2018 Hr’g Tr. 86:8 – 11 (Amato) (testifying that CSS has, in fact, sought out and received placements for children despite the intake closure when placements were in the best interests of the child).

#### **D. Current Effects Of Closure Of CSS Intake Of New Referrals**

In response to Plaintiffs’ claims that CSS’s intake closure has and will continue to negatively affect foster children, DHS offered evidence showing that the closure of CSS’s intake of new referrals has had little or no effect on the operation of Philadelphia’s foster care system. DHS Commissioner Figueroa testified that CSS’s intake closure “has not resulted in a rise in

children placed in congregate care.”<sup>9</sup> Jun. 21, 2018 Hr’g Tr. 86:4–87:9 (Figueroa). Further, Figueroa testified that CSS’s intake closure “has not resulted in a rise in children staying in DHS’s childcare room.” Jun. 21, 2018 Hr’g Tr. 86:4–87:9 (Figueroa). Figueroa’s testimony was based on her review of “weekly data” that Figueroa receives from DHS’s “performance and technology team that . . . have . . . detailed data.” Jun. 21, 2018 Hr’g Tr. 86:16–87:11 (Figueroa).

That the effects of closing CSS’s intake have been small relative to size and breadth of the Philadelphia foster care system is, unfortunate, but unsurprising given Commissioner Figueroa’s explanation that:

Kids are abused every day. They are neglected every day. They end up in [DHS’s] placement, in [DHS’s] care, because their families can’t care for them. We are incredibly fortunate that we have foster care agencies, but it’s not a one to one.

Jun. 21, 2018 Hr’g Tr. 93:23–94:7 (Figueroa). The number of cases and idiosyncrasies of each child involved in each case means that the mere fact that there are empty, available foster homes does not equate to fewer children in congregate care. Figueroa explained that assuming that “availability [at any one foster agency] [will] reduce the [use of] congregate care is an over [simplification] of the complication of our work.” Jun. 21, 2018 Hr’g Tr. 93:23–94:7 (Figueroa). That the negative effects of closing CSS’s intake have been relatively slight is also supported by the reality that, as of the evidentiary hearing date, at least three foster agencies had intake closures in place and the foster system nevertheless remained stable. *See* Jun. 21, 2018 Hr’g Tr. 5:14–15 (Figueroa) (testifying that “I have closed intake in other circumstances for other providers.”); Jun. 21, 2018 Tr. 8:24-25–9:1 (Figueroa) (testifying that the week before, DHS also

<sup>9</sup> Congregate care is a broad term used to describe a variety of “nonfamily-like [foster care] settings.” Jun. 18, 2018 Hearing Tr. 93:6 (Ali).

closed intake for another agency); Jun. 21, 2018 Hr’g Tr. 12:9–21 (Figueroa) (testifying that Bethany Christian Services’s intake remained closed as of June 21).

**E. Defendants’ Preference To Continue Work With CSS And Offer Of New Contracts**

DHS and Philadelphia have explicitly stated a preference for continuing their relationship with CSS, despite CSS’s religious nature, so long as CSS complies with its contract responsibilities. *See, e.g.*, Jun. 21, 2018 Hr’g Tr. 9:18–24 (Figueroa) (indicating that DHS would prefer to continue contracting with CSS); Jun. 19, 2018 Hr’g Tr. 120:7 – 11 (Amato) (testifying that DHS and Philadelphia were clear that they did “not plan to agree to any further referrals to CSS . . . absent assurances that CSS is prepared to adhere to contractual obligations). Indeed, DHS and Philadelphia manifested their preference to continue working with CSS by offering CSS two different renewal services contracts. *See, e.g.*, Jun. 21, 2018 Hr’g Tr. 10:1–10 (Figueroa). The first contract would be a renewal on the same terms as CSS’s current Services Contract. The second contract would be an alternate services contract to provide financial support to CSS even if CSS could not agree to certify same-sex couples consistent with the all-comers provisions of the standard services contract. *See, e.g.*, Jun. 21, 2018 Hr’g Tr. 10:5–10. Such alternate contracts have been provided to other foster care agencies in the past to ensure the best interest of foster children. *See, e.g.*, Jun. 21, 2018 Hr’g Tr. 10:20–11:16 (Figueroa). That Defendants have offered two contracts to CSS despite the Parties’ present dispute shows Defendants’ strong desire to keep CSS as a foster care agency.

**III. STANDARD OF REVIEW**

**A. Temporary Restraining Order and Preliminary Injunctive Relief Factors**

A preliminary injunction is “an extraordinary remedy never awarded as of right.”

*Groupe SEB USA, Inc. v. Euro-Pro Operating LLC*, 774 F.3d 192, 197 (3d Cir. 2014) (citing

*Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008)). Preliminary injunctive relief is appropriate only “upon a clear showing that the plaintiff is entitled to such relief.” *Id.* (citing *Winter*, 555 U.S. at 22). Ultimately, “the decision to grant or deny a preliminary injunction is committed to the sound discretion of the district court.” *United States v. Price*, 688 F.2d 204, 210 (3d Cir. 1982) (citing *Stokes v. Williams*, 226 F. 148, 156 (3d Cir. 1915)). In deciding whether to grant injunctive relief, the Court must consider whether: (1) Plaintiffs have demonstrated a likelihood of success on the merits; (2) Plaintiffs will be irreparably harmed by the denial of injunctive relief; (3) the balance of equities favors Plaintiffs; and (4) the public interest favors granting the injunction. *See, e.g., Del. Strong Families v. Att’y Gen. of Del.*, 793 F.3d 304, 308 (3d Cir. 2015).<sup>10</sup>

The Third Circuit has explained that the first two factors of this analysis—likelihood of success on the merits, and irreparable harm—act as “gateway factors.” *Reilly v. City of Harrisburg*, 858 F.3d 173, 180 (3d Cir. 2017). Accordingly, when confronted by a motion for preliminary injunctive relief, a court must first determine whether the movant has met these two gateway factors before considering the remaining two factors—balance of harms, and public interest. *Id.* at 179. In short, “[i]f these gateway factors are met, a court then considers the remaining two factors and determines in its sound discretion if all four factors, taken together, balance in favor of granting the requested preliminary relief.” *Id.*

Esteemed jurists have acknowledged that the existence of complex questions of law and disputed matters of fact at the preliminary injunction phase of a case may create “doubt about the probability of [a] plaintiff’s success to justify denying a preliminary injunction.” *Transcon. Gas*

<sup>10</sup> The standard for issuing a temporary restraining order is the same as that for ordering a preliminary injunction. *Ride the Ducks, LLC v. Duck Boat Tours, Inc.*, No. CIV. A. 04-CV-5595, 2005 WL 670302, at \*4 (E.D. Pa. Mar. 21, 2005).

*Pipe Line Co. v. Permanent Easements for 2.14 Acres & Temp. Easements for 3.59 Acres in Conestoga Twp., Lancaster Cty., Pa.*, No. 5:17-CV-00715, 2017 WL 1283948, at \*5 (E.D. Pa. Apr. 6, 2017) (citing *St. John of Jerusalem-Knights of Malta v. Messineo*, 572 F. Supp. 983, 990 (E.D. Pa. 1983)). Indeed, in *Transcon. Gas Pipe Line Co.*, the district court collected a number of cases supporting this general proposition. 2017 WL 1283948, at \*5 (citing *La Chemise Lacoste v. General Mills, Inc.*, 53 F.R.D. 596, 605 (D. Del. 1971) for the proposition that “[a] Court should not decide doubtful and difficult questions on a motion for a preliminary injunction.”); *see also id.* (citing *Coffee Dan’s, Inc. v. Coffee Don’s Charcoal Broiler*, 305 F. Supp. 1210, 1213 (N.D. Cal. 1969) for the proposition that “[o]n an application for a preliminary injunction the court is not bound to decide doubtful and difficult questions of law or disputed questions of fact.”).

Although there exists, in this case, a myriad of complex questions of law and a great number of disputed facts such that the Court could justifiably deny injunctive relief on these grounds alone, the Court nevertheless engages in the preliminary injunction analysis below to ensure that the reasons for the Court’s decision are sufficiently articulated for the Parties.

#### **IV. DISCUSSION AND CONCLUSIONS OF LAW<sup>11</sup>**

##### **A. Factual Precedent: Faith-Based Foster Agencies In Other Jurisdictions**

At the outset, the Court notes that while precise legal precedent on the issues raised in this case is absent, there exists some factual precedent. In 2006, for example, in the wake of Massachusetts’s legalization of same-sex marriages, Catholic Charities in Boston shut down its

<sup>11</sup> The following discussion and conclusions of law are set forth pursuant to Fed. R. Civ. P. 52(a)(2).

foster care agency after it unsuccessfully sought permission from Massachusetts to withhold its services from legally married same-sex couples.<sup>12</sup>

In 2010, Catholic Charities in Washington, DC, like Catholic Charities in Boston, ended its foster care program in response to Washington, DC's legislation to legalize same-sex marriage.<sup>13</sup> As a result, "Catholic Charities' caseload of 43 children and 35 foster families was transferred, along with seven staffers, to the Bethesda, Md.-based National Center for Children and Families so as not to disrupt client care."<sup>14</sup>

In 2011, Catholic Charities in Illinois sued, among others, the State of Illinois after the State indicated that it would not renew its foster care contract with Catholic Charities because Catholic Charities' "failure to provide services to unmarried cohabiting couples was in direct violation of" state law. Summary Judgment Order 2, *Catholic Charities of the Diocese of Springfield v. Madigan*, No. 2011-MR-254 (Ill. Cir. Ct. Aug. 18, 2011). The Sangamon County Circuit Court granted the State's Cross Motion for Summary Judgment on grounds that Catholic Charities had no cognizable right to a state government services contract. The court reasoned that Catholic Charities did "not have a legally recognized protected property interest in the renewal of its contracts for foster care and adoption services . . . [and] [t]he fact that [Catholic Charities] have contracted with the State to provide foster care and adoption services for over forty years does not vest the Plaintiffs with a protected property interest." *Id.* After the Sangamon County Circuit Court's decision, Catholic Charities in Illinois ended its foster care

<sup>12</sup> Patricia Wen, [Catholic Charities Stuns State, Ends Adoptions](http://archive.boston.com/news/local/articles/2006/03/11/catholic_charities_stuns_state_ends_adoptions/), boston.com (Mar. 11, 2006), [http://archive.boston.com/news/local/articles/2006/03/11/catholic\\_charities\\_stuns\\_state\\_ends\\_adoptions/](http://archive.boston.com/news/local/articles/2006/03/11/catholic_charities_stuns_state_ends_adoptions/).

<sup>13</sup> Julia Duin, [Catholics End D.C. Foster-Care Program](https://www.washingtontimes.com/news/2010/feb/18/dc-gay-marriage-law-archdiocese-end-foster-care/), (Feb. 18, 2010), <https://www.washingtontimes.com/news/2010/feb/18/dc-gay-marriage-law-archdiocese-end-foster-care/>.

<sup>14</sup> *Id.*

and adoption services and agreed to transfer “more than 1,000 foster care children and staff to other agencies in their regions.”<sup>15</sup>

In 2006, in contrast to the decisions by Catholic Charities in Boston, Washington, DC, and Illinois to end its foster care services, Catholic Charities in San Francisco chose to end its full service adoption agency to avoid providing services to same sex couples, but otherwise planned to “provide staff and financial resources to connect needy children to adoptive parents,” and formally collaborate with other adoption agencies who can provide full services to all-comers without violating San Francisco’s anti-discrimination efforts.<sup>16</sup>

Against this backdrop, the Court turns to the Parties’ legal arguments.

**B. Services Contract Requires Contractors To Provide Services Consistent With Fair Practices Ordinance**

**1. The Unambiguous Terms Of The Services Contract Evinces The Parties’ Intent That The Fair Practices Ordinance Apply To CSS’s Services**

As a threshold matter, the Parties disagree on whether the Services Contract requires CSS to provide its services to all-comers in accordance with the Fair Practices Ordinance because such services may or may not constitute a “public accommodation.” While briefing on this issue is scant, the Parties expended significant time arguing this issue at the evidentiary hearing.

*See, e.g.*, Jun. 18, 2018 Hr’g Tr. 9:17–12:14 (Plaintiffs’ Opening Statement); *see also* Pls.’

Proposed Findings of Fact and Conclusions of Law ¶¶ 61–65. In view of the plain terms of

<sup>15</sup> Manya A. Brachear, 3 Dioceses Drop Foster Care Lawsuit—Catholic Charities To End Service Rather Than Work With Parents In Civil Unions, ChicagoTribute.com (Nov. 15, 2011), [http://articles.chicagotribune.com/2011-11-15/news/ct-met-catholic-charities-foster-care-20111115\\_1\\_civil-unions-act-catholic-charities-religious-freedom-protection](http://articles.chicagotribune.com/2011-11-15/news/ct-met-catholic-charities-foster-care-20111115_1_civil-unions-act-catholic-charities-religious-freedom-protection).

<sup>16</sup> Elizabeth Fernandez, Catholic Agency Finds Way Out Of Adoption Ban/Alliance With other Groups Gets Around Same-Sex Parent Issue, SFGate.com (Aug. 27, 2006, 4:00 AM), <https://www.sfgate.com/bayarea/article/SAN-FRANCISCO-Catholic-agency-finds-way-out-of-2470402.php>.

CSS's covenant to be bound by the Fair Practices Ordinance as set forth in the Services Contract, and in view of the expansive, but plain, definition of "public accommodations" under the Fair Practices Ordinance, the Court concludes that the Fair Practices Ordinance applies to CSS's provision of services under the Services Contract.

It is well-established that:

[c]ontract interpretation is a question of law that requires the court to ascertain and give effect to the intent of the contracting parties as embodied in the written agreement. Courts assume that a contract's language is chosen carefully and that the parties are mindful of the meaning of the language used. When a writing is clear and unequivocal, its meaning must be determined by its contents alone.

*Old Summit Mfg., LLC v. Pennsummit Tubular, LLC (In re Old Summit Mfg., LLC)*, 523 F.3d 134, 137 (3d Cir. 2008) (citing *Dep't of Transp. v. Pa. Indus. for the Blind and Handicapped*, 886 A.2d 706, 711 (Pa. Commw. Ct. 2008)); see also *D&M Sales, Inc. v. Lorillard Tobacco Co.*, No. CIV.A.09-2644, 2010 WL 786550, at \*3 (E.D. Pa. Mar. 8, 2010) (providing that "the court's goal is 'to ascertain and give effect to the intent of the contracting parties,'" and "[w]hen the words of an agreement are clear and unambiguous, the court will ascertain the intent of the parties from the language used in the agreement.").

In this case, the Parties' intent that the Fair Practices Ordinance apply to CSS's services is manifest by the clear and unequivocal terms of the Services Contract. In entering into the Services Contract, CSS agreed to the provisions enumerated under Article XV. CSS explicitly "represent[ed], warrant[ed], and covenant[ed] that . . . [CSS was] in compliance with . . . the Fair Practices Ordinance." Decl. of James Amato Ex. C, ECF p. 18–19 of 39, ECF No. 13-5. Accordingly, the plain terms of the Services Contract manifest the Parties' intent that CSS be

bound by the Fair Practices Ordinance by expressly incorporating the Fair Practices Ordinance into the Services Contract.

Having concluded that the Services Contract evinces the Parties' intent that the Fair Practices Ordinance apply to CSS's services rendered under the Services Contract, the Court turns to the issue of whether the Fair Practices Ordinance would require CSS to provide foster parent certifications and home visits for prospective parents in accordance with the all-comers/nondiscrimination provisions of the Fair Practices Ordinance. The resolution of this issue turns on two questions: (1) whether CSS's scope of services includes the provision of certification and home visits in connection with certification in the first instance, and (2) if so, whether those services fall within the meaning of a public accommodation under the Fair Practices Ordinance.

**2. CSS's Scope Of Services Requires CSS To Recruit, Screen, Train, And Certify Resource Caregivers**

Here, as with all questions of parties' obligations under a contract, the Court must look to the intent of the parties as embodied in the plain and unambiguous terms of the contract. In agreeing to perform the Scope of Services under the Services Contract, CSS agreed to "recruit, screen, train, and provide certified resource care homes." Decl. of James Amato Ex. A, ECF p. 28 of 52, ECF No. 13-3. Indeed, CSS's obligation to recruit, screen, train, and certify resource caregivers is emphasized elsewhere in the Scope of Services. Decl. of James Amato Ex. A, ECF p. 28-29 of 52, ECF No. 13-3 (providing that "resource caregivers are screened, trained, and certified by [CSS]"); *see also* Decl. of James Amato Ex. A, ECF p. 27 of 52 n.1, ECF No. 13-3 (providing under the "Statement of Purpose" that "Provider Staff is responsible for recruiting and certifying foster and kinship homes"). The Court concludes that CSS's certification of prospective foster parents and CSS's provision of home studies "to assure [that prospective

foster parents] are qualified and well prepared for the responsibility of foster care”<sup>17</sup> are services that CSS agreed to provide under the Services Contract.

Having determined that certification and home studies are services that CSS was hired to provide under the Services Contract, the Court turns to whether these services constitute “public accommodations” under the Fair Practices Ordinance such that CSS’s provision of these services must be rendered in accordance with the all-comers, anti-discrimination provision of the Fair Practices Ordinance.

### **3. The Services That CSS Provides Are Public Accommodations Within The Meaning Of The Fair Practices Ordinance**

In interpreting a municipal ordinance, a court must employ the same analysis that the court employs when interpreting a statute. *Tri-Cty. Landfill, Inc. v. Pine Twp. Zoning Hearing Bd.*, 83 A.3d 488, 509 (Pa. Commw. Ct. 2014); *see also Diehl v. City of McKeesport*, 432 A.2d 288, 290 (Pa. Commw. Ct. 1981) (providing that “[t]he rules of statutory construction are applicable to statutes and ordinances alike”). Accordingly, when interpreting an ordinance, a court must determine, as it must when interpreting a statute, the intent of the legislative body that enacted the ordinance. *See Tri-Cty. Landfill, Inc.*, 83 A.3d at 509 (citing 1 Pa. Cons. Stat. § 1921). Generally, the best indicator of the legislative body’s intent is the plain language of the ordinance. *Id.*

The Fair Practices Ordinance provides an expansive, but plain definition of the term “public accommodation.” Under the Fair Practices Ordinance, a public accommodation is:

Any [] provider, whether licensed or not, which solicits or accepts patronage or trade of the public or whose . . . services, facilities . . . are extended, offered [] or otherwise made available to the public; including all . . . services provided by any public agency or

<sup>17</sup> Foster Care & Adoption Services, <https://cssphiladelphia.org/adoption/> (last visited Jul. 1, 2018).

authority; any agency, authority or other instrumentality of . . . the City, its departments, boards and commissions.

Philadelphia Fair Practices Ordinance § 9-1102 (Definitions) at 4, Chapter 9-1100 of the Philadelphia Code.

In this case, CSS's provision of services meets the definition of public accommodations and, therefore, CSS must provide its services in accordance with the Fair Practices Ordinance as incorporated by Article XV, § 15.1 of the Services Contract. CSS is a "licensed" "provider" under the Services Contract. CSS publicly solicits prospective foster parents and advertises to attract new foster parents.<sup>18</sup> CSS provides professional "services" to the public. In return for its services, CSS receives public funds and the source of those funds are to be disclosed to the public when CSS disseminates information relating to its services under the Services Contract.<sup>19</sup> CSS operates and maintains facilities that are used by staff and members of the public to carry out CSS's work under the Services Contract. Jun. 19, 2018 Hr'g Tr. 36:18–22 (Amato). The Court concludes, therefore, that CSS's services are public accommodations to be provided consistent with CSS's covenant under Article XV, § 15.1, which requires CSS to serve all Philadelphians who seek out its services.

### **C. Likelihood of Success on the Merits**

Having determined that the terms of the Services Contract, including the all-comers, nondiscrimination provisions of the Fair Practices Ordinance incorporated into the Services Contract under Article XV, § 15.1, apply to CSS's provision of services, the Court turns to

<sup>18</sup> See Jun. 18, 2018 Hearing Tr. 65:17 (Fulton) (testifying to seeing a television commercial about foster care); Foster Care & Adoption Services, <https://cssphiladelphia.org/adoption/> (last visited Jul. 1, 2018) (soliciting prospective foster parents through a website).

<sup>19</sup> Decl. of James Amato Ex. B, ECF p. 35 of 39, ECF No. 13-4 (Services Contract providing that "[CSS] shall identify the Department as a funding source in all literature, documents reports or pamphlets which Provider publishes develops or produces in connection with this Contract.").

CSS's argument that it nevertheless need not comply with these all-comers, nondiscrimination provisions because compliance would violate CSS's rights under the Free Exercise and Establishment Clauses of the First Amendment, the Pennsylvania Religious Freedom Act ("RFPA"), and the Free Speech Clause of the First Amendment.

**1. Free Exercise Clause Claim**

**i. The Services Contract And Fair Practices Ordinance Incorporated In The Services Contract Is A Neutral Law Of General Applicability Subject To Rational Basis Review**

The First Amendment to the United States Constitution provides that "Congress shall make no law . . . prohibiting the free exercise [of religion]." *Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly*, 309 F.3d 144, 165 (3d Cir. 2002) (quoting U.S. Const. amend. I.) (alteration in original). The strictures of the Free Exercise Clause apply to state and local government under the Fourteenth Amendment. *See Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (holding the religious protections under the First Amendment apply to the states through the Due Process Clause of the Fourteenth Amendment). "Depending on the nature of the challenged law or government action, a free exercise claim can prompt either strict scrutiny or rational basis review." *Tenafly Eruv Ass'n, Inc.*, 309 F.3d at 165.

When a challenged law "is 'neutral' and 'generally applicable,' and burdens religious conduct only incidentally, the Free Exercise Clause offers no protection." *Id.* at 165 (citing *Employment Div. v. Smith*, 494 U.S. 872, 879 (1990)); *see also Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359, 364 (3d Cir. 1999) (explaining that in cases involving state laws affecting religious freedoms, *Smith* is the appropriate framework for analysis because the federal Religious Freedom Restoration Act of 1993, passed by Congress in response to *Smith*, does not apply to state actions). Thus, the constitutionality of a neutral and

generally applicable state or local law under the Free Exercise clause is evaluated using the rational basis standard.<sup>20</sup>

By contrast, “if a law is not neutral . . . or is not generally applicable . . . strict scrutiny applies and the burden on the religious conduct violates the Free Exercise Clause unless it is narrowly tailored to advance a compelling government interest.” *Tenaflly Eruv Ass’n, Inc.*, 309 F.3d 144 at 165 (citing *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532, 542 (1993)). “A law is not neutral if it has as its ‘object . . . to infringe upon or restrict practices because of their religious motivation.’” *Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253, 275 (3d Cir. 2007) (citing *Lukumi*, 508 U.S. at 533). “A law is not generally applicable when it ‘proscribes particular conduct only or primarily when religiously motivated.’” *Id.* at 275 (citing *Tenaflly*, 309 F.3d at 165).

Even if a law is neutral and generally applicable on its face, if “government officials exercise discretion in applying a facially neutral law, so that whether they enforce the law depends on their evaluation of the reasons underlying a violator’s conduct, they contravene the neutrality requirement if they exempt some secularly motivated conduct but not comparable religiously motivated conduct.” *Tenaflly Eruv Ass’n, Inc.*, 309 F.3d 144 at 165–66. Unless there is evidence of government targeting of religious conduct “for distinctive treatment” then the framework for analysis under *Smith*, 494 U.S. 872, will govern the review of a challenged law or action. *Tenaflly Eruv Ass’n, Inc.*, 309 F.3d 144 at 167 (quoting *Lukumi*, 508 U.S. at 534).

In the absence of case law directly addressing the factual circumstances presented in this case, the Court finds the Supreme Court’s decision in *Christian Legal Soc’y Chapter of the Univ. of California, Hastings Coll. of the Law v. Martinez*, 561 U.S. 661, 698 (2010) instructive. In

<sup>20</sup> “[R]ational basis review requires merely that the action be rationally related to a legitimate government objective.” *Tenaflly Eruv Ass’n, Inc.*, 309 F.3d 144 at 165 n.24.

*Martinez*, the Supreme Court reviewed a law school’s policy requiring student groups who wished to take advantage of the benefits of official recognition by the law school to comply with an all-comers/nondiscrimination policy. A faith-based student group argued that the University’s insistence that the student group comply with the all-comers policy violated, among other things, the group’s right to the free exercise of religion. *Id.*

A group of law students at a public law school formed a chapter of the Christian Legal Society (“CLS”) that required its members to sign a “Statement of Faith” and adhere to bylaws that would “exclude from affiliation anyone who engages in ‘unrepentant homosexual conduct.’” *Id.* at 672. CLS applied for registered student organization (“RSO”) status with the law school. RSO status would confer on CLS various benefits including subsidies of CLS’s events with funds originating from the school-wide mandatory student-activity fee, use of certain law school facilities, and the ability to advertise events to the student body using the law school’s communication channels and the use of the law school’s name and logo in advertising. *Id.* at 669–70. To qualify for RSO status, the law school required applicants to agree to a nondiscrimination policy that would prohibit the applicant from discriminating against prospective members on the basis of “race, color, religion, national origin, ancestry, disability, age, sex or sexual orientation.” *Id.* at 671. CLS would not adopt the nondiscrimination policy and, accordingly, the school withheld RSO status and its attending benefits from CLS. *Id.* at 673.

In upholding the law school’s conditioning of RSO status and attending benefits on CLS’s acceptance of the nondiscrimination policy, the Supreme Court reasoned that the law school’s policy was, in essence, a neutral “all comers” policy and that the law school, “caught in the crossfire between a group’s desire to exclude and students’ demand for equal access, may

reasonably draw a line in the sand permitting *all* organizations to express what they wish but *no* group to discriminate in membership.” *Id.* at 694. The Supreme Court continued stating that:

[t]he question here . . . is not whether [the law school] *could*, consistent with the Constitution, provide religious groups dispensation from the all-comers policy by permitting them to restrict membership to those who share their [sincerely held religious belief]. It is instead whether [the law school] *must* grant that exemption. This Court’s decision in *Employment Div., Dept. of Human Resources of Ore. v. Smith*, . . . unequivocally answers no to that latter question.

*Martinez*, 561 U.S. at 694 n.24. The Supreme Court further considered the fact that RSOs “are eligible for financial assistance drawn from mandatory student-activity fees . . . the all-comers policy ensures that no [law] student is forced to fund a group that would reject her as a member.” *Id.* at 688. Ultimately, the Supreme Court held that the law school’s policy was constitutional despite its incidental effect on CLS and its ability to receive RSO benefits, including financial support for its activities. *Id.* at 698.

The Court also considers the U.S. District Court for the Western District of Michigan’s decision in *Teen Ranch, Inc. v. Udow*, 389 F.Supp.2d 827 (W.D. Mich. 2005), which was affirmed by the Sixth Circuit in *Teen Ranch, Inc. v. Udow*, 479 F.3d 403 (6th Cir. 2007), because the court’s rationale in *Teen Ranch* provides some analytical assistance on the present facts.

In *Teen Ranch*, a faith-based residential home for troubled youth, Teen Ranch, sued a state agency, charged with placing troubled youth in protective care, after the state agency issued a moratorium against further placements of children with Teen Ranch due to Teen Ranch’s policies and practices that violated laws prohibiting the use of state funds for sectarian activities. 389 F.Supp.2d at 829–32. Teen Ranch argued that the state’s moratorium on new placements with Teen Ranch “violate[d] the Free Exercise Clause because it conditions the receipt of a governmental benefit on Teen Ranch’s surrender of its religious beliefs and practices and

burdens the free exercise of Plaintiff’s religious beliefs without satisfying the strict scrutiny standard.” *Id.* at 837. In rejecting Teen Ranch’s free exercise challenge, the district court reasoned that “[u]nlike [cases involving] unemployment benefits or the ability to hold office, a state contract for youth residential services is not a public benefit.” *Id.* at 838 (emphasis added).

The district court relied on the Supreme Court’s decision in *Locke v. Davey* and explained that in *Locke*:

where the [Supreme] Court reviewed a state scholarship program that excluded any student who was pursuing a degree in devotional theology . . . [a]lthough the law was not facially neutral with respect to religion, the [Supreme] Court held that it did not violate the Free Exercise Clause [because the law] ‘imposes neither criminal nor civil sanctions on any type of religious service or rite . . . . And it does not require students to choose between their religious beliefs and receiving a government benefit. The State has merely chosen not to fund a distinct category of instruction.

*Teen Ranch*, 389 F. Supp. 2d at 838 (citing *Locke v. Davey*, 540 U.S. 712, 720–21 (2004)). The district court in *Teen Ranch*, thus, recognized that the context in which a purported burden on religious expression occurs is critical in determining whether the state has violated the Free Exercise Clause. There is a difference between fundamental benefits such as unemployment compensation and voluntary contracts for the provision of government services. *Id.* at 838 (stating that there is no support for the proposition that “the State can be required under the Free Exercise Clause to contract with a religious organization”).<sup>21</sup> On appeal, the Sixth Circuit stated

<sup>21</sup> The state court in *Catholic Charities of the Diocese of Springfield, et al. v. Madigan, et al.* similarly focused on context in granting summary judgment for the State of Illinois in a factually analogous dispute to the dispute in this case. See Section IV.A for a summary of the case in *Madigan*; see also Summary Judgment Order 2, *Catholic Charities of the Diocese of Springfield, et al. v. Madigan, et al.*, No. 2011-MR-254 (Ill. Cir. Ct. Aug. 18, 2011) (concluding that despite Catholic Charities’ long history of participation in foster care, it did not have a right to a state contract for foster care).

“[a]fter thoroughly reviewing the record, we believe that the district court was correct in reaching its conclusions.” *Teen Ranch*, 479 F.3d at 410.

In this case, the Services Contract and the Fair Practices Ordinance incorporated into the Services Contract is, on its face, a neutral law of general applicability under *Smith*, therefore, the Court applies the rational basis test to determine the constitutionality of the Services Contract and its application to CSS.

First the Court concludes that the Services Contract and Fair Practices Ordinance are neutral with respect to religion because there is no evidence that the Services Contract or Fair Practices Ordinance were drafted or enacted with the object “to infringe upon or restrict practices because of their religious motivation.” *Lighthouse Inst. for Evangelism, Inc.*, 510 F.3d at 275 (quoting *Lukumi*, 508 U.S. at 533) (emphasis added). The plain language of the Services Contract and the plain language and history of the Fair Practices Ordinance as incorporated into the Services Contract demonstrate neutrality. Article XV, § 15.1 of the Services Contract makes no reference to religion except that § 15.1 would protect individuals receiving services under the Services Contract from religious discrimination. Decl. of James Amato Ex. C, ECF p. 18–19 of 39, ECF No. 13-5 (“Provider shall not discriminate or permit discrimination against any individual because of . . . religion.”). The plain language of the Fair Practices Ordinance likewise supports a finding of neutrality. The Fair Practices Ordinance makes no reference to religion except that it, again, prohibits service providers from discriminating on the basis of religion. Philadelphia Fair Practices Ordinance § 9-1106, Chapter 9-1100 of the Philadelphia Code.

The legislative history and intent of the Fair Practices Ordinance similarly supports a finding of neutrality. Philadelphia City Council first enacted the Fair Practices Ordinance in

1963 long before the present dispute between the Parties. Philadelphia City Council amended the Fair Practices Ordinance in 1982, thirty-six years before the events relevant to this case, to broaden the scope of its inclusion policy to protect Philadelphians on the basis of, among other things, sexual orientation. Indeed, the Legislative Findings section of the Fair Practices Ordinance explained the reasons for its enactment. The Fair Practices Ordinance provides that Philadelphia’s population:

Consists of people of every race, ethnicity, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, age, disability, marital status, and familial status . . . . [and] [d]iscrimination in places of public accommodation causes embarrassment and inconvenience to citizens and visitors of the City, creates breaches of the peace, and is otherwise detrimental to the welfare and economic growth of the City.

§ 9-1101. The history and text of the Fair Practices Ordinance provide no basis to conclude that the Fair Practices Ordinance has as its object the infringement of religious rights. Accordingly, the Fair Practices Ordinance, as incorporated by the Parties into the Services Contract, is neutral.

The Services Contract and the Fair Practices Ordinance are also generally applicable. In this case, the Services Contract was, in fact, applied generally. The general applicability of the Services Contract and Fair Practices Ordinance is not only evident from the text of the Services Contract, but also from the actions DHS and Philadelphia took in this case. First, the Services Contract and Fair Practices Ordinance do not “proscribe particular conduct only or primarily when religiously motivated;” they proscribe only CSS’s ability to turn away qualified Philadelphians on the basis of particular character traits without regard to secular or religious reasons. *Lighthouse Inst. for Evangelism, Inc.*, 510 F.3d at 275 (citing *Tenaflly*, 309 F.3d at 165). Among the character traits that CSS may not consider when refusing to serve qualified Philadelphians are “perceived race, ethnicity, color, sex, sexual orientation, religion, national

origin, ancestry, age, disability, marital status, source of income, familiar [sic] status . . . .”  
Article XV, § 15.1.

As applied in this case, the Services Contract and Fair Practices Ordinance were, in fact, implemented in a general manner. Not only has DHS confirmed that it would not permit any foster agency under contract, faith-based or not, to turn away potential foster parents for the foster parents’ characteristics under the Services Contract and Fair Practices Ordinance, DHS also closed intake of new referrals by CSS and Bethany Christian Services for the same reason. This evidence supports the conclusion that DHS and Philadelphia are not applying the Services Contract or the Fair Practices Ordinance to target particular religious denominations for any religious reason.<sup>22</sup>

Having concluded that the Services Contract and Fair Practices Ordinance are apparently facially neutral and generally applicable and appear to have been neutrally and generally applied in this case, the Court concludes that Defendants’ enforcement of the Services Contract and Fair Practices Ordinance is rationally related to a number of legitimate government objectives. While the standard for rational basis review is well known, it bears repeating:

Under rational basis review, ‘[a] statute is presumed constitutional, and the burden is on the one attacking the legislative arrangement to negate every conceivable basis which might support it, whether or not that basis has a foundation in the record.’ . . . . The regulation must be reasonable and not arbitrary and it must bear ‘a rational relationship to a [permissible] state objective.’”

*Lighthouse Inst. for Evangelism, Inc.*, 510 F.3d at 278 (internal citation omitted). While not directly applicable to the local contracting practices at issue in this case, the imposition of

<sup>22</sup> This fact contradicts Plaintiffs’ argument that DHS and Philadelphia specifically targeted CSS for its Catholic practices and association with the Archbishop of the Philadelphia Archdiocese. See below Section IV.C.2.ii addressing Plaintiffs’ argument that strict scrutiny should apply in reviewing Defendants’ actions because Defendants purportedly targeted Plaintiffs for Plaintiffs’ religious beliefs.

contractual conditions in government services contracts has a long and well-established history. Indeed, the courts, in reviewing federal contracts, have frequently upheld conditions placed on contractors through federal executive orders. *See, e.g.*, Exec. Order No. 8802, 6 F.R. § 3109 (Jun. 25, 1941) (requiring “[a]ll contracting agencies of the Government of the United States . . . include in all defense contracts . . . a provision obligating the contractor not to discriminate against any worker because of race, creed, color, or national origin” even before the enactment of the Civil Rights Act of 1964); PA Exec. Order 2016-05 (Apr. 7, 2016), [https://www.governor.pa.gov/executive\\_orders/executive-order-2016-05-contract-compliance/](https://www.governor.pa.gov/executive_orders/executive-order-2016-05-contract-compliance/) (prohibiting “discrimination by reason of race, gender, creed, color, sexual orientation, or gender identity or expression” in the “award, selection, or performance of any contracts or grants issued by Commonwealth agencies”).

Here, Defendants have at least six permissible governmental objectives that are furthered by seeking CSS’s compliance with the Services Contract. First, DHS and Philadelphia have a legitimate interest in ensuring that when contractors agree to terms in a government contract, the contractors adhere to those terms. Second, DHS and Philadelphia have a legitimate interest in ensuring that when its contractors voluntarily agree to be bound by local laws, the local laws are enforced. Third, DHS and Philadelphia have a legitimate interest in ensuring that when they employ contractors to provide governmental services, the services are accessible to all Philadelphians who are qualified for the services. Fourth, in the context of foster care and adoption, DHS and Philadelphia have a legitimate interest in ensuring that the pool of foster parents and resource caregivers is as diverse and broad as the children in need of foster parents and resource caregivers. Fifth, DHS and Philadelphia have a legitimate interest in ensuring that individuals who pay taxes to fund government contractors are not denied access to those

services.<sup>23</sup> Sixth, DHS and Philadelphia have an interest in avoiding likely Equal Protection Clause and Establishment Clause claims that would result if it allowed its government contractors to avoid compliance with the all-comers, nondiscrimination provisions of the Fair Practices Ordinance by discriminating against same-sex married couples.<sup>24</sup>

That Defendants have legitimate objectives in this case is clearer still in view of the Supreme Court's decision in *Martinez*, 561 U.S. 661 and the decision in *Teen Ranch*, 389 F. Supp. 2d 827. In *Martinez*, the Supreme Court explained that where a public law school was “caught in the crossfire between a group’s desire to exclude and [an interest in] equal access, [the

<sup>23</sup> See *Martinez*, 561 U.S. at 688 (concluding that the fact that where University organizations may receive funding derived from a mandatory student-activity fee, that the University has an interest in ensuring that no student “is forced to fund a group that would reject her as a member.”).

<sup>24</sup> See, e.g., *Campaign for Southern Equality v. Mississippi Dep’t of Human Servs.*, 175 F.Supp.3d 691 (S.D. Miss. 2016) (granting injunction to same-sex couples against state department of human services on basis that state law prohibiting adoption by same-sex couples violated federal equal protection under *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015)).

The Court notes that while the Third Circuit rejected “avoiding ‘an Establishment Clause controversy’” as a government interest in *Tenaflly*, in that case, the Third Circuit concluded that strict scrutiny applied and, thus, a “possible” Establishment Clause controversy could not meet the exacting requirements of a “compelling” government interest. 309 F.3d at 172. Further, in *Tenaflly*, the Third Circuit concluded that the existence of an Establishment Clause controversy was, in essence, impossible. Here, faced with the Supreme Court’s ruling in *Obergefell*, recognizing marriage for same-sex couples and marriage’s attending benefits, and faced with the fact that CSS conditions the provision of its services on prospective parents’ procurement of a clergy letter, the possibility of an Equal Protection and Establishment Clause claim is not as remote a possibility as was the case in *Tenaflly*.

The Court also notes here that although CSS has disclaimed responsibility as a government actor in connection with some aspects of its claims, CSS, otherwise has urged the Court to consider CSS as a government contractor “akin to a government employee” in connection with its argument on Free Speech grounds. Pls.’ Br. 26, ECF No. 10-2. The Court need not decide whether CSS would qualify as a state actor at this time in connection with any possible Equal Protection or Establishment Clause claim.

law school] may reasonably . . . permit[] *all* organizations to express what they wish but *no* group to discriminate in membership.” 561 U.S. at 694. In this case, DHS and Philadelphia are in much the same position as the law school in *Martinez* and, like the law school in *Martinez*, they may permit government contractors to express what the contractors wish but may also insist that their contractors adhere to contractual obligations to serve all-comers and not discriminate. To permit a contractor to avoid a contractual provision requiring the contractor to accept all those who seek their services unilaterally would permit what the Supreme Court explained could not be permitted in *Martinez*.<sup>25</sup>

In this case, as in *Teen Ranch*, context matters. In *Teen Ranch*, the district court aptly drew a distinction between cases involving essential government benefits such as unemployment compensation or the ability to hold office, and “a state contract for youth residential services, which is not a public benefit.” 389 F. Supp. 2d at 838; *see also* Summary Judgment Order 2, *Catholic Charities of the Diocese of Springfield, et al. v. Madigan, et al.*, No. 2011-MR-254 (Ill. Cir. Ct. Aug. 18, 2011) (granting summary judgment for State of Illinois reasoning that Catholic Charities did “not have a legally recognized protected property interest in the renewal of its contracts for foster care and adoption services”). There is no support for the proposition that “the State can be required under the Free Exercise Clause to contract with a religious organization.” *Id.* at 838. Here, CSS seeks, as the plaintiff in *Teen Ranch* sought, a government services contract on terms that it deems acceptable, but unlike those cases where the government withheld essential benefits on religious grounds, CSS is not entitled to a government services contract to perform governmental work. It further bears repeating that there is no evidence in the

<sup>25</sup> When asked whether the public law school was required to exempt a faith-based student group’s decision from an all-comers/nondiscrimination policy, the Supreme Court answered that “[t]his Court’s decision in *Employment Div., Dept. of Human Resources of Ore. v. Smith*, . . . unequivocally answers no to that . . . question.” *Martinez*, 561 U.S. at 694 n.24.

record that either DHS or Philadelphia has withheld a new contract or contractual compensation to CSS on religious grounds. The Court concludes that the terms of Services Contract, as applied by Defendants in this case, would likely survive rational basis review.

**ii. No Evidence Of Targeting To Trigger Strict Scrutiny**

Although the Court concludes that rational basis review applies in this case, the Court addresses Plaintiffs' argument that strict scrutiny review should apply instead.

At the outset, the Court acknowledges the Parties' varying citations to the recent Supreme Court case, *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S.Ct. 1719 (2018). *Masterpiece Cakeshop*, however, has little bearing on this case in view of *Masterpiece Cakeshop's* narrow holding. Among other narrow propositions, *Masterpiece Cakeshop* stands for the unfortunately now-remarkable proposition that disputes such as the one before this Court "must be resolved with tolerance." *Id.* at 1732.

In an attempt to show that Defendants' actions are subject to strict scrutiny despite the facial neutrality and general applicability of the Services Contract provisions at issue, and DHS's and Philadelphia's expressed preference to continue contracting with CSS, Plaintiffs allege that Defendants have targeted CSS "purely based on its religious beliefs." Pls.' Br. 17, ECF No. 13-2. In support of their claim of targeting, Plaintiffs point to (1) anti-Archdiocese of Philadelphia and anti-Archbishop of Philadelphia comments made by the Mayor of Philadelphia to show that DHS and Philadelphia intentionally sought to penalize CSS for its religious beliefs and exercise, and (2) the purported selective, discretionary enforcement of "laws or legal instruments in a way that burdens conduct for religious reasons but not secular reasons." Pls.' Br. 21, ECF No. 13-2. Plaintiffs draw too strong a conclusion from the Mayor's comments and misapprehend the way

in which “secular exemptions” might show a government’s actions are not neutral or generally applied so as to trigger strict scrutiny.

First, contrary to Plaintiffs’ contentions, the Mayor’s comments do not support the conclusion that DHS targeted CSS for its Catholic beliefs because (a) there was insufficient evidence at the preliminary injunction phase to show that the Mayor had any influence in DHS’s decisions in this case, thereby rendering the comments irrelevant to these proceedings, and (b) even comments the Mayor made relating to Catholicism do not demonstrate targeting in light of the fact that DHS also closed Bethany Christian Services’s referrals intake, a non-Catholic agency, that similarly would not comply with its obligation to serve all-comers under its foster agency contract.

Plaintiffs cite four comments involving the Mayor of Philadelphia that purportedly show that DHS closed CSS’s intake due to CSS’s Catholic beliefs.<sup>26</sup> First, Plaintiffs cite a nearly three-year-old *Philadelphia Magazine* article about then mayoral candidate Jim Kenney in which Kenney appeared critical of policies of the Archdiocese of Philadelphia and the Archbishop of Philadelphia, but appeared otherwise approving of Pope Francis, Catholic sisters, and other Catholic orders and programs.<sup>27</sup> Second, Plaintiffs cite a nearly two year old *Philadelphia Inquirer* article in which Mayor Kenney was quoted as saying that Philadelphia Archbishop

<sup>26</sup> The difficulty in Plaintiffs relying on the Mayor’s statements, in part, stems from the fact that the Mayor himself was raised Catholic and, therefore, it is conceivable that when the Mayor has commented on Catholicism in the past, he was commenting on Catholic ideas as they related to his own faith. The Supreme Court has recently reminded the courts that they are to “take care not to engage in [] any judicial psychoanalysis” of lawmakers. *Trump v. Hawaii*, No. 17-965, 2018 WL 3116337, at \*37 (U.S. June 26, 2018) (Sotomayor, J., dissenting). This is why the courts, when determining the intent of legislators, generally confine their review to statements made contemporaneously with the legislation in question. *Id.*

<sup>27</sup> Patrick Kerkstra, [Jim Kenney’s Long War With The Archdiocese](https://www.phillymag.com/citifed/2015/07/09/jim-kenney-catholic-archdiocese-charles-chaput/), *Phillymag.com*, (July 9, 2015, 11:23 PM), <https://www.phillymag.com/citifed/2015/07/09/jim-kenney-catholic-archdiocese-charles-chaput/>.

Chaput’s guidelines on the implementation of a Catholic text, *Amoris Laetitia*, were “not Christian.”<sup>28</sup> Third, Plaintiffs cite a March 16, 2018 comment by the Mayor where the Mayor stated “we cannot use taxpayer dollars to fund organizations that discriminate against people because of their sexual orientation or because of their same-sex marriage status . . . . It’s just not right.”<sup>29</sup> Fourth, Plaintiffs cite a May 7, 2018 letter indicating that the Philadelphia Commission on Human Relations was investigating CSS’s policy of turning away certain persons based on their status as same-sex and married at “the request of the Mayor.” *See* (initial) Injunction Motion Ex. 1-G (sealed), ECF No. 10-14.

Plaintiffs rely too heavily on these four citations to draw a sweeping conclusion that CSS has suffered impermissible hostility at the hands of the Mayor. The evidence submitted at the three-day evidentiary hearing is insufficient to draw the conclusion Plaintiffs would have the Court draw. There was no evidence to show that the Mayor directed DHS to close CSS’s intake of new referrals or to insist that CSS comply with its contractual obligation to serve all Philadelphians. *See* Jun. 19, 2018 Hr’g Tr. 166:6–21 (Figueroa) (testifying that Commissioner Figueroa herself “decided that it was in the best interest [of children] to close intake, so that [Figueroa] could look more deeply into” CSS’s and Bethany Christian Services’s policies); Figueroa Decl. ¶ 32, ECF No. 20-6 (same); Jun. 18, 2018 Hr’g Tr. 96:2–3 (Ali) (testifying that, to Ali’s knowledge, Commissioner Figueroa herself decided to close CSS’s intake of new

<sup>28</sup> David O’Reilly, Chaput Edict Draws Mixed Reviews; Kenney Calls It ‘Not Christian’, Philly.com, (Jul. 6, 2016, 11:04 PM), [http://www.philly.com/philly/news/20160707\\_Chaput\\_edict\\_draws\\_mixed\\_reviews\\_\\_Kenney\\_calls\\_it\\_not\\_Christian\\_.html](http://www.philly.com/philly/news/20160707_Chaput_edict_draws_mixed_reviews__Kenney_calls_it_not_Christian_.html). *See* Mot. for Temporary Restraining Order or Preliminary Injunction Ex. 1-J, ECF No. 10-17.

<sup>29</sup> Tom MacDonald, Philly Halts Foster Placements With 2 Faith-Based Agencies Shutting Out LGBT Couples, WHYY.com, (Mar. 16, 2018), <https://whyy.org/articles/philly-halts-foster-placements-2-faith-based-agencies-shutting-lgbt-couples/>. This article was cited in Plaintiffs’ Brief and is attached as Exhibit 1-U to Plaintiffs’ initial Injunction Motion. *See* Mot. for Temporary Restraining Order or Preliminary Injunction Ex. 1-U, ECF No. 10-28.

referrals); Jun. 21, 2018 Hr'g Tr. 108:11–13, 108:18–20 (Figueroa) (testifying that Commissioner Figueroa did not know the Mayor's views on CSS when Figueroa met with CSS, nor did Figueroa “discuss cutting off intake with the Mayor's office”).

That DHS made its own decision to close intake is supported by the fact that DHS has closed intake for other foster care agencies in the past for a number of reasons and, thus, intake closure is a relatively unremarkable DHS administrative action that may be taken to address a number of agency concerns. *See, e.g.*, Jun. 21, 2018 Hr'g Tr. 5:14–15 (Figueroa) (testifying that “I have closed intake in other circumstances for other providers.”); Jun. 21, 2018 Tr. 8:24–25–9:1 (Figueroa) (testifying that the week before, DHS also closed intake for another agency). In short, there is insufficient evidence in the record to show that the Mayor was involved in DHS's decision to close CSS's and Bethany Christian Services's intake of new referrals. Therefore, the Mayor's comments are irrelevant to this case and cannot support Plaintiffs' claim of religious hostility and intentional targeting.

Each of Plaintiffs' four citations purportedly showing DHS's intentional targeting of CSS on religious grounds cannot support Plaintiffs' conclusion for a number of other reasons. Plaintiffs' first two citations are three and two years old, respectively. The events that precipitated this case occurred in March 2018. These first two citations, as a matter of timeliness, if not substance, are irrelevant. Plaintiffs' third citation to the Mayor's comment that “we cannot use taxpayer dollars to fund organizations that discriminate against people because of their sexual orientation or because of their same-sex marriage status . . . . It's just not right” is, by its plain terms, not about religious views, but about whether publicly funded service providers may refuse to serve all Philadelphians, including those that are in same-sex marriages. Plaintiffs' fourth citation, to a May 7, 2018 letter in which the Philadelphia Commission on Human

Relations indicated that the Commission would undertake an investigation, in part, at the request of the Mayor, was sent after DHS made an independent decision to close CSS and Bethany Christian Services's intake. The letter, therefore, cannot support a conclusion that the Mayor was involved in DHS's decision.

Plaintiffs also have pointed to Commissioner Figueroa's statement at the May 15 meeting between DHS officers and CSS management that "it would be great if we listened to the teachings and the words of our current Pope Francis" as another ground on which to rest its targeting and preference allegations. Jun. 21, 2018 Hr'g Tr. 106:1-3 (Figueroa). As with the Mayor's comments, Plaintiffs draw too broad a conclusion from the Commissioner's statement. The fact remains that DHS closed intake for both CSS and Bethany Christian Services, a non-Catholic organization. This fact undercuts Plaintiffs' position that DHS has targeted CSS for its Catholic beliefs. Further, Commissioner Figueroa's words themselves are unclear whether references to "we" and "our current Pope Francis" were references to her own beliefs as a Catholic who was educated by the Jesuit order, or as a representative of DHS. Jun. 19, 2018 Hr'g Tr. 149:5-18. As cautioned by Justice Sotomayor, the Court will not engage in judicial psychoanalysis on these facts. *Trump v. Hawaii*, No. 17-965, 2018 WL 3116337, at \*37.

In another attempt to show that DHS has targeted CSS on religious grounds, Plaintiffs argue that DHS has granted secular exemptions to the Services Contract's fair practices provisions, but now refuse a religious exemption to CSS. Plaintiffs, however, misapprehend how religious targeting may be proven through the government's provision of "secular exemptions." On this issue, the Third Circuit's decision in the case *Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*, provides the framework for determining whether the government is impermissibly providing secular exemptions to a regulation, and not providing

comparable religious exemptions to the same regulation in violation of the First Amendment. 170 F.3d 359 (3d Cir. 1999).

In *Fraternal Order of Police*, the Third Circuit considered a police department regulation that prohibited its officers from wearing beards to maintain uniformity among the officers. 170 F.3d at 361. The regulation applied generally to all officers, but the police department carved out a categorical exemption for officers who had medical reasons for keeping a beard. *Id.* By contrast, the police department refused to carve out a categorical exemption for officers who had religious reasons for keeping a beard. *Id.* Then Circuit Judge Alito wrote for the Third Circuit that the police department's exemption from the no-beard policy on medical grounds "raise[d] concern because it indicate[d] that the [police department] ha[d] made a value judgment that secular (i.e., medical) motivations for wearing a beard are important enough to overcome its general interest in uniformity but that religious motivations are not." *Id.* at 366 (emphasis added). The focus of analysis must be on whether the government exempts activities that would violate the policy at issue for secular reasons, but not for religious reasons. Thus, in *Fraternal Order of Police*, the focus was on the police department's provision of a secular exemption from the no-beard policy.

Here, the policy at issue is the fair practice provisions of CSS's Services Contract, that is the all-comers, nondiscrimination provisions. The question is whether DHS grants exemptions to the fair practice provisions of foster agency contracts for secular reasons, but denies CSS an exemption for religious reasons thereby evidencing an impermissible governmental value judgment that secular motivations for violating fair practice provisions are more important than religious motivations. The answer to this question is no. There is no evidence in the record to show that DHS has granted any secular exemption to the requirement that its foster care agencies

provide their services to all comers. Plaintiffs have not alleged, nor have Plaintiffs presented, any evidence that DHS has granted exemptions to any secular agency to permit a secular agency to refuse its services to all comers in contravention of any fair practices provisions of any foster services contract.

The purported secular exemptions to which Plaintiffs point to show religious targeting are not, in fact, exemptions to the fair practices requirements and, as such, cannot be considered evidence of targeting. CSS complains that DHS has permitted “referrals of families for a variety of secular reasons, including proximity, expertise in caring for medical needs, expertise in addressing behavioral needs, ability to find foster placements for pregnant youth, expertise working in a ‘kin care’ program, and other specialties or areas of focus.” Pls.’ Br. 21, ECF No. 13-2. These “secular reasons,” however, are not exemptions from fair practices requirements. DHS permits agencies to “refer” prospective foster parents to specialty agencies equipped to handle certain special needs, but nowhere is there evidence in the record that DHS permits agencies to refuse to provide their services to prospective foster parents in violation of the fair practices policies contained in government contracts or local law. While CSS has represented that it would euphemistically “refer” same-sex couples to other foster agencies willing to serve same-sex couples, CSS’s “referral” to another agency would nevertheless amount to CSS’s refusal to serve that same-sex couple.

As there is insufficient evidence to support the conclusion that DHS has explicitly targeted CSS for religious reasons, strict scrutiny is inapplicable in this case.

## **2. Establishment Clause Claim**

Plaintiffs also assert a claim under the Establishment Clause based on Defendants’ alleged “engag[ment] in denominational preference and targeting.” Pls.’ Br. 24, ECF No. 10-2.

The First Amendment to the U.S. Constitution provides that “there should be ‘no law respecting an establishment of religion.’” *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971) (quoting the First Amendment)). The Supreme Court has provided two tests for deciding whether government action runs afoul of the Establishment Clause: the “endorsement test” and the *Lemon* test. *Doe v. Indian River School Dist.*, 653 F.3d 256, 282–83 (3d Cir. 2011). Plaintiffs have not articulated how, if at all, Defendants’ actions fit under either test. Instead, Plaintiffs have simply asserted that Defendants have “demonstrate[d] a preference for some religious groups over CSS.” Pls.’ Br. 24, ECF No. 13-2. The Court cannot conclude that Plaintiffs have met their burden of showing entitlement to relief under the Establishment Clause. The Court will, nevertheless, address Plaintiffs’ Establishment Clause arguments as they have articulated them below, despite Plaintiffs’ failure to articulate a claim under the endorsement test or the *Lemon* test.

In support of Plaintiffs’ Establishment Clause claim, Plaintiffs cite to the same purported evidence of religious targeting that they cited in connection with their free exercise claim, that is, evidence of the Mayor’s alleged bias against the Archdiocese of Philadelphia and the Archbishop of Philadelphia. Plaintiffs argue that the Mayor’s comments in tandem with DHS’s actions “demonstrate an intent to target Catholic Social Services based upon disagreement with [CSS’s] religious beliefs.” Pls.’ Br. 25, ECF No. 10-2. As discussed in connection with Plaintiffs’ religious targeting argument, above, the evidence does not support Plaintiffs’ sweeping conclusion.

In pursuing its Establishment Clause claim, CSS glosses over the fact that it has not been singled out for its policy of refusing to serve all qualified Philadelphians. DHS closed Bethany Christian Services’s intake of new referrals for the same reason DHS closed CSS’s intake. Jun. 21, 2018 Hr’g Tr. 12:9–23 (Figueroa) (testifying that DHS closed Bethany Christian Services’s

intake and that its intake remains closed, however, Bethany Christian Services has represented that it will enter into a new contract with the DHS for the coming year and comply with the fair practices requirements under its contract). That DHS closed intake for CSS, which operates under the command of the Archdiocese of Philadelphia, and also closed intake for Bethany Christian Services, not associated with the Archdiocese of Philadelphia, militates against concluding that DHS has engaged in denominational preference and targeting. The Mayor's allegedly anti-Archdiocese of Philadelphia and anti-Archbishop of Philadelphia comments offer no support to Plaintiffs' argument of denominational preference and targeting because DHS also closed Bethany Christian Services's intake, which is not associated with the Archdiocese of Philadelphia or the Archbishop of Philadelphia.

Plaintiffs have not demonstrated entitlement to relief under the Establishment Clause.

### **3. Pennsylvania Religious Freedom Act Claim**

Plaintiffs' next lodge a statutory claim under the Pennsylvania Religious Freedom Act ("RFPA"). 71 Pa. Cons. Stat. Ann. §§ 2401–2407. Before turning to the substance of Plaintiffs' claim, the Court emphasizes that Plaintiffs' claim is a state law claim. Under certain circumstances a district court may abstain from ruling on a state law issue, such as the issue in this case, in favor of allowing the state courts an opportunity to address the issue. Indeed, in *Combs v. Homer-Center School Dist.*, the Third Circuit vacated a district court order awarding a defendant summary judgment on a RFPA claim and ordered the district court to remand the matter to the appropriate state court for adjudication. 540 F.3d 231, 253–254 (3d Cir. 2008). The Third Circuit explained in *Combs*, that “[b]ecause all federal issues have been decided on summary judgment and since [the plaintiffs’] RFPA claim raises a novel and potentially complex issue of State law, we will decline to exercise supplemental jurisdiction over [the plaintiffs’]

pendent state law claim.” 540 F.3d at 254. Notwithstanding the Third Circuit’s guidance that the district courts remain wary of intruding upon state law matters, the Court will address Plaintiffs’ RFPA claim in view of the procedural posture of this case.

At the preliminary injunction stage, the Third Circuit has advised that considerations of the novelty and potential complexity of a state law question “have very little weight.” *New Jersey-Philadelphia Presbytery of the Bible Presbyterian Church v. New Jersey State Bd. of Higher Educ.*, 654 F.2d 868 (3d Cir. 1981) (concluding that the concerns implicated by the *Pullman* doctrine, which permits courts to abstain from deciding certain complex state law matters are of less import at the preliminary injunction stage). While the state law matters presented in this case are complex, the Court finds that state court precedent provides a sound basis for a decision on Plaintiffs’ RFPA claim at the preliminary injunction stage.

Section 2401 of RFPA provides:

- (a) General rule. Except as provided in subsection (b), an agency shall not substantially burden a person’s free exercise of religion, including any burden which results from a rule of general applicability.
- (b) Exceptions. An agency may substantially burden a person’s free exercise of religion if the agency proves, by a preponderance of the evidence, that the burden is all of the following:
  - (1) In furtherance of a compelling interest of the agency.
  - (2) The least restrictive means of furthering the compelling interest.

71 Pa. Cons. Stat. Ann. § 2404 (emphasis added).

While RFPA would appear, on its face, to protect a wide range of religious activity, the Third Circuit has noted that “[s]ignificantly, not all burdens on the exercise of religion trigger the RFPA’s heightened scrutiny.” *Brown v. City of Pittsburgh*, 586 F.3d 263, 285 (3d Cir. 2009).

The Third Circuit has explained that the nature of our society is such that “virtually all legislation . . . imposes an incidental burden at some level by placing indirect costs on an individual’s activity.” *Id.* at 285 (internal quotation omitted) (alteration in original). When the costs of legislation may affect religious freedoms, the Pennsylvania General Assembly has “identified a substantiality threshold as the tipping point for requiring heightened justifications for governmental action.” *Id.* at 285 (citing *Combs v. Homer-Center School Dist.*, 540 F.3d 231, 262 (3d Cir. 2008) (Scirica, C.J., concurring)). RFPA further “requires ‘as a threshold matter’ that persons invoking its protections ‘prove . . . that their free exercise of religion has or will likely be substantially burdened’ by ‘clear and convincing evidence’.” *Id.* at 285 (citing *Combs*, 540 F.3d at 253 (per curiam)) (emphasis added). The Third Circuit has quoted Chief Judge Scirica’s concurring opinion in *Combs* for the proposition that “by requiring proof of ‘a substantial burden’ by clear and convincing evidence, Pennsylvania appears to have set a higher threshold than other religious restoration statutes.” *Id.* at 285 (citing *Combs*, 540 F.3d at 262 (Scirica, C.J., concurring)) (emphasis added).

Under RFPA, a law substantially burdens a person’s fundamental religious exercise if it:

- (1) Significantly constrains or inhibits conduct or expression mandated by a person’s sincerely held religious beliefs.
- (2) Significantly curtails a person’s ability to express adherence to the person’s religious faith.
- (3) Denies a person a reasonable opportunity to engage in activities which are fundamental to the person’s religion.
- (4) Compels conduct or expression which violates a specific tenet of a person’s religious faith.

71 Pa. Cons. Stat. Ann. § 2403. In determining whether the government substantially burdens a person’s free exercise of religion under RFPA, a state law, the Court looks to the way in which the state law has been interpreted and applied by state courts.

In *Ridley Park United Methodist Church v. Zoning Hearing Bd. Ridley Park*, 920 A.2d 953 (Pa. Commw. Ct. 2007), the Commonwealth Court reviewed a church’s claim that a town zoning ordinance prohibiting the operation of a church-run religious childcare center on the church’s property violated the church’s free exercise under RFPA. The Commonwealth Court framed the issue presented as “whether the Church would be ‘substantially burdened’ if it was precluded from operating a daycare center because it would lose ‘a reasonable opportunity to engage in activities which are fundamental to [its] religion.’” 920 A.2d at 960 (quoting 71 Pa. Cons. Stat. Ann. § 2403). The Commonwealth Court resolved the issue by concluding that:

nothing here impinges on the religious activities of the Church. While it aided in carrying out the Church’s religious mission, the daycare is not a fundamental religious activity of a church. For example, ministering to the sick can flow from a religious mission, but it is not a fundamental religious activity of a church because a hospital may be built to satisfy that mission.

*Id.* at 960. Thus, the Commonwealth Court concluded the zoning ordinance “does not violate the RFPA” because “the [c]hurch failed to meet its burden of proving that it was substantially denied a reasonable opportunity to engage in activities that were fundamental to its religion.” *Id.*

In *Staple v. Dep’t of Corrections*, the Commonwealth Court considered a situation in which the Pennsylvania Department of Corrections confiscated religious texts from an inmate. 2014 WL 2927286 at \*4 (Pa. Commw. Ct. 2014) (not precedential). While *Staple* involved the application of a specific carve out under RFPA that grants correctional facilities greater authority to burden inmates’ religious freedoms, the case, nevertheless, provides some insight into the limits of RFPA. A person’s access to religious texts would ostensibly be one of the most fundamental religious rights, and yet, even under RFPA, a state agency may confiscate and prohibit an individual’s access to such texts. *Id.* at 4. The result in *Staple*, thus, would confirm the Third Circuit’s observation in *Brown* that “Pennsylvania appears to have set a higher

threshold than other religious restoration statutes” and that RFPA does not provide protection in many circumstances. *Id.* at 285 (citing *Combs*, 540 F.3d at 262 (Scirica, C.J., concurring)); *see also Brown*, 586 F.3d at 288 (holding that RFPA provides only as much protection to religiously motivated expression as the First Amendment’s Free Speech Clause).

In *Commonwealth v. Parente*, the Commonwealth Court addressed a defendant’s assertion that a city noise control ordinance prohibiting the defendant’s use of a hand-held microphone with speakers to “exercise his religious beliefs” in accordance with “the dictates of his conscience and serv[ing] God by peacefully preaching and counseling people,” violated his rights under RFPA. 956 A.2d 1065, 1073 (Pa. Commw. Ct. 2008). The Commonwealth Court held that the application of the ordinance and the defendant’s conviction thereunder did not violate the defendant’s rights under RFPA because “the defendant failed to establish that the activities he engaged in were fundamental to his religion.” *Id.* at 1074. Instead, the defendant proved only that “he engaged in these activities based upon his religious beliefs or that [the activities] flowed from a religious mission.” 956 A.2d at 1074 (emphasis added). In so holding, the Commonwealth Court drew a distinction between those activities that are fundamental to a person’s religion and those activities that may be inspired by or flow from a religious mission.

These state court decisions interpreting RFPA highlight what the Third Circuit has noted in other cases: the analytical framework established by RFPA “appears to create some tension between state and federal law.” *Combs*, 540 F.3d at 258. While the “United States Supreme Court has cautioned against making religious interpretations in the First Amendment context,” the Pennsylvania General Assembly and the Commonwealth’s courts appear to require courts to “inquire into . . . whether an activity is fundamental to a person’s religion.” *Id.*

In this case, Plaintiffs have articulated their fundamental religious exercise as “providing foster care to Philadelphia children.” Pls.’ Br. 13, ECF No. 13-2; *see also* Pls.’ Proposed Findings of Fact and Conclusions of Law ¶ 120, ECF No. 46 (stating that “[c]aring for foster children is a fundamental religious exercise for Plaintiffs); Jun. 19, 2018 Hr’g Tr. 37 (Amato) (testifying that “the church’s care for orphans . . . at-risk children . . . [is] intrinsic to who we are and what we do.”). Although the decision in *Ridley Park* raises significant doubt about whether Pennsylvania courts would consider foster care to be a fundamental religious exercise,<sup>30</sup> the Court will assume, for purposes of the Injunction Motion, that “providing foster care to . . . children” constitutes a fundamental religious exercise under RFPA. Pls.’ Br. 13, ECF No. 10-2.

Assuming that providing foster care to children constitutes a fundamental religious exercise, the next question under RFPA analysis is whether holding CSS to its obligations under the Services Contract, in particular its obligation to provide its services to all-comers in accordance with the Fair Practices Ordinance, substantially burdens CSS’s provision of foster care to children. The Court concludes that CSS’s provision of foster care to children is not substantially burdened in this case because CSS is not reasonably likely to show by clear and convincing evidence that its fundamental religious exercise has been substantially burdened under any of the four definitions of “substantial burden” provided under RFPA.<sup>31</sup> Requiring

<sup>30</sup> As discussed in detail above, the Commonwealth Court held that childcare “is not a fundamental religious activity of a church” even if childcare may “aid[] in carrying out the Church’s religious mission.” *Ridley*, 920 A.2d at 960. Indeed, the Commonwealth Court reasoned that while “ministering to the sick can flow from a religious mission . . . it is not a fundamental religious activity of a church.” *Id.* at 960. There is little question that “providing foster care to . . . children” likely flows from and aides CSS’s religious mission, but it is not as clear, that foster care is a fundamental religious exercise under *Ridley Park*.

<sup>31</sup> Plaintiffs claim that “all four types of burden” considered “substantial” under § 2403 of RFPA are implicated in this case. Plaintiffs assert that DHS’s actions “[s]ignificantly constrain[] or inhibit[] conduct or expression mandated by [Catholic Social Services’] religious beliefs” and “[d]en[y] [CSS] a reasonable opportunity to engage in activities which are fundamental to the

CSS's compliance with the terms of the Services Contract does not: constrain or inhibit CSS from conduct or expression mandated by its religious beliefs, curtail CSS's ability to express adherence to CSS's religious faith, deny CSS a reasonable opportunity to "provide foster care to children," or compel CSS to engage in conduct or expression that violates a "specific tenet" of CSS's religious faith.

Resolution of the issue of "substantial burden" requires the Court to focus on what precisely CSS has been asked to do in this case and whether doing it necessarily results in a conflict with CSS's religious beliefs. CSS has been asked, and indeed CSS agreed when it entered into the Services Contract, to serve all persons who seek CSS's services consistent with the all-comers provisions of the Fair Practice Ordinance. Compliance with the all-comers provisions would, as discussed above, require CSS to provide certification services to prospective parents regardless of, among other things, religion, race, marital status, sexual violence victim status, sex, sexual orientation, gender identity, or age. CSS contends that compliance with the all-comers provision of the Services Contract necessarily compels it to engage in "conduct and expression contrary to Catholic teaching," in particular, Catholic teaching about marriage. Pls.' Br. 14, ECF No. 10-2.

CSS contends that the provision of certification services for same-sex couples would require CSS to express its religious approval of same-sex relationships in contravention of Catholic teaching about marriage. This is not the case. To illustrate this point, if, for example, CSS were to certify a couple where one spouse is previously divorced, CSS's certification would

[agency's] religion." Pls.' Proposed Findings of Fact and Conclusions of Law ¶ 126, ECF No. 46 (alterations in original); *see also* Pls.' Br. 12, ECF No. 10-2 (asserting same burdens using verbatim language). Elsewhere, Plaintiffs also state that DHS's actions "curtail . . . Catholic Social Services' 'ability to express adherence' to its faith, and attempt to '[c]ompel[] conduct or express which violates a specific tenet of [Catholic Social Services'] religious faith.'" Pls.' Br. 14, ECF No. 10-2 (alterations in original).

not suggest that CSS approved of divorce as a religious matter. In short, CSS was hired to provide a scope of services to the citizens of Philadelphia that is narrower than CSS contends.

The Services Contract requires CSS to “recruit, screen, train, and provide certified resource care homes” consistent with the all-comers provisions of the Fair Practices Ordinance Decl. of James Amato Ex. A, ECF p. 28 of 52, ECF No. 13-3. The Services Contract does not require CSS to do anything in connection with prospective foster parents but certify prospective foster parents as meeting state guidelines for foster care. CSS is imbuing its certifications with meaning that is not required or compelled by the Services Contract. The Services Contract does not require CSS to express its religious approval or disapproval of persons seeking out its services. The Services Contract does not require CSS to do or say anything else in connection with CSS’s religious views.

With this understanding in mind, the Court concludes that DHS has not and is not constraining Plaintiffs’ ability to engage in the provision of foster care to children by imposing on CSS a contractual condition that would require CSS to violate its religious beliefs or curtail CSS’s ability to express its religious beliefs. In essence, if CSS provides its services consistent with the minimal requirements of the all-comers provisions of the Fair Practices Ordinance, then CSS may continue to provide foster care to children. This does not constitute a substantial burden on CSS’s religious exercise of providing foster care to children. As to the individual Plaintiffs, as discussed in detail below and in connection with the irreparable harm prong, the individuals are not constrained by Defendants’ actions in connection with CSS in their fostering of children because the individual Plaintiffs are, as they always have been, entitled to be foster parents with any of the thirty foster care agencies with whom DHS has contracted.

#### 4. Free Speech Claims

Plaintiffs allege two claims under the Free Speech Clause of the First Amendment. First, Plaintiffs allege that the services CSS provides under the Services Contract relating to certification of prospective foster parents are services for which CSS is not paid, therefore, by requiring CSS to provide certifications DHS is compelling CSS to engage in unpaid for speech. Second, Plaintiffs contend that DHS and Philadelphia retaliated against CSS for CSS's comments published in the March 13 *Philadelphia Inquirer* article in violation of the Free Speech Clause. The Court rejects both claims. First, in hiring CSS to perform services under the Services Contract, DHS and Philadelphia did not seek to create a forum for private speech nor did they seek to promote speech at all. Rather, DHS contracted for specific services relating to DHS's responsibility of providing foster care services to the citizens of Philadelphia, including certification services and home visits for prospective foster parents. This is the case whether CSS was paid in a lump sum or per diem as CSS contends. Second, there is insufficient evidence to conclude that DHS retaliated against CSS for CSS's religious views as opposed to CSS's confirmation that its policies directly contradict the Services Contract.

##### i. Compelled Speech

In resolving Plaintiffs' claim that DHS and Philadelphia are impermissibly conditioning CSS's contract on unconstitutionally compelled speech, the Court begins by identifying the purpose of the contract because the purpose of the contract is the springboard for analysis.<sup>32</sup>

<sup>32</sup> The Court disagrees that DHS and Philadelphia are conditioning the grant of a contract to CSS on CSS's agreement to "adopt [a] particular belief." Pls.' Proposed Findings of Fact and Conclusions of Law 67, ECF No. 46. DHS and Philadelphia ask only what they would ask of any contracting party, that CSS enter into the contract consistent with the duty of good faith and fair dealing. DHS and Philadelphia have asked CSS to confirm that, to the extent CSS would enter into an agreement that CSS could perform in accordance with the contract's fair practices provisions.

The U.S. Supreme Court’s decision in *Legal Services Corp. v. Velazquez* advised courts to look to the purpose of a government program when analyzing whether a government condition to participation in the program is constitutional under the First Amendment. 531 U.S. 533 (2001). In *Legal Services Corp.*, a group of lawyers employed by the New York City Legal Services Corp., sought a declaration that Congress’s imposition of a funding condition on legal services under the Legal Services Corporation Act was an unconstitutional restriction of their freedom of speech. *Id.* at 536. Congress’s funding condition prohibited legal services corporations’ use of federal funds to “amend or otherwise challenge existing welfare law.” *Id.* In ruling that the funding condition of the Legal Services Corporation Act was unconstitutional, the Supreme Court focused on the purpose of the law. The law was “designed to facilitate private speech, not promote a governmental message.” *Id.* at 542. Indeed, advice from legal services corporation attorneys to their clients, the Supreme Court concluded, “cannot be classified as governmental speech even under a generous understanding of the concept.” *Id.* at 543.

As the Legal Services Corporation Act’s purpose was to facilitate private speech, and as the speech in which legal services corporation attorneys were engaged was not governmental speech, the Supreme Court held that the law’s funding condition was unconstitutional. In so holding, the Supreme Court, however, also acknowledged that “[w]hen the government disburses public funds to private entities to convey a governmental message, it may take legitimate and appropriate steps to ensure that its message is neither garbled nor distorted by the grantee.” *Legal Servs. Corp.*, 531 U.S. 533, 541–42 (2001) (quoting *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 833 (1995)) (emphasis added).

In this case, DHS’s purpose in entering into the Services Contract with CSS and its other foster care agencies is for CSS and the other twenty-nine foster care agencies to provide foster care services. The Services Contract is not intended here, in contrast to the Legal Services Corporation Act in *Legal Servs. Corp.*, to create a forum for private speech or to facilitate private speech. CSS and its sister agencies were hired to perform governmental functions for DHS and Philadelphia. That CSS’s services under the Services Contract parallel many of DHS’s own, provides support for the conclusion that CSS is performing governmental work, including the dissemination of governmental messages. For example, CSS is required under the Services Contract to recruit prospective foster parents, and, in fact, CSS has recruited prospective foster parents in much the same way that DHS has recruited prospective foster parents. *Compare* Jun. 18, 2018 Hr’g Tr. 65:14–19 (testifying that she saw television commercials soliciting prospective foster parents)) and Foster Care & Adoption Services, <https://cssphiladelphia.org/adoption/> (last visited Jul. 1, 2018) (advertising CSS’s foster care and adoption services to members of the public through a website) *with* Jun. 18, 2018 Hr’g Tr. 101:19–101:2 (Ali) (describing phone bank recruiting event) and Jun. 19, 2018 Hr’g Tr. 161:23–162:1 (Figuroa) (describing recruitment as a general foster-care responsibility). That CSS’s work under the Services Contract was governmental in nature, is further supported by the fact that the Services Contract stipulated that written materials published by CSS relating to services rendered under the Services Contract were to identify DHS as a funding source. CSS’s work under the Services Contract is, thus, an extension of DHS’s own work and CSS’s speech, to the extent any is required under the Services Contract, constitutes governmental speech under *Legal Servs. Corp.*

As CSS’s speech, to the extent any is required under the Services Contract, constitutes governmental speech, DHS is permitted to “take legitimate and appropriate steps to ensure that

its message,” that foster care services in Philadelphia are provided to all Philadelphians consistent with the all-comers provision of the Fair Practices Ordinance, was and is “neither garbled nor distorted by” CSS. *Legal Servs. Corp.*, 531 U.S. 541–42.

Plaintiffs rely on *Cradle of Liberty Council, Inc. v. City of Philadelphia*, in support of their argument that Defendants have impermissibly conditioned CSS’s public contract on compelled speech. 851 F. Supp. 2d 936, 948 (E.D. Pa. 2012). Plaintiffs’ reliance on *Cradle of Liberty*, however, is misplaced for at least two reasons. First, *Cradle of Liberty* is not binding on this Court. Second, *Cradle of Liberty* is otherwise not persuasive because the facts at issue in that case are not analogous to the facts at issue here. *Cradle of Liberty* concerned a Boy Scout troop that was using a city-subsidized building to carry out youth activities, all while refusing membership to prospective gay Boy Scouts. The City attempted to change the Boy Scout troop’s general policy on membership for prospective gay Scouts by conditioning the lease of the building on a policy change. Ultimately, the district court concluded that the City could not use the lease to change the tenant Boy Scout troop’s general policies when the policies were not related to the use of the building.

The critical difference between *Cradle of Liberty* and this case is that in *Cradle of Liberty*, the City attempted to use a lease agreement to change a tenant’s policy that was unrelated to the lease. *See id.* at 943 (emphasis added) (providing that the City had informed the tenant that “it had to completely abandon its practice of denying membership to homosexuals, even in contexts unrelated to the subsidized building”). In this case, by contrast, Defendants’ insistence that CSS serve all-comers consistent with the Services Contract is central to the purpose of the Services Contract. Defendants have not conditioned CSS’s Services Contract on CSS changing its activities, views, opinions outside the context of the Services Contract. CSS

may continue to refuse its private services to same sex couples outside the confines of the Service Contract and outside of CSS's role as a DHS foster care agency.

**ii. Retaliation**

CSS concedes that “[a]s a contractor, Catholic Social Services is treated as ‘akin to a government employee’ addressing matters of ‘public concern.’” Pls.’ Br. 26, ECF No. 13-2. For a public employee, to prevail on a retaliation claim, the employee must show that “(1) his speech is protected by the First Amendment and (2) the speech was a substantial or motivating factor in the alleged retaliatory action, which, if both are proved, shifts the burden to the employer to prove that (3) the same action would have been taken even if the speech had not occurred.” *Munroe v. Central Bucks Sch. Dist.*, 805 F.3d 454, 466 (3d Cir. 2015). The Third Circuit has noted that the “second and third stages of this analysis present questions for the fact finder and are not subject to review. *Baldassare v. New Jersey*, 250 F.3d 188, 194–95 (3d Cir. 2001) (citations omitted).

Plaintiffs’ retaliation claim fails on elements two and three. There is no evidence that it was CSS’s viewpoint, as opposed to CSS’s verbal and written confirmation that its policies directly conflicted with the Services Contract, that motivated DHS to close CSS’s intake of new referrals. Even if CSS’s engagement in protected activity, namely CSS’s commenting to the *Philadelphia Inquirer* about CSS’s policies in connection with a public services contract, was a substantial or motivating factor for DHS’s alleged retaliation, the Court concludes that DHS would likely prevail in establishing that it would have taken the same action had CSS not spoken with the *Philadelphia Inquirer* about its policies.

For purposes of this analysis, the Court assumes that CSS’s statements to the *Philadelphia Inquirer* and the publication of those statements constitute constitutionally-

protected activity. Assuming that CSS has engaged in constitutionally-protected activity, the next analytical step is determining whether CSS's protected activity was a substantial or motivating factor in the alleged retaliatory action. While CSS would have the Court conclude that the evidence in the record shows that DHS closed CSS's intake of new referrals because of CSS's viewpoint as communicated to the *Philadelphia Inquirer*, in fact, the evidence shows that DHS closed CSS's intake of new referrals because CSS confirmed that its policies violate CSS's contractual obligations under the Services Contract. On this issue, the Eleventh Circuit's decision in *Keeton v. Anderson-Wiley* is instructive. 664 F.3d 865 (11th Cir. 2011).

In *Keeton*, the Eleventh Circuit confronted a situation in which the plaintiff, a graduate student in the Counselor Education Program at Augusta State University, sued the University for First Amendment violations after the faculty asked the plaintiff to complete a remediation plan before she could participate in the University's clinical practicum. 664 F.3d at 867. The faculty required the plaintiff to complete the remediation plan as a condition to her actively counseling students as part of a clinical practicum because the faculty learned that the plaintiff intended to "convert students from being homosexual to heterosexual" once the plaintiff obtained access to the clinic. *Id.* at 868–69. University officials concluded that the plaintiff's intended actions would violate various provisions of the American Counseling Association's Code of Ethics, a mandatory code of ethics for all universities providing counseling programs. *Id.* at 869. Ultimately, the plaintiff confirmed that she would not participate in any "remediation plan that I already know I won't be able to successfully complete." *Id.* at 871. The University then withdrew the plaintiff from the counseling practicum and the plaintiff filed suit. *Id.*

In concluding that the plaintiff's free speech rights had not been violated, the Eleventh Circuit focused on the evidence of why the University asked the plaintiff to engage in a

remediation plan and why the University ultimately withdrew the plaintiff from the counseling practicum. *Id.* The Eleventh Circuit explained that the plaintiff “confuse[d] her viewpoint-based objections to ASU’s officials’ actions with viewpoint discrimination.” *Id.* at 875. In other words, the mere fact that the plaintiff disagreed with the legitimate reasons for the University’s actions did not transform the University’s legitimate actions into illegitimate retaliatory actions. Indeed,

the evidence shows that, in requiring Keeton to learn about and interact with the GLBTQ population, to read articles in counseling or psychological journals about counseling the GLBTQ population, and to become familiar with the ALGBTIC Competencies for Counseling Gays and Transgender clients, ASU’s officials sought to teach her how to effectively counsel GLBTQ clients in accordance with the ACA Code of Ethics.

*Keeton*, 664 F.3d at 874. The Eleventh Circuit reiterated elsewhere that:

the record shows that ASU’s officials imposed the remediation plan, not because she expressed her personal religious views regarding homosexuality, but because she was unwilling to comply with the ACA Code of Ethics. That this unwillingness to abide by ASU’s curriculum and her chosen profession’s ethical standards initially became apparent through her writings and class discussions does not cloak it in First Amendment protection.

*Id.* at 878 (emphasis added). Accordingly, the decision in *Keeton* demonstrates that a plaintiff lodging a First Amendment retaliation claim must establish a causal link between the alleged retaliation and that plaintiff’s alleged protected activity. *See also Briscoe v. City of Philadelphia*, 1996 WL 684316 (E.D. Pa. Nov. 27, 1996) (concluding that a contractor who was not offered a new contract was not retaliated against as result of the contractor’s testimony in court against a city program because the contractor failed to prove that decision not to offer her a new contract was causally linked to her protected activity).

Here, the evidence shows that DHS's closure of CSS's intake of new referrals was not based on CSS's viewpoint as expressed in the *Philadelphia Inquirer* article, but instead, based on CSS's admission that it would not comply with the all-comers provisions of the Services Contract. CSS misperceives the closure of its intake as having to do with its viewpoint in the same way the plaintiff in *Keeton* misperceived "her viewpoint-based objections to [the university's] officials' actions with viewpoint discrimination." 664 F.3d at 875. Although CSS expressed its position on same-sex relationships, it was not that expression that motivated DHS's actions. Instead, it was CSS's indication that it maintains a policy in direct conflict with its obligations under the Services Contract. *See, e.g.*, Jun. 19, 2018 Hr'g Tr. 120:7–11 (Amato) (emphasis added) (quoting from Defendants' letter indicating that Defendants do "not plan to agree to any further referrals to CSS . . . absent assurances that CSS is prepared to adhere to contractual obligations.").

Testimony established DHS's reason for closing intake. Commissioner Figueroa testified that she "decided that it was in the best interest [of children] to close intake, so that [Figueroa] could look more deeply into" CSS's and Bethany Christian Services's policies. Jun. 19, 2018 Hr'g Tr. 166:6–21 (Figueroa); Figueroa Decl. ¶ 32, ECF No. 20-6; *see also* Jun. 18, 2018 Hr'g Tr. 96:2–3 (Ali) (testifying that, to Ali's knowledge, Commissioner Figueroa herself decided to close CSS's intake of new referrals). CSS witness James Amato further testified that he understood that DHS's position was that CSS was "not complying with the public accommodation requirements" under the Services Contract. Jun. 19, 2018 Hr'g Tr. 60:11–13 (Amato); *see also* Jun. 19, 2018 Hr'g Tr. 56:9–13 (Amato) (testifying that he understood DHS's concerns were about CSS "not completing home studies for same-sex individuals and couples").

CSS is not reasonably likely to show that DHS retaliated against CSS for its religious views and comments relating to those views.

Even if CSS could establish that its engagement in protected activity was a substantial or motivating factor for DHS's decision to close intake and not offer CSS a new services contract, DHS would likely meet its burden under the third prong of the retaliation claim that it would have taken such action in the absence of CSS's protected activity. In addition to testimony that DHS would not permit any agency to refuse service to qualified Philadelphians protected by the all-comers provisions of the Fair Practices Ordinance, perhaps the strongest evidence that DHS would have taken the same course of action even in the absence of CSS's purported protected activity is the fact that DHS, indeed, took the same course of action in connection with Bethany Christian Services—who also made comments to the *Philadelphia Inquirer*, that has similar policies in contravention of its services contract. DHS also called all other faith-based agencies and a non faith-based agency to examine their policies on same-sex couples.

#### **D. Irreparable Harm**

Plaintiffs have identified five purported irreparable harms that will result absent injunctive relief: (1) violations of Plaintiffs' religious rights will result in irreparable harm as a matter of law, (2) violations of Plaintiffs' free speech right will result in irreparable harm as a matter of law, (3) without a new government services contract CSS will be forced to lay off staff and possibly shut down its operations entirely, (4) with the closure of CSS, the individual Plaintiffs and other CSS-certified foster parents will not be able to use their skills to foster children, and (5) the closure of CSS will result in a rise in the number of children in congregate care or DHS's overnight foster care room. The Court disagrees because these alleged harms are

either not present on these facts or are otherwise not irreparable for purposes of preliminary injunction analysis.

The first two harms to which Plaintiffs point are harms that would occur only if Plaintiffs First Amendment rights have been violated. As the Court explained at length above, Plaintiffs are unlikely to prevail on the merits of their First Amendment claims. Accordingly, while a loss of First Amendment freedom may be considered irreparable<sup>33</sup> these alleged harms are not present on the facts before the Court.

Plaintiffs' third alleged irreparable harm is the possibility that CSS, without a new government services contract, may lay off staff or shut down its operations. It is hornbook law that the "irreparable harm requirement is met if a plaintiff demonstrates a significant risk that he or she will experience harm that cannot adequately be compensated after the fact by monetary damages . . . this is not an easy burden." *Adams v. Freedom Forge Corp.*, 204 F.3d 475, 484–85 (3d Cir. 2000) (internal citations omitted); *see also Lehigh Valley Cmty. Mental Health Ctrs., Inc. v. Pa. Dep't of Human Servs.*, 2015 WL 6447171 at \* 3 (E.D. Pa. Oct. 26, 2015) (concluding that "going out of business" and "thousands of clients . . . left without proper mental health care" did not meet the standard for irreparable harm). That this burden is particularly exacting was made clear in the Third Circuit's decision in *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 801 (3d Cir. 1989).

In *Air Freight*, the Third Circuit reversed a district court injunction prohibiting the respondent from terminating a pivotal contract with petitioner. *Id.* at 798. The contract

<sup>33</sup> *See McTernan v. City of York*, 577 F.3d 521, 528 (3d Cir. 2009) (noting that the district court "acknowledged that loss of First Amendment freedom for any period of time can be considered irreparable harm," but holding no First Amendment violation occurred where police arrested religiously motivated protesters who blocked access to a public performance stage and other facilities).

accounted for eighty percent of petitioner's business and, thus, the termination of the contract would have caused the petitioner to "lose the main portion of its business, many if not all of its employees, and its goodwill and reputation." *Id.* at 799. Termination of the contract, the petitioner claimed would "undoubtedly . . . force[] [the petitioner's] shutdown or significantly curtail its operation." *Id.* In reversing the district court's injunction order, the Third Circuit reviewed the petitioner's allegations of irreparable harm including the potential that it would lay off its employees, and close its operations. *Id.* at 802. The Third Circuit, however, was unconvinced that such harms could not be compensated by money damages since possible damages could be calculated with relative precision. *Id.*

As to CSS's claim it will be forced to lay off staff and close its operation unless the Court issues an injunction, the Court finds these harms are economic harms that are insufficient to meet the irreparable harm standard for a preliminary injunction. Evidence shows that CSS is compensated by DHS under the Services Contract and that CSS is paid on a per diem basis. *See* Decl. of James Amato Ex. A, ECF p. 15 of 52, ECF No. 13-3; Jun. 21, 2018 Hr'g Tr. 11:4–7 (Figueroa) (testifying that many contractors are paid on a per diem basis); Jun. 21, 2018 Hr'g Tr. 139:20–24 (same) (Figueroa); Jun. 19, 2018 Hr'g Tr. 41:5–6 (Amato) (testifying that CSS "subsidized [foster care] services to the tune of \$3.8 million"). Given the Parties' familiarity of their financial relationship, the Court concludes that CSS's possible harm in the form of lost revenue under the Services Contract can be quantified and may be fully compensable through money damages.

Plaintiffs have also not established the imminence of their financial collapse in the absence of injunctive relief because CSS has testified that it also has foster care contracts with Montgomery County, PA and Bucks County, PA. Jun. 19, 2018 Hr'g Tr. 89:3–9 (Amato).

There are also interim financial arrangements that are available to CSS. DHS Commissioner Figueroa explained that in the past, when foster care agencies have shut down, DHS, in fact, has provided temporary funding to those foster care agencies to ensure smooth transitions of their staff, foster parents, and the children. Jun. 21, 2018 Hr'g Tr. 10:23–11:9 (Figueroa). Accordingly, the economic harms to which Plaintiffs point in support of injunctive relief are insufficient to meet the exacting standard of irreparable harm.

Plaintiffs' fourth alleged irreparable harm is the purported inability of CSS-certified foster parents to continue providing foster care services if CSS closed its operations and the foster parents were forced to transfer to other agencies. To prove this point, Plaintiffs called each of the four individual plaintiffs in this case to testify to the harms that they would expect to suffer if CSS closed its operations. Ms. Simms-Busch testified that if CSS closed its foster program that she, as of the time of the hearing, had "no idea" how she or her foster children would be impacted. Jun. 18, 2018 Hr'g Tr. 52:16–23 (Simms-Busch). Ms. Simms-Busch also was unsure whether she could or could not transfer to another foster care agency. Jun. 18, 2018 Hr'g Tr. 53:2–7 (Simms-Busch). Ms. Paul likewise was unsure what impact CSS's closure would have on her ability to provide foster care and was unsure whether she could or could not transfer to another foster care agency. Jun. 18, 2018 Hr'g Tr. 63:11–25 (Paul). Ms. Fulton was similarly unsure what impact CSS's closure would have on her provision of foster care, though she would be emotionally devastated. Jun. 18, 2018 Hr'g Tr. 68:20–23 (Fulton). Each of the individual plaintiffs expressed that CSS's closure would be emotionally burdensome.

While transferring to another agency may be difficult, uncertain, and emotionally challenging, transferring to other agencies is neither impossible nor unlikely to be successful.

Decl. Kimberly Ali ¶¶ 27–29, ECF No. 20-1 (explaining the process by which resource parents transfer from one agency to another); Decl. Kimberly Ali ¶¶ 34–36, ECF No. 20-1 (describing how Lutheran Children and Family Service of Eastern Pennsylvania’s voluntary closure was handled and explaining that there were no significant issues in transferring families to other agencies). The Third Circuit, although acknowledging how individuals can suffer mental anguish in connection with litigation, has held that emotional difficulty alone cannot justify the imposition of an injunction.

In *Adams*, the Third Circuit concluded that even where the denial of injunctive relief would force patients to switch doctors and medical providers and that such a switching of doctors would prove “emotionally draining” and could present some medical risk, such harms were not the type of irreparable harm “contemplated by the preliminary injunction standard.” 204 F.3d at 489. The Third Circuit continued stating that “injunctions will not be issued merely to allay the fears and apprehensions or to soothe the anxieties of the parties.” *Id.* at 490. In this case, in the event CSS closes its operations, the individual plaintiffs and other non-party CSS-certified resource parents may transfer to other agencies and continue using their skills to provide foster care to children, even though such transfers may be challenging.

Finally, Plaintiffs argue that in the event CSS closes its operations, the number of children in congregate care living situations will increase or the number of children in DHS’s overnight foster care room will increase. As provided above, in connection with the factual background of this case, DHS has shown that the closure of CSS’s intake of new referrals has had little or no effect on the operation of Philadelphia’s foster care system. DHS Commissioner Figueroa testified that CSS’s intake closure “has not resulted in a rise in children placed in congregate care.” Jun. 21, 2018 Hr’g Tr. 86:4–87:9 (Figueroa). Further Commissioner Figueroa

testified that CSS’s intake closure “has not resulted in a rise in children staying in DHS’s childcare room.” Jun. 21, 2018 Hr’g Tr. 86:4–87:9 (Figueroa). Figueroa’s testimony was based on her review of “weekly data” that Figueroa receives from DHS’s “performance and technology team that . . . have . . . detailed data.” Jun. 21, 2018 Hr’g Tr. 86:16–87:11 (Figueroa). To the extent CSS closes its operations, it would not be the first foster agency to do so in Philadelphia. Decl. Kimberly Ali ¶¶ 34–36, ECF No. 20-1 (explaining that Lutheran Children and Family Service of Eastern Pennsylvania closed its operations in March 2016 and its over 100 foster children were transferred to other foster agencies over a three-month period). Plaintiffs have not established with sufficient evidence that irreparable harm in the form of increased use of congregate care or the DHS overnight foster care room will result absent an injunction.

#### **E. Balancing Of The Harms And The Public Interest**

As the Court has concluded that Plaintiffs are not likely to succeed on the merits of their claims and have presented insufficient evidence of irreparable harm, the Court need not spend undue time analyzing the remaining two factors of the preliminary injunction standard—balancing of the equities, and the public interest. *See Reilly*, 858 F.3d at 180 (providing that the first two factors of the preliminary injunction standard are gateway factors).

In connection with the balancing of harms prong of the analysis, Defendants called Frank Cervone as an expert to testify to the harms that might occur if the Court granted injunctive relief.<sup>34</sup> The Parties disagree on whether Cervone’s testimony should be considered for a variety of reasons. The Court, however, need not, and has not relied on Cervone’s testimony in deciding

<sup>34</sup> Cervone serves as the executive director of the Center for Child Advocates. Jun. 21, 2018 Hr’g Tr. 153:5–9 (Cervone). Cervone has had, and continues to have, a long and distinguished career in advocating for children. The Court thanks Mr. Cervone for his dedication to a life of public service.

the Injunction Motion, and therefore, the Court will not address the Parties' arguments on the propriety of Cervone's testimony.

Here, even in the absence of Cervone's testimony, the balance of the equities tilts in favor of Defendants. If the Court were to grant Plaintiffs' Injunction Motion, the Court would, in essence, cast aside DHS's and Philadelphia's reasonable objectives in seeking the enforcement of the Services Contract and the Fair Practices Ordinance incorporated into the Services Contract. As discussed in connection with Plaintiffs' claim under the Free Exercise Clause, Defendants' interests in this case are manifold, but at a minimum, include six important governmental objectives.

First, DHS and Philadelphia have a legitimate interest in ensuring that when contractors agree to terms in a government contract, the contractors adhere to those terms. Second, DHS and Philadelphia have a legitimate interest in ensuring that when its contractors voluntarily agree to be bound by local laws, the local laws are enforced. Third, DHS and Philadelphia have a legitimate interest in ensuring that when they employ contractors to provide governmental services, the services are accessible to all Philadelphians who are qualified for the services. Fourth, in the context of foster care and adoption, DHS and Philadelphia have a legitimate interest in ensuring that the pool of foster parents and resource caregivers is as diverse and broad as the children in need of foster parents and resource caregivers. Fifth, DHS and Philadelphia have a legitimate interest in ensuring that individuals who pay taxes to fund government contractors are not denied access to those services. Sixth, DHS and Philadelphia have an interest in avoiding likely Equal Protection Clause and Establishment Clause claims that would result if

it allowed its government contractors to avoid compliance with the all-comers, nondiscrimination provisions of the Fair Practices Ordinance by discriminating against same-sex married couples.<sup>35</sup>

Granting an injunction in the face of the foregoing legitimate interests would be in direct conflict with the balance of harms and the public interest. Accordingly, the Court concludes that the balance of harms and the public interest militate in favor of denying the Injunction Motion.

## V. CONCLUSION

For the reasons set forth above, and having considered all four factors implicated by the preliminary injunction standard, Plaintiffs' Amended Motion for Temporary Restraining Order and Preliminary Injunction (ECF No. 13) is **DENIED**. An appropriate Order follows.

<sup>35</sup> Preventing discrimination in the provision of public services is undeniably a legitimate interest. As the Supreme Court in *Heart of Atlanta Motel, Inc. v. United States* proclaimed:

Discrimination is not simply dollars and cents, hamburgers and movies; it is the humiliation, frustration, and embarrassment that a person must surely feel when he is told that he is unacceptable as a member of the public because of his race or color. It is equally the inability to explain to a child that regardless of education, civility, courtesy, and morality he will be denied the right to enjoy equal treatment, even though he be a citizen of the United States and may well be called upon to lay down his life to assure this Nation continues.

379 U.S. 241, 292 (1964).

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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

*Plaintiffs,*

v.

CITY OF PHILADELPHIA,  
DEPARTMENT OF HUMAN  
SERVICES FOR THE CITY OF  
PHILADELPHIA, and  
PHILADELPHIA COMMISSION ON  
HUMAN RELATIONS,

*Defendants.*

Civil Action No. 18-cv-2075

Assigned to the Honorable  
Judge Tucker

**DECLARATION OF JAMES AMATO**

1. My name is James Amato. I am over the age of 21 years old and capable of making this declaration pursuant to 28 U.S.C. § 1746. I have not been convicted of a felony or been convicted of a crime of dishonesty. I have personal knowledge of all the contents of this declaration.

2. The City of Philadelphia is facing a crisis because of the acute shortage of qualified families available to care for the thousands of vulnerable children who have been removed from abusive or neglectful homes and placed in foster care. The City relies on private foster agencies to help fill this shortage. In March of this year, the City sent out an “urgent” call that 300 additional families are needed for fostering.



6. Foster care services involve placing children with foster families who have already undergone extensive interviews and home studies by social workers at the agency. The agency makes a determination whether a particular foster family would be an appropriate family to care for foster children. After these interviews, home studies, and evaluations, an agency may provide a written certification endorsing a specific foster family to care for foster children, including thorough analysis and a written endorsement of any relationships of the foster parents. No same-sex couple has ever requested CSS to provide such a written certification for foster care services.

7. State law does not prohibit foster agencies from declining to perform a home study, nor from referring families to another licensed agency to perform a home study. And in fact, foster care agencies have referred families to other agencies regularly for a number of secular reasons including 1) geographic constraints, such as proximity of an agency to the child's biological home or current school, 2) the expertise of an agency for particular medical needs, 3) the expertise of an agency to address particular behavioral issues, 4) agencies focused on finding foster placements for pregnant youth, and 5) the expertise of an agency focused on homes under the City's "kin care" program. Some agencies also specialize in finding families who want to foster LGBT youth, including an agency located in suburbs near Philadelphia. Other agencies specialize in placing Native American children with families of Native American lineage.

8. Because of its religious mission, CSS would also refer a family to one of over two dozen nearby agencies if providing a written certification for that family would violate CSS's religious beliefs. In fact, four such agencies are located within two miles of CSS's downtown office. Catholic Social Services has provided foster services consistent with its religious beliefs, without complaint, as long as it has been operating.

9. On March 15, in response to a newspaper article discussing Catholic Social Services' religious beliefs, the City abruptly cut off foster care referrals to CSS, and has threatened to make it impossible for CSS to continue contracting with the City to provide these services as of June 30, 2018. Only two religious foster care agencies have been subject to contract suspensions by the City, even though a number of other religious groups operate foster care agencies.

10. Also on March 15, the Philadelphia City Council passed a resolution alleging that some foster service providers prohibit the placement of children with LGBTQ people based on religious principles and calling for an investigation. A true and correct copy of this resolution is included as Attachment B. Catholic Social Services has provided foster services consistent with its religious beliefs, without complaint, as long as it has been operating.

11. On March 16, the Commission on Human Relations (Commission) sent a letter to Catholic Social Services, to which CSS later responded. A true and correct copy of the Commission's letter is included as Attachment C; a true and correct copy of Catholic Social Services' response is included as Attachment D. On March 27, the

Operations Director at the City's Department of Human Services (DHS), sent an email to other foster agencies in Philadelphia forbidding them from referring any additional foster intakes to Catholic Social Services. A true and correct copy of this email is included as Attachment E.

12. On May 7, the Commission and the City's Law Department responded to Catholic Social Services' April 18th letter (Attachment D), defending the City's actions and stating that CSS would face subpoenas and further adverse actions under the contract in 10 days. True and correct copies of these letters are included as Attachments F and G, respectively.

13. If the City persists in these actions, the consequences will be severe. Currently, CSS has about 26 available spots for foster children in need of a home, and this number is projected to increase to about 35 spots by the end of June 2018. Additionally, about a dozen foster homes currently sit completely empty because CSS cannot receive any referrals, and therefore cannot place any children with these loving parents. The number of foster parents, like Mrs. Paul, who are willing and anxious to care for foster children but are unable to do so at all because of the City's actions, will increase to about 20 by the end of June. This number is expected to accelerate quickly if the City's actions continue, as CSS on average would receive about 9 additional referrals from the City every month prior to the current referral freeze.

14. If the City makes renewal of the contract impossible on June 30, then many current placements will be in jeopardy. Children who are already at a

vulnerable point in their lives stand to have those lives disrupted again, since their foster parents are certified and supported by CSS and cannot automatically receive foster placements and support from another agency.

15. The City's current actions are resulting in placements being made that are not in the best interest of children. A court has already had to order the City to place a child with the former foster mother of that child—a mother working with CSS. And right now, an urgent situation is ongoing where the City is refusing to place a special needs child, referred to as Doe Foster Child #1, with his former foster mother named Doe Foster Mother #1, even though no other permanent home for the child is currently available and the child is languishing in temporary respite homes. Included as Attachment H is a true and correct copy of the email a social worker at Catholic Social Services sent seeking to resolve this situation. My understanding is that under normal circumstances, Doe Foster Child #1 would have been placed with his former foster mother almost immediately after he was removed from the other home due to an emergency, and no court order or court determination would have been necessary since she was the only permanent home available. The CUA assigned to Doe Foster Child #1 has expressed the position that it would be in Doe Foster Child #1's best interest to return to Doe Foster Mother #1's care, as she is prepared to adopt Doe Foster Child #1. I am aware that the Child Advocate with the Philadelphia Defender Association assigned to Doe Foster Child #1's case has also expressed her opinion that the child should be returned to Doe Foster Mother #1's care. Yet DHS is still resisting

this outcome. The reason DHS provided to Doe Foster Child #1's social worker for denying the placement was the City's current dispute with Catholic Social Services.

16. I am aware of multiple additional children who have been referred elsewhere when CSS families should have been the preferred placement for those children as a result of the City's freeze on referrals to CSS.

17. If the City continues refusing to refer children to CSS, or if the City fulfills its threat to permanently end CSS's foster care service to Philadelphia children on June 30th, CSS will probably have to close its foster program and immediately lay off the staff involved in this program. Relying on its contract with the City, CSS has hired 15 staff members dedicated exclusively to its foster services program and has budgeted and raised funds designed to supplement the City's funding for foster care. Were CSS forced to close this program, CSS would also lose the network of foster families it has carefully cultivated over the years. Restarting this program later from scratch would be incredibly difficult, and likely impossible.

Even if a new contract were not signed by June 30th, however, CSS could continue operating under the current contract if referrals resume. It is commonplace for CSS to continue operating under an old contract in agreement with the City until a new contract could be drafted and signed. True and accurate signature pages from prior contracts showing the date of ratification are included as Attachment I.

18. Attachment J is a true and correct copy of an article entitled *Chaput edict draws mixed reviews; Kenney calls it 'not Christian'*, visited on June 4, 2018,

and available at [http://www.philly.com/philly/news/20160707 Chaput edict draws mixed reviews Kenney calls it not Christian .html](http://www.philly.com/philly/news/20160707_Chaput_edict_draws_mixed_reviews_Kenney_calls_it_not_Christian_.html).

19. Attachment K is a true and correct copy of an article entitled *Jim Kenney's Long War with the Archdiocese*, visited on June 4, 2018, and available at <https://www.phillymag.com/citified/2015/07/09/jim-kenney-catholic-archdiocese-charles-chaput/#Ipkpzv0aRjYCyIrL.99>.

20. Attachment L is a true and correct copy of an article entitled *Project Discovery by Crossroads*, last visited on June 4, 2018, and available at <http://crossroadsprograms.org/wp-content/uploads/2016/07/Project-Discovery-Brochure.pdf>.

21. Attachment M is a true and correct copy of an article titled *Crossroads Programs Inc: LGBTQ Focused Services*, last visited on June 4, 2018, and available at <https://www.mightycause.com/organization/Crossroads-Programs>.

22. Attachment N is a true and correct copy of an article titled *Local Organization Seeks Foster Parents for LGBTQ Youth*, list visited on June 4, 2018, and available at <https://www.phillymag.com/g-philly/2014/05/28/local-organization-seeks-foster-parents-lgbtq-youth/>.

23. Attachment O is a true and correct copy of an article titled *N.J. Youth Agency Looks to Match LGBT Adults, Teens*, last visited on June 4, 2018, and available at <http://www.epgn.com/news/regional/7396-25314381-nj-youth-agency-looks-to-match-lgbt-adults-teens>.

24. Attachment P is a true and correct copy of a website titled *Mother/Baby Host Home*, last visited on June 4, 2018, and available at <https://www.pammentor.com/who-we-serve/children-and-families/motherbaby-host-home/>.

25. Attachment Q is a true and correct copy of a website titled *Therapeutic Foster Care*, last visited on June 4, 2018, and available at <https://www.pammentor.com/who-we-serve/children-and-families/therapeutic-foster-care/>.

26. Attachment R is a true and correct copy of a document titled *Pennsylvania Indian Child Welfare Handbook*, last visited on June 4, 2018, and available at <http://www.pacwrc.pitt.edu/ICWA/Indian%20Child%20Welfare%20Handbook.pdf>.

27. Attachment S is a true and correct copy of a website titled *Welcome to Rainbow Adoptions*, last visited on June 4, 2018, and available at <http://www.cotraic.org/adopt.html>.

28. Attachment T is a true and correct copy of a document titled *Quarterly Indicators Report*.

29. Attachment U is a true and correct copy of an article titled *Philly halts foster placements with 2 faith-based agencies shutting out LGBT couples*, last visited on June 4, 2018, and available at <https://whyy.org/articles/philly-halts-foster-placements-2-faith-based-agencies-shutting-lgbt-couples/>.

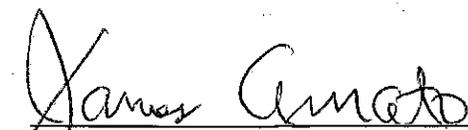
30. Attachment V is a true and correct copy of testimony entitled *Education Interrupted: How We Are Failing Our Children in Residential Placements*, last visited on June 4, 2018, and available at <https://www.elc-pa.org/wp->

[content/uploads/2018/05/ELC-Testimony-Before-City-Council-Re-Residential-Placements-May-17-2018.pdf](#).

31. Attachment W is a true and correct copy of an article entitled *Two foster agencies in Philly won't place kids with LGBTQ people*, last visited on June 4, 2018, and available at <http://www.philly.com/philly/news/foster-adoption-lgbtq-gay-same-sex-philly-bethany-archdiocese-20180313.html>.

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

Executed on June 4, 2018.

  
James Amato

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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

*Plaintiffs,*

v.

CITY OF PHILADELPHIA,  
DEPARTMENT OF HUMAN  
SERVICES FOR THE CITY OF  
PHILADELPHIA, and  
PHILADELPHIA COMMISSION ON  
HUMAN RELATIONS,

*Defendants.*

Civil Action No. 18-cv-2075

Assigned to the Honorable  
Judge Tucker

**SUPPLEMENTAL DECLARATION OF JAMES AMATO**

1. My name is James Amato. I am over the age of 21 and am capable of making this declaration pursuant to 28 U.S.C. § 1746. I have not been convicted of a felony or been convicted of a crime of dishonesty. I have personal knowledge of all the contents of this declaration.

2. The City asked to hold a meeting with Catholic Social Services (“Catholic”) representatives regarding potential contract options on June 28, 2018. Catholic remains committed to providing foster care services if possible, and I communicated Catholic’s desire to continue doing so in this meeting.

3. The City indicated a willingness to pay *per diem* amounts for foster children currently cared for by Catholic’s families. But the City remains unwilling to

resume normal operations with Catholic, meaning it will not agree to reopen intake to send foster children to Catholic to place with its growing number of empty foster homes.

4. Without intake resuming, any interim approach will require Catholic to begin laying off staff next month and to close its foster care program altogether within a matter of months. This will result in the displacement of foster children who need to remain in foster care and who are cared for by families who cannot continue as foster parents without the support that Catholic offers.

5. Catholic also explored whether there is any option available for compliance that would enable Catholic to receive the full foster care contract it has received in the past. The City made clear that for Catholic to receive a full contract, Catholic must agree not only to be willing to perform home studies for anyone who requests a home study, but also to ensure that the outcome of a home study would be an endorsement and certification of the relationship of a same-sex couple. The City made clear that Catholic's religious beliefs would not be an acceptable basis for Catholic's unwillingness to provide a written certification regarding a couple's relationship and to approve that couple for foster care.

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

Executed on June 28, 2018.

  
James Amato

The Honorable Petrese B. Tucker  
United States District Court for the Eastern District of Pennsylvania  
U.S. Courthouse  
601 Market Street  
Philadelphia, PA 19106-1790

VIA ECF

**Re: Additional Foster Care Placements and Staff Reductions**

Dear Judge Tucker:

We write to advise the Court of two urgent situations that have arisen since the hearing because of the City's ongoing intake freeze.

*First*, Catholic has learned that the City urgently needed to move two siblings from their current kincare placement to a new placement. A court ordered that the two siblings be kept together, and the City's stated deadline by which the children needed to be moved in their best interest was July 1, but the difficulty in finding a family to take both siblings caused the City to miss this deadline.

Catholic has a certified foster family who is interested in caring for these two siblings. That family has a connection with the children's family, a relationship of the type which the City has considered to qualify as a kincare placement. After the City missed the deadline, the available kincare family learned of the situation. They notified the CUA that had been searching for a home for these children, and the CUA requested—twice—that the Central Referral Unit place the siblings with this family. That placement was denied by a CRU administrator because the available kincare family was certified through Catholic. Because of this denial, the children in question remained in a sub-optimal placement even longer, rather than joining a loving and available kincare foster family.

Catholic did not learn of this situation—or the denial—until after the fact. Yesterday afternoon, leadership at Catholic contacted the DHS Commissioner seeking to override the CRU Administrator’s refusal in the best interest of these children. Due to Catholic’s direct intervention, DHS leadership permitted the placement. But—as evidenced by the initial denial—it appears that DHS still has not told its staff, or even its CRU administrators, that exceptions to the intake freeze should be made to allow referrals to Catholic when it is in the child’s best interest. While DHS eventually acted the child’s best interest once Catholic became aware of the situation and elevated it, the ongoing freeze delayed yet more children from getting to appropriate homes, and it is impossible to know how many other children are in similar circumstances.

An injunction from this Court resuming regular referrals would prevent this type of situation from arising in the future. Without an injunction, situations like this one will continue to recur, with families and children being left in limbo, only reaching the correct placements when and if Catholic happens to find out and successfully petition DHS management to override DHS’s initial refusal.

*Second*, Catholic writes to advise the Court of the loss of two employees from Catholic’s foster care program. Due to the City’s intake freeze, Catholic’s foster program could not continue to support these employees. The employees left the program on June 26th and 29th.

Fortunately, in this instance, Catholic could offer these employees a transfer to other programs within the Archdiocese, but a job transfer was not the employees’ first choice, and Catholic does not have the openings to continue this practice for the foster program’s remaining staff. As long as the intake freeze continues, Catholic’s foster program will be forced to lay off additional employees. As discussed in the Amato declaration and at the hearing, the loss of the knowledge and expertise of these employees will be a serious blow to Catholic’s foster care program, one that will likely be impossible to repair.

Respectfully submitted,

/s/ Mark Rienzi

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Mark Rienzi

*Counsel for Plaintiffs*

**Certificate of Service**

I hereby certify that this letter has been served electronically via ECF and is available for viewing and downloading from the ECF system.

/s/ Mark Rienzi

Mark Rienzi

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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

*Plaintiffs,*

v.

CITY OF PHILADELPHIA,  
DEPARTMENT OF HUMAN  
SERVICES FOR THE CITY OF  
PHILADELPHIA, and  
PHILADELPHIA COMMISSION ON  
HUMAN RELATIONS,

*Defendants.*

Civil Action No. 18-cv-2075

Assigned to the Honorable  
Judge Tucker

DECLARATION OF SHARONELL FULTON

1. My name is Sharonell Fulton. I am over the age of 21 and am capable of making this declaration pursuant to 28 U.S.C. § 1746. I have not been convicted of a felony or been convicted of a crime of dishonesty. I have personal knowledge of all of the contents of this declaration.

2. I am a foster parent who works with Catholic Social Services. I have fostered more than 40 children over 25-plus years as a foster parent. I have cared for children with significant medical needs and am currently caring for two special needs foster children.

3. Catholic Social Services has provided me with training, resources, support, and professional guidance as to how to best care for special needs children.

I have been able to call social workers at any hour and receive an answer from someone I knew and trusted. These social workers have become like family to me and have shown great love and care to my foster children. By contrast, I previously received training from a government agency, and I noted the stark difference between the way that agency treated me and Catholic Social Services' care and compassion.

4. To provide an example of the type of support I receive from Catholic Social Services, in 2010 I received a late-night request to take four foster children into my home the day before Christmas Eve. The children had been removed into foster care because of an emergency situation [REDACTED]. [REDACTED]. The City dropped these children off on my doorstep with nothing but the insufficient clothing they had on their backs, and these children were on the verge of starvation themselves. The City provided me with no other support or resources, and I am not a person of financial means. I was very worried about how to meet the very basic needs of these children, let alone provide a happy Christmas for them after everything they had gone through. But the next day, Catholic Social Services workers showed up on my doorstep to provide encouragement, assistance, and financial resources so that I could buy much needed food, clothing, bedding, and even gifts for these children. This is not the type of support I believe I would receive from other agencies, but it was critical for me to be able to provide the love and care that these children needed.

5. To provide another example, years ago I received two young brothers, ages five and seven, [REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]. These boys lived in my home as foster children their entire childhood and I raised them as my own sons. I believe that I would not receive the kind of support I need to serve children, particularly children such as these boys or my current foster children with serious special needs or medical problems, if I were with another agency.

6. I am aware that other foster parents have been unsatisfied with the support they have received from other foster agencies.

7. If Catholic Social Services is no longer contracted with the City, my two current foster children with special needs may be transferred out of my home. Because of their extensive medical needs, I anticipate that these children will have a very difficult time being placed, and it is very unlikely they will be placed with a foster parent that has the same capacity and training to address these special needs as I do. It also took me quite some time to help these children learn that they could trust me and accept my love and care. Finding a new home for these children will not be an easy task, and I worry every night about what will happen to them.

8. I share the religious beliefs of Catholic Social Services. It is insulting and hurtful for me to observe the government of the city in which I live needlessly denigrate and publicly condemn my own religious beliefs in such a discriminatory fashion.

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

Executed on June 4, 2018.

A handwritten signature in cursive script, reading "Sharonell Fulton", written over a horizontal line.

Sharonell Fulton

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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

*Plaintiffs,*

v.

CITY OF PHILADELPHIA,  
DEPARTMENT OF HUMAN  
SERVICES FOR THE CITY OF  
PHILADELPHIA, and  
PHILADELPHIA COMMISSION ON  
HUMAN RELATIONS,

*Defendants.*

Civil Action No. 18-cv-2075

Assigned to the Honorable  
Judge Tucker

**DECLARATION OF CECELIA PAUL**

1. My name is Cecelia Paul. I am over the age of 21 and am capable of making this declaration pursuant to 28 U.S.C. § 1746. I have not been convicted of a felony or been convicted of a crime of dishonesty. I have personal knowledge of all of the contents of this declaration.

2. I am a foster parent who has worked with Catholic Social Services for 46 years and who has fostered 133 children. I was honored by the City as one of its Foster Parents of the Year for my excellent care. Caring for children in need is what gives life meaning to me. I first began caring for children when I worked as a nurse. My religious beliefs inspired me to make serving children my life's work. These religious beliefs also inspired me to work with Catholic Social Services, and the social

workers at this agency have become like family to me. I trust them, rely on them, and I cannot imagine starting from scratch and fostering children without them.

3. Because the City is no longer referring children to families who work with Catholic Social Services, as of April 1 am no longer caring for foster children in need.

4. No longer caring for foster children has left a void in my life and has left me unable to fulfill my religious commitment to give of myself and show love to those most in need. My home will remain empty of foster children as long as the City continues refusing to refer foster children to Catholic Social Services.

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

Executed on June 4, 2018.

A handwritten signature in cursive script that reads "Cecelia Paul". The signature is written in black ink and is positioned above a horizontal line.

Cecelia Paul

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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

*Plaintiffs,*

v.

CITY OF PHILADELPHIA,  
DEPARTMENT OF HUMAN  
SERVICES FOR THE CITY OF  
PHILADELPHIA, and  
PHILADELPHIA COMMISSION ON  
HUMAN RELATIONS,

*Defendants.*

Civil Action No. 18-cv-2075

Assigned to the Honorable  
Judge Tucker

**DECLARATION OF TONI LYNN SIMMS-BUSCH**

1. My name is Toni Lynn Simms-Busch. I am over the age of 21 and am capable of making this declaration pursuant to 28 U.S.C. § 1746. I have not been convicted of a felony or been convicted of a crime of dishonesty. I have personal knowledge of all of the contents of this declaration.

2. I previously worked as a foster care social worker with a private agency, and then later as a child advocate social worker for four years at the Defender Association of Philadelphia. I obtained my bachelor's degree in forensic psychology from Chatham University in Pittsburgh. In my prior role as a child advocate social worker with the City of Philadelphia, I interacted with all of the foster agencies in the City. I observed that some of the agencies offered high-quality services, and others

were at the other end of the spectrum. I observed that Catholic Social Services consistently was among the best of any foster agency in terms of the quality of services they provided, and they operated with the highest level of integrity, professionalism, responsiveness, and care.

3. I am now a foster parent myself, caring for two very young foster children who are biological siblings. I chose to work with Catholic Social Services because I observed their high-level care in the past, and because of my desire to raise my family with an organization that shared my religious beliefs. I am inspired by my religious beliefs to serve children, which is why I found my previous work as a child advocate so rewarding. I am continuing that religiously-motivated practice of serving vulnerable children now as a foster mother.

4. Fostering is often a very emotionally exhausting process, and I could not imagine continuing on this journey without the support I receive from Catholic Social Services. In my interactions with other agencies, I have not received this same level of personal care and loving encouragement. It is possible that in the future, a biological sibling of my foster children will need foster care, and I would be very open to fostering this child if I could work with Catholic Social Services. I am very open to fostering other children in need in the future as well.

5. If Catholic Social Services were forced to close its program, however, I think it is highly unlikely that I would be able to continue fostering. It would be devastating for me if I were no longer able to continue caring for foster children. It

would also be very disruptive for me and my family if I could no longer rely on Catholic Social Services.

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

Executed on June 4, 2018.



Toni Lynn Simms-Buseh

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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

*Plaintiffs,*

v.

CITY OF PHILADELPHIA,  
DEPARTMENT OF HUMAN  
SERVICES FOR THE CITY OF  
PHILADELPHIA, and  
PHILADELPHIA COMMISSION ON  
HUMAN RELATIONS,

*Defendants.*

Civil Action No. 18-2075

Assigned to the Honorable  
Judge Tucker

**DECLARATION OF DOE FOSTER MOTHER #1**

1. I am over the age of 21 years old and capable of making this declaration pursuant to 28 U.S.C. § 1746. I have not been convicted of a felony or been convicted of a crime of dishonesty. I have personal knowledge of all of the contents of this declaration.

2. I am a foster parent who works with Catholic Social Services. I have fostered fourteen children over eighteen years as a foster parent, and I have adopted two of them. Some of the children I have cared for have had significant special needs and learning disabilities. For example, more than one of the children I have cared for was diagnosed with autism.

3. Catholic Social Services has provided me with significant support and resources to help me care for the needs of my foster children, and they also provided me with additional help as I worked to meet the needs of my autistic foster children. I have been able to call social workers at any hour and receive an answer from someone I knew and trusted, and I have always relied heavily on the social workers I interact with. These social workers have always demonstrated the highest level of care and have shown great love and attention to my children. Although I am not Catholic, I am a religious person and I appreciate the spiritual environment at Catholic Social Services and the way that seems to motivate a dedication to children. My own religious beliefs inspire me to want to care for children in need.

4. I have never worked with another foster agency and I am not certified to receive foster placements through any other agency. I want to continue working with the agency and social workers whom I trust.

5. I received a new foster son, Doe Foster Child #1, in October of 2016. Doe Foster Child #1 is a young child, but he is the age that other children have normally already started speaking in full sentences. However, when Doe Foster Child #1 came to my home he never spoke at all in the beginning. He also had great difficulty eating, and he was very fearful of other normal activities like taking a bath. Because he did not speak, it was also difficult to understand in the beginning what Doe Foster Child #1 needed. After consultation with my Catholic Social Service social workers, and with medical attention, Doe Foster Child #1 was diagnosed with autism. Because of Doe Foster Child #1's age, we do not know yet Doe Foster Child #1's level on the

autism spectrum. We began to take Doe Foster Child #1 to receive therapy for autism, and we also had more information about how to meet Doe Foster Child #1's needs.

6. In the months after coming to our family, Doe Foster Child #1 began to show remarkable progress. He began to say some words, like "hi" and "bye," he would play happily in the bath, and he showed great affection and attachment to our family members. Doe Foster Child #1 is also the same age as my grandson who lives with me. The two boys shared a room and developed a deep bond. I would often find them playing together in the backyard.

7. On one occasion, one of my adult children took Doe Foster Child #1 to the dentist for an appointment. Doe Foster Child #1 was so fearful and upset when he thought he would be taken from our family. But when he came back after the appointment he bolted out of the car and into the house and held me tight as he happily and repeatedly said, "hi, hi." I assured him that this was his home, that he did not need to worry, that I loved him, and everything was ok.

8. When I have adopted foster children in the past, one of my adult children co-signed on the adoption. That way if anything ever happened to me, I had peace of mind knowing that my adopted child would still be taken care of.

9. Within the last few months, Doe Foster Child #1's social worker asked if I wanted to adopt Doe Foster Child #1. He said that no other families were interested in adopting. I expressed interest in adopting, but I explained that I needed to consult with my adult children and figure out who would co-sign on Doe Foster

Child #1's adoption. Because of different events going on in the lives of my adult children, I knew that this would take some time.

10. Just a few weeks ago, Doe Foster Child #1 was removed from my home to be placed with another foster family who was immediately ready to adopt Doe Foster Child #1 I was heartbroken when this happened. I thought that I would have more time and be able to adopt Doe Foster Child #1 myself. When the social worker with the CUA in charge of Doe Foster Child #1 came to pick him up to take him away, I kissed him goodbye and told him how much I loved him. But every time the social worker tried to lead Doe Foster Child #1 out of our home, he would wriggle free and come running back to hold me. Doe Foster Child #1 finally had to be carried crying from our home. I watched from the window in my house as my adult son helped carry Doe Foster Child #1 out. While doing so, my son kept assuring Doe Foster Child #1 that it would be ok, that he would like his new family, and that we would always love him.

11. Very recently, the social worker with the CUA in charge of Doe Foster Child #1 contacted me and let me know that an emergency situation had arisen with the foster family Doe Foster Child #1 was placed with, and all the children in that home were being immediately removed. He did not give me details, but he asked if I would be willing to take Doe Foster Child #1 back. My immediate response was, "bring my son home." The social worker said he needed to check with DHS and would get back to me.

12. The social worker then followed up the same day and informed me that DHS denied the request to place Doe Foster Child #1 with me because I work with Catholic Social Services. DHS apparently told the social worker that “Catholic Social Services is going through a case right now and DHS is not approving him to come back here.” I was devastated when I heard this news. The social worker seemed upset as well. The social worker said that the only option they had for Doe Foster Child #1 was a temporary respite home, but he would be moved from that home after a few days while they searched for another home.

13. I repeatedly expressed my desire to Doe Foster Child #1’s social worker that he bring Doe Foster Child #1 back to my home. I also communicated this to my social workers at Catholic Social Services. I also spoke with my adult son, who told me he was prepared to co-sign on Doe Foster Child #1’s adoption if we could get him back. I communicated the fact that I was immediately prepared to adopt Doe Foster Child #1 to my social workers and Doe Foster Child #1’s social worker, but the social workers still did not bring Doe Foster Child #1 back home. My grandson frequently asks when Doe Foster Child #1 will come back home.

14. Recently, the social worker informed me that Doe Foster Child #1 was having difficulty associated with normal bodily functions. The social worker asked if I had any advice to help Doe Foster Child #1. It sounded to me as though Doe Foster Child #1 was regressing, and that some of these problems were related to Doe Foster Child #1’s earlier issues with eating properly. I gave the social worker detailed instructions about how to prepare Doe Foster Child #1’s food, what he liked to eat,

and how to help him with other bodily functions. But I also expressed again that the best thing for Doe Foster Child #1 would be to come back to our family. When Doe Foster Child #1 lived in our home, he was thriving and he felt safe and loved.

15. I have learned that Doe Foster Child #1 has not been receiving his regular and needed therapy for his autism, because Doe Foster Child #1's school called me to ask why Doe Foster Child #1 had not been attending his special classes and receiving therapy. The school wondered if Doe Foster Child #1 was sick since he had not been attending. I am worried about his physical and emotional wellbeing right now. I also understand that Doe Foster Child #1 has since been moved to another temporary respite home, and that there is no other permanent home available for Doe Foster Child #1 right now. My understanding is that under normal circumstances, Doe Foster Child #1 would have been placed with me so that I could give him the love and care he needs, and we could proceed with the adoption process. DHS has not provided me with any reason—other than its dispute with Catholic Social Services—for refusing to let me care for Doe Foster Child #1, I say prayers for his return throughout the day and look at Doe Foster Child #1's pictures every night. I frequently call his social worker to see if I can do anything to get Doe Foster Child #1 back. I cannot understand why Doe Foster Child #1 is being kept from me.

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

Executed on June 6, 2018.

*Doe Foster Mother #1*

Doe Foster Mother #1



## CITY OF PHILADELPHIA

COMMISSION ON HUMAN RELATIONS  
601 Walnut Street, Suite 300 South  
Philadelphia, PA 19106  
Telephone (215) 686-4670  
Fax (215) 686-4684

THOMAS H. EARLE, ESQUIRE  
Chairperson

RUE LANDAU, ESQUIRE  
Executive Director

May 7, 2018

Mark Rienzi  
President  
The Becket Fund for Religious Liberty  
1200 New Hampshire Ave., NW, Suite 700  
Washington, D.C. 20036  
Via First Class Mail and Email

Dear Mr. Rienzi:

Thank you for your letter of April 18, 2018. The Department of Human Services (“DHS”) will respond separately through the Law Department to the issues you raised concerning the contract between Catholic Social Services (“CSS”) and DHS. We are writing to address your statements regarding the jurisdiction of Philadelphia Commission on Human Relations (“PCHR”).

The purpose of the Philadelphia Fair Practices Ordinance (“FPO”) is to assure that all persons are afforded equal opportunities for employment, housing, and the use of public accommodations such as CSS. Philadelphia Code §9-1101(1)(a) and (e). PCHR initiated this investigation at the request of the Mayor and pursuant to its authority under the Home Rule Charter, the Fair Practices Ordinance, and its governing regulations in order to determine if CSS is engaged in discriminatory practices. *See* PCHR Regulation No. 2.1. Pennsylvania Courts have deferred to agencies like PCHR in determining the extent of their jurisdiction and permitted the due course of administrative actions. *See Chestnut Hill College*, 158 A.3d 251, 257-58 (Pa. Cmwlth. 2017), *alloc. den.*, 173 A.3d 262 (Pa. 2017).

CSS’ provision of services to children in foster care and to their foster parents under that contract is a public accommodation under § 9-1102(w) of the FPO, and therefore within the jurisdiction of the PCHR. Your citation to *Roman Catholic Archdiocese of Philadelphia v. Pa. Human Rel. Comm’n.*, 548 A.2d 328 (Pa. Cmwlth. 1988) and assertion that CSS is “distinctly private” do not alter this conclusion.

First, unlike the PHRA, the FPO does not contain an exception for “distinctly private” entities.

Second, your April 18 letter, as well as CSS’s own website, demonstrate that that the provision of services to children in foster care and to their foster parents is a public accommodation. Your letter states that CSS “serves and places children regardless of their race, color, sex, sexual orientation, gender identity, religion, national origin...” pursuant to its contract with the City. The very nature of this process requires CSS to identify, recruit, certify, select, and

provide training, payment and services to the individuals and families who foster these children. See Professional Services Contract General Provisions Article V. Indeed, the CSS Philadelphia website invites members of the public to contact CSS to become potential foster parents. See <https://cssphiladelphia.org/adoption/>.

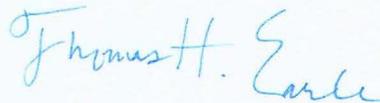
Third, the Commonwealth Court's recent opinion in *Chestnut Hill College* makes plain that a discrimination claim alleged against a Catholic-affiliated entity does not involve a matter of purely ecclesiastical concern, and therefore, religiously affiliated institutions like Chestnut Hill College (and also CSS) fall within the jurisdiction of the investigating agency. 158 A.3d 251, 259-60 (Pa. Cmwlth. 2017); see also, *O'Connor v. Archdiocese of Philadelphia*, 975 A.2d 1084, 1106-09 (Pa. 2009) (finding Archdiocese was not exempt from parents' claims that their child had been unfairly disciplined by the school).

As we explained in our March 16, 2018 correspondence, any potential violation of the FPO falls under the jurisdiction of PCHR. Therefore, we reiterate the request for information set forth in that letter and ask that you respond within ten days of this letter to avoid the issuance of a subpoena.

Sincerely,



Rue Landau, Esquire  
Executive Director



Thomas H. Earle, Esquire  
Chairperson

cc: Marcel S. Pratt, City Solicitor  
Cynthia Figueroa, DHS Commissioner



CITY OF PHILADELPHIA

LAW DEPARTMENT  
One Parkway  
1515 Arch Street  
Philadelphia, PA 19102-1595

May 7, 2018

Mark Rienzi  
President  
The Becket Fund for Religious Liberty  
1200 New Hampshire Ave. NW, Suite 700  
Washington, DC 20036

Dear Mr. Rienzi:

The City of Philadelphia (the "City") is in receipt of your letter dated April 18, 2018 to the Philadelphia Commission on Human Relations (the "Commission"). Mr. Earle or Ms. Landau will respond directly to you regarding the questions you raise concerning the Commission's jurisdiction. We are writing to you separately to respond to the concerns you raise regarding the City's decision to suspend new referrals from DHS to Catholic Social Services' ("CSS") family foster care program.

While we are genuinely appreciative of the invaluable services that CSS provides on the City's behalf to the City's most vulnerable children and to the resource families that care for those children, those services must be provided in a manner consistent with certain core City principles, including our non-discrimination rules. As CSS works on the City's behalf, we cannot allow discrimination against qualified couples who are ready to take on this important role, simply because of whom they choose to marry. We would not allow such discrimination against, for example, Catholic couples or "mixed-race" couples, and we cannot allow it with respect to same-sex couples, either.

You take issue in your letter with the City's ability to apply these non-discrimination rules in the context of CSS's current contract with the City. We disagree.

Nothing in CSS's existing contract obligates the City to continue to send any referrals to CSS. A review of CSS's contract For General, Kinship, and Teen Parent/Baby Resource Home Care Providers shows numerous duties on the part of CSS, but for DHS, its duty primarily is to provide CSS with support and compensation for the services that CSS performs, with no minimum guarantee or even a duty to provide *any* referrals. Without any duty to make referrals, DHS simply cannot be in breach of its contract for failure to continue making referrals.

Moreover, the City has the unilateral right under the contract to terminate or suspend the contract, regardless of any breach or lack thereof by CSS, “for any reason, including, without limitation, the convenience of the City.” Professional Services Contract General Provisions (“General Provisions”) ¶ 14.2. You correctly note in your letter that the City has not sent to CSS a notice of default or a notice to suspend or terminate. That is intentional, as we do not wish to make this an adversarial proceeding, and we remain hopeful that CSS will comply with its contractual obligations and will implement them in a non-discriminatory manner. Regardless, however, the City reserves the right to cancel or suspend this contract, at any time, for the City’s convenience.

Of course, the City does not need to rely on its mere convenience. Section 3.21 of the General Provisions states:

Provider shall not reject a child or family for Services based upon the location or condition of the family’s residence, their environmental or social condition, *or for any other reason* if the profiles of such child or family are consistent with Provider’s Scope of Services or DHS’s applicable standards as listed in the Provider Agreement, unless an exception is granted by the Commissioner or the Commissioner’s designee, in his/her sole discretion.

(“Services” are defined at General Provisions ¶ 1.72 as “the work to be performed under this contract,” which plainly includes the intake and registration of new, prospective foster parents. *See, e.g.*, Scope of Service p.4 (“Resource caregivers are screened, trained, and certified by the Provider.”); *id.* at 6 (“Provider is responsible for offering training and related support to Resource Parents”)). In your letter, you confirm that CSS has no intention of complying with this contractual obligation to provide Services to *all* qualified families, as you have clearly re-affirmed that CSS intends to reject families for Services based solely on the fact that they are same-sex couples. That is not a permissible reason for rejection under either the Scope of Services set forth in the contract or under DHS’s applicable standards, and the Commissioner has no intention of granting an exception.

Indeed, as you know, the refusal to provide Services to same-sex couples constitutes a violation of a fundamental City policy to provide services to *all* qualified families. We cannot allow a provider, acting under a City contract, to inform a qualified family who wants to give of its time, resources, and home, in order to protect vulnerable children, that they must go elsewhere to make this contribution, solely because our contractual provider disapproves of their familial relationship. The City maintains an important policy that all resource families be treated equally, so long as they meet the agreed-upon eligibility requirements. We recognize that CSS’s values and the City’s values may diverge here, but CSS is contracting with the City, not free-lancing, and the ultimate responsibility for managing this foster care program belongs to the City. We have to insist that all services provided as part of this program are provided in a manner that is consistent with our conception of equality.

Moreover, and independent of the foregoing, CSS's refusal to provide services to same-sex couples is a violation of law. CSS falls squarely within the definition of a "public accommodation" under the City's Fair Practices Ordinance, Phila. Code § 9-1102(1)(w), as CSS is, *inter alia*, a "provider . . . whose . . . services . . . are . . . made available to the public." You focus on CSS's admirable provision of services to *the children*, but the contract indisputably also requires CSS to provides services to *the foster families*, including certification, support, re-evaluation, and training to *any* family that meets state regulations and DHS standards and wishes to provide badly needed foster care.

Please be assured that we have not targeted your client on the basis of its religious beliefs. As we explained, our motivation arises from our concern that all families in this City be treated equally with respect to all opportunities and services that are available to them. We respect your sincere religious beliefs, but your freedom to express them is not at issue here where you have chosen voluntarily to partner with us in providing government-funded, secular social services. The Commonwealth has set eligibility standards for prospective foster parents. It is inappropriate (and arguably unconstitutional) for us to allow a provider to add its own requirements for foster parents that are rooted in religious doctrine, and which clash with the constitutional requirement that we treat all marriages/families equally. Nor can we allow you to refuse service to an otherwise eligible family by referring them to another agency.

Please also note that CSS's current contract expires on June 30, 2018, and the City is under no legal obligation to enter into a new contract for any period thereafter. We are hopeful that we can work out any differences before then, but please be advised that -- except where the best interests of a child demands otherwise -- the City does not plan to agree to any further referrals to CSS, and the City intends to assist with the transition of foster families to other agencies, absent assurances that CSS is prepared to adhere to its contractual obligations and, in implementing its City contract, to comply with all applicable laws, including those relating to non-discrimination. We believe our current contract with CSS is quite clear that this is our right, but please be advised that any further contracts with CSS will be explicit in this regard.

Family equality is both a legal requirement, and an important City policy and value that must be embodied in our contractual relationships. If CSS cannot come into compliance, we are prepared to enter into an interim, contractual relationship with CSS in order for CSS to continue to supervise the foster children in its care properly with the least amount of disruption for them, while the transition to other agencies is completed. On a related note, contrary to the discussion in your letter regarding DHS's practice concerning siblings, because the best interests of the children in our care are paramount, we did recently grant an exception to the cessation of CSS referrals in that instance to ensure that siblings were placed together, and we expect that the best interests of the children will remain paramount throughout any transition.

In closing, we do not wish to see our valuable relationship with CSS regarding foster care services come to an end. We are hopeful that CSS will be prepared to commit to comply with the letter and spirit of CSS's contractual obligations and the Fair Practices Ordinance by

committing to provide foster care services on a non-discriminatory basis to all families that meet the City's standards. Please let me know as soon as possible whether CSS is prepared to comply with these standards. Alternatively, please let me know with whom I should be in contact for purposes of promptly negotiating a transition plan.

Thank you for your understanding and your client's work with children and families.

Sincerely,

A handwritten signature in blue ink that reads "Valerie M. Robinson". The signature is written in a cursive style.

Valerie Robinson  
Chair, Corporate and Tax Group

cc: Rue Landau, Executive Director Philadelphia Commission on Human Relations  
Cynthia Figueroa, Commissioner, Department of Human Services  
Marcel S. Pratt, City Solicitor

We're piloting a new, user-friendly website design. To view the existing City website, visit PHILA.GOV

Office of the Mayor | City government directory | TRANSLATE



SERVICES

PROGRAMS & INITIATIVES NEWS & EVENTS PUBLICATIONS & FORMS

Services / Birth, marriage & life events / Become a foster parent

## Birth, marriage & life events

Adopt a child

Become a foster parent

Ask the DHS  
Commissioner's Action  
Response Office (CARO)

Get a birth certificate

Get a copy of a divorce decree

Get a death certificate

Get a marriage license

Request Medical Examiner  
records

## Become a foster parent

Every child deserves to be loved, and to grow up in a safe and healthy environment. Foster care is temporary care for children who are unable to remain in their own homes. Most children enter foster care as a result of abuse or neglect.

Over 5,000 children and youth are in foster care at any given time in this city. People who care for children in foster care are called resource parents because they help parent a child, and act as a resource and mentor to that child's family. Resource parents provide children with love and support while they are separated from their families.

### Overview

The goal of foster care is to reunite children with their families. When this is not possible, as determined by the courts, many resource parents choose to adopt the children that are in their care.

### Resource parents as part of the team

Resource parents play a central role in helping children in foster care reunify with their family of origin.

Resource parents are key members of the child's permanency planning team. This team can consist of the child's social worker, birth family, and other caring adults. As the person who lives with the youth 24 hours a day, seven days a week, resource parents bring important perspectives and information to the team meetings.

Successful resource parents:

- Work with all members of the team.
- Share information .
- Give and receive support.
- Ensure that the child feels safe and is free from threats of harm or danger.

Resource parents can help in the reunification process in many ways. They should:

- Be a role model and mentor for the parents of origin.
- Support the child's relationship with their parents.
- Share information with the parents, such as health care and educational progress.
- Provide emotional support for the child as they prepare to return home.
- Be available to both the child and their parents after they return home.
- Include parents and other family members in important holidays, birthdays, or other special occasions (such as school plays).

## Financial assistance

Resource parents receive money for the cost of caring for a child. The amount changes depending on the level of care the child needs. All children receive medical coverage through Medicaid.

## Who

Foster parents can be single, married, divorced, any gender or sexual orientation.

## Requirements

To care for children in foster care, you must:

- Pass child abuse, criminal history, and FBI clearances.
- Be physically able to care for a child.
- Have space in your home for an additional child.
- Be at least 21 years of age.

How

Here's how to become a resource parent



1 Choose a foster care agency.

DHS works with many state-licensed agencies to provide foster

care. Browse the [list of foster agencies](#) to find the best fit for you. You want to feel confident and comfortable with the agency you choose. This agency will be a big support to you during your resource parent journey. Once you've found one that you like, call them to find out how to begin the certification process. Each agency has slightly different requirements, specialties, and training programs.

2

## Begin the certification process.

The certification process will take approximately 3-6 months to complete.

As part of the process you will have to:

- Fill out an application.
- Attend an orientation .
- Complete at least 6 hours of training.
- Get a medical examination that proves you are physically able to care for children and are free from contagious diseases.
- Pass child abuse, criminal history, and FBI clearances.
- Have a social worker come to your home to help determine if it is safe for a child.

Relatives, family friends, trusted teachers, coaches, or others who have a close connection with the foster child may become kinship caregivers. Kinship caregivers are allowed to have foster children placed more quickly into their homes. This is often better for the child, as it limits disruption and prevents the need for placement in a foster care center.

Kinship caregivers go through an initial review that includes clearances of their home. Once they have been cleared, the foster children connected to them can come live with them. Kinship caregivers still need to go through the rest of the process of becoming a foster parent, but they can do this while they serve as foster guardians.

To get more information about becoming a resource parent, call (215) 683-5709 or email [dhs.fosteringphilly@phila.gov](mailto:dhs.fosteringphilly@phila.gov).

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Contract Number 16-20030-04  
Original Contract Number 16-20030  
290 – Placement Services

City of Philadelphia  
Department of Human Services

**CONFORMED**  
**STANDARD AMENDMENT AGREEMENT**

**THIS STANDARD AMENDMENT AGREEMENT** (“Amendment Agreement”) is made as of September 20, 2017 and effective July 1, 2017 (the “Effective Date”) by and between the City of Philadelphia (“the City”), by and through its **DEPARTMENT OF HUMAN SERVICES** (“Department”), and **CATHOLIC SOCIAL SERVICES** (“Provider”), a nonprofit corporation, with its principal place of business at **222 NORTH 17<sup>TH</sup> STREET, PHILADELPHIA, PENNSYLVANIA 19103.**

**BACKGROUND**

The City and Provider entered into a certain Contract, Contract Number **16-20030**, dated **November 30, 2015**, which includes the City of Philadelphia Professional Services Contract General Provisions for the Department of Human Services (the “General Provisions”), the Provider Agreement, Cross Agency Response for Effective Services (“CARES”) Limited License Agreement (when applicable), and any and all attachments, exhibits and documents thereto (collectively, the “Base Contract”), wherein Provider agreed to render various Services to the City in accordance therewith; and

The City and Provider entered into an amendment to the Base Contract, Contract Number **16-20030-01**, for the period **July 1, 2015** to **June 30, 2016**; and

The City and Provider entered into an amendment to the Base Contract, Contract Number **16-20030-02**, for the period **July 1, 2015** to **June 30, 2016**; and

The City and Provider entered into an amendment to the Base Contract, Contract Number **16-20030-03**, for the period **July 1, 2016** to **June 30, 2017**; and

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**Statement of Purpose:**

This Scope of Service is made and entered into between Catholic Social Services (the Provider) and the Philadelphia Department of Human Services (DHS), and sets forth the services for general, kinship, and teen parent/baby resource home care.

Throughout this document, the term "Resource Parent" refers to both kinship parents and non-relative foster parents.

When a child or youth is placed through a Community Umbrella Agency, CUA, the Provider offers ongoing support and coaching to Resource Parents through Provider Staff<sup>1</sup>. The Provider is required to work collaboratively with the CUA. Contracts between DHS and all CUAs set forth services for resource home care with case management responsibilities remaining with the CUA. When the child or youth is receiving case management services directly from DHS, the Provider must also deliver case management services to the Resource Parent, parent or other reunification resource, and the child or youth and collaborate with the assigned DHS Social Worker (DHS cases).

**Department Overview:**

The mission of the Department of Human Services (DHS) is to provide and promote safety, permanency, and well being for children and youth at risk of abuse, neglect and delinquency. DHS is organized in the following Divisions: Administration and Management, Child Welfare Operations Division, Community Based Prevention Services, Finance, Juvenile Justice Services, and Performance Management and Technology. DHS continues to implement the Improving Outcomes for Children (IOC) model. The vision for IOC is to:

- o Maintain children and youth safely in their own homes and community.
- o Timely reunification or other permanency.
- o Reduce use of congregate care.
- o Improve children, youth, and family functioning.

As it relates to Resource Home care, the IOC framework provides a single Case Manager to work with assigned families. The case management service is provided by Community Umbrella Agencies who are embedded in the communities they serve.

For children and youth for whom the Provider continues to provide case management services, the case management staff interact on a regular basis with schools, medical, dental, and behavioral health providers; various community resources; and all service providers indicated on an Individual Service Plan (ISP) or Family Service Plan (FSP). For youth funded and placed by a CUA, the Provider interacts with external resources as needed, collaborates and communicates with the CUA, and continues to support the resource caregivers.

**Provider Organizational Overview:**

**Mission Statement:** Catholic Social Services of the Archdiocese of Philadelphia continues the work of Jesus by affirming, assisting and advocating for individuals, families, and communities.

**Vision and Values Statement:** Catholic Social Services Vision:

<sup>1</sup> Provider Staff is responsible for recruiting and certifying foster and kinship homes.

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Catholic Social Services exists to transform lives and bring about a just and compassionate society where every individual is valued, families are healthy and strong, and communities are united in their commitment to the good of all. We envision a world touched by God's mercy: where poverty and need are alleviated, and all people share justly in the blessings of creation.

#### Catholic Social Services Values:

Compassion: genuine care and heartfelt concern for those we serve  
 Dignity: respect for each person created in God's image, regardless of color, capacity, or age  
 Charity: generosity toward all people in response to God's goodness to us  
 Justice: defense of and advocacy for the rights of the poor, vulnerable, and disadvantaged  
 Excellence: professional competence and responsible stewardship of time and resources

#### Problems and Issues to be Addressed:

Ideally, children and youth should be with their own families. When this is not possible, resource homes ensure that children and youth can be maintained safely in their own community. All resource home procedures and resources must be directed to supporting reunification or other permanency options, and the overall positive functioning of children, youth, and their families. Resource Parents must function as mentors to legal families to support these goals. An increased focus on recruiting resource caregivers who can manage adolescents is required in order to reduce the use of congregate care. There must also be a continued focus on the need for resource homes for children who are 0-6 years of age. The specific issue to be addressed by the Provider is to recruit, screen, train, and provide certified resource care homes for dependent children or youth, some of whom will need support to address behavioral health, medical, and educational needs. Homes for teens including pregnant teens and teen parents (teen parent/baby placements) are a priority in order to reduce the use of congregate care.

#### Program Objectives:

The program objectives are to provide trauma informed and culturally competent placement resources via trained resource caregivers. Resource caregivers also serve as a mentor and support to the legal family. Anticipated outcomes for resource home care services are:

- o To provide children with protection, care, and a nurturing environment with certified Resource Parents which can include extended family members while a permanent plan can be established within a set time frame.
- o To focus on identifying strengths, developing protective capacities and building resiliency and adaptive coping skills.
- o To facilitate participation in service delivery and/or treatment provided by external resources so that healthy partnerships can be created and goals on the service plans can be achieved.
- o To provide opportunities to strengthen and develop youth assets.
- o To promote social competency skills.
- o To ensure that youth is available for assigned court related appearances.
- o To collaborate with the CUA case manager, DHS and/or other team members in planning the transition into the next level of care which will ideally be family reunification.
- o To access medical, dental and behavioral health services as needed.
- o To provide support, including access to resources, to achieve academic and vocational goals.

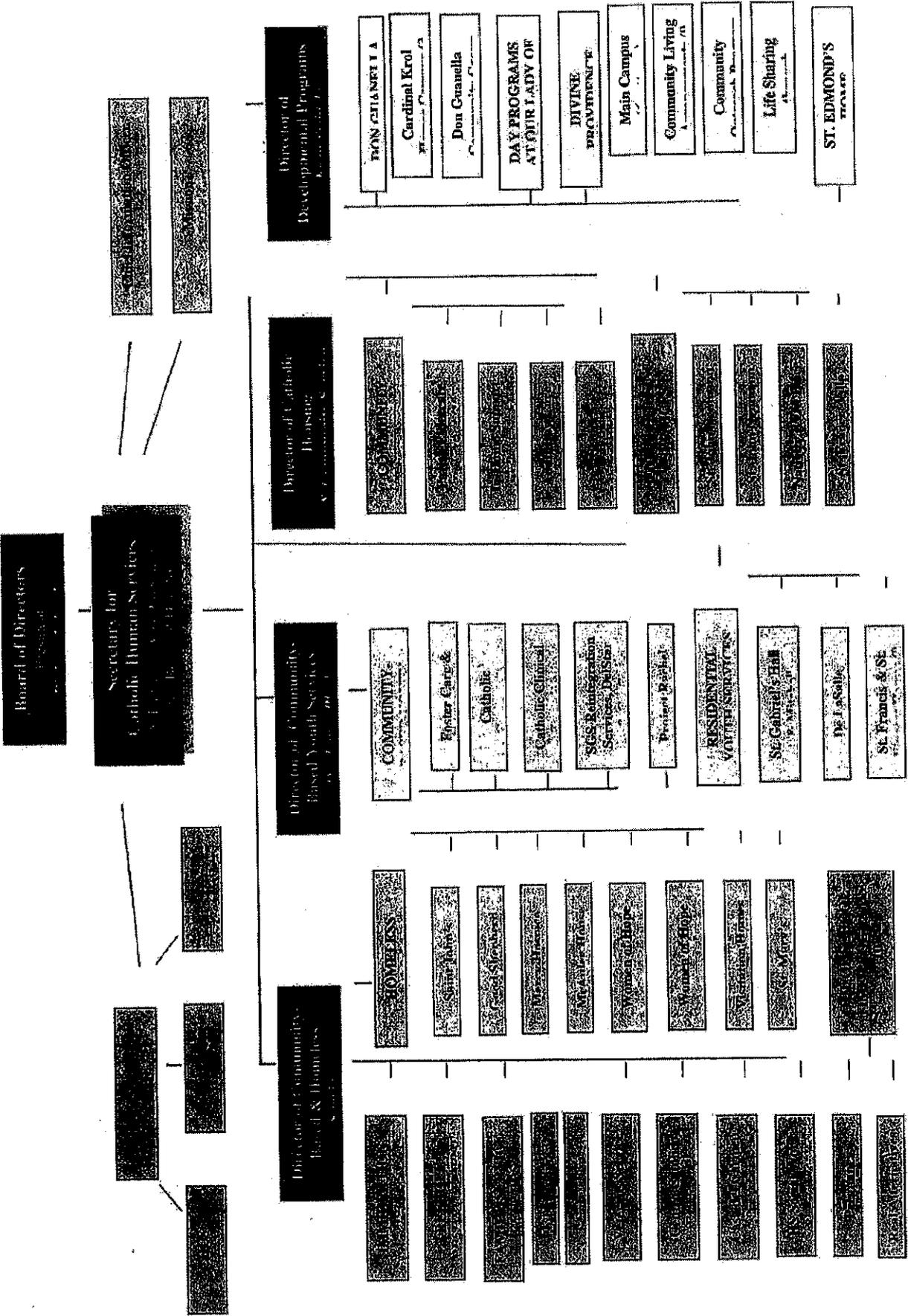
#### Program Overview:

**Resource Home (Foster Care and Kinship Care):** The primary goal of Resource Home Care is to support the safety, stability, permanency, and well-being needs of the child or youth and legal family. Resource

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# CATHOLIC SOCIAL SERVICES ARCHDIOCESE OF PHILADELPHIA Organizational Structure

July 2017





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- 1.84 **Total Actual Cost.** "Total Actual Cost" means the sum of all allowable expenses incurred by Provider in the provision of a particular Service under the Contract.
- 1.85 **Vacancy.** "Vacancy" means the existence of an available bed in a placement program, or an available service unit or slot in a non-placement program.

**ARTICLE II: TERM**

- 2.1 **Initial Term.** The initial term ("Initial Term") of this Contract is set forth in the Provider Agreement. In no event shall the Initial Term exceed one (1) year.
- 2.2 **Additional Terms.** The City may, at its sole option, amend this Contract to add on an annual basis up to three (3) successive one (1) year terms ("Additional Terms"), unless any shorter term (or terms) is specified in the Provider Agreement. Unless otherwise stated in the Provider Agreement, the same terms and conditions applicable in the Initial Term shall be applicable in the Additional Term(s). The City shall give Provider thirty (30) days written notice of its intent to amend this Contract to add an Additional Term prior to each annual Additional Term. Each Additional Term shall be subject to appropriation of funds by City Council for such Additional Term. There shall be no liability or penalty to the City for electing not to amend the term of this Contract to add Additional Terms. Each Additional Term of this Contract shall be deemed to constitute a separate contract, whose term shall not exceed one (1) year.

**ARTICLE III: PROVIDER'S DUTIES AND COVENANTS**

- 3.1 **Performance Requirements.** Provider shall provide all Services and Materials in accordance with this Contract and applicable professional standards. All payments to Provider are contingent upon satisfactory performance of the terms and conditions set forth in this Contract, as determined by the Commissioner in his or her sole discretion.
- 3.2 **Compliance with Applicable Law.** Provider shall comply with the requirements of all Applicable Law with respect to Provider's activities, Services, Materials and facilities used in connection with any aspect of this Contract, whether or not such Applicable Law is specifically identified by name in this Contract. Provider shall inform the Commissioner, in writing, of any notices of violations of any Applicable Law within forty-eight (48) hours of Provider's receipt thereof, and shall correct any violations within the time prescribed by law, or immediately in the case of any emergency. In the case of out-of-state placements, the regulations of the licensing state and municipality, if any, shall apply except when such regulations are in conflict with PA DHS or City policies governing the

### 3.17 Service Requirements.

- (a) Provider shall provide Services to the children and youth and their families in accordance with the FSP, any Placement Amendments, and Form Authorizations.
- (b) Provider shall submit a Scope of Services which shall be consistent with Department's Program Standards and Applicable Law.
- (c) Provider's Scope of Services shall be current, shall satisfy the City's requirements as to form and content, and shall be attached as an exhibit to the Provider Agreement.

### 3.18 Web-Based Central Referral Unit (CRU) System Participation.

- (a) The Department utilizes a Web-Based CRU System for all its non-PBC providers. Upon its implementation, Provider shall report all its vacancies, by age and gender, by participating in the Department's Web-Based CRU System, and in any additional tracking system the Department may identify, and Provider shall update the system on a weekly basis, and/or more frequently for emergency shelter programs. Failure to comply with this provision may result in the Provider not receiving referrals from the Department's CRU. Provider has twenty-four (24) hours to accept or reject a referral.
- (b) The Department shall monitor Provider's compliance with this provision and shall only make referrals based upon vacancies reported through this system. The Department, in its sole discretion, may periodically utilize additional resource tracking systems.

3.19 Dependent Placement Referrals. Provider shall accept youth with deferred or dual adjudications in its dependent facility. To the extent permitted by law, including applicable state regulations, Provider shall accept dependent youth in its delinquent facilities if such youth are otherwise eligible for admission into Provider's facility. Delinquent Providers agree that their Scope of Services shall not exclude dependent children from their program unless they are required by law to do so.

3.20 Referral Disputes. Provider shall submit a written quarterly report to the Commissioner's designee detailing the number and circumstances of each referral dispute registered in accordance with Section 5.2(b)(3) of these General Provisions. Excessive referral disputes, as determined by the Commissioner in his/her sole discretion, may cause the City to terminate this Contract.

3.21 Rejection of Referral. Provider shall not reject a child or family for Services based upon the location or condition of the family's residence, their environmental or social condition, or for any other reason if the profiles of such child or family are consistent with Provider's Scope of Services or DHS's applicable standards as listed in the Provider Agreement, unless an exception is

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granted by the Commissioner or the Commissioner's designee, in his/her sole discretion.

3.22 **Notice of Referral Acceptance or Rejection.**

- (a) Except for Performance Based Contract Providers, Provider shall notify the Commissioner within twenty-four (24) hours of its decision to accept or reject placement referrals; provided, however, Provider's rejection of a placement referral must be in accordance with the process set forth in Section 5.2(b)(3) of the General Provisions. Provider shall provide the Commissioner with a written statement of the basis for each rejected referral within twenty-four (24) hours of the rejection unless an exception is granted by Commissioner or Commissioner's designee.
- (b) Within seventy-two (72) hours of accepting a case that has been designated as a Kinship Care placement, Provider must visit the placement and complete an assessment of the kinship caregiver's home to ensure that it is in compliance with State regulations regarding foster homes

3.23 **Documentation of Referrals.** Providers must maintain centrally located documentation regarding each referral that the Provider receives from DHS. Provider must maintain the following information: the date of receipt of referral; the requesting DHS division (CWO or JJS); the name, age and race of the child; presenting primary problem; and whether the child was accepted or rejected for admission to the program and if applicable, the reason for rejection.

3.24 **Vacation, Holiday Placement.** Provider shall ensure that each child in an Out-of-Home Placement has uninterrupted Services and placement in the event Provider's office closes for vacation or holidays.

3.25 **Adequate Clothing.** It shall be Provider's responsibility to purchase a seasonally adequate and complete wardrobe for each child in placement in its program and for any child who is being discharged from its program.

3.26 **Return of Medical Assistance Card.** At the time of discharge or within seventy-two (72) hours of an unplanned discharge, Provider shall return the Medical Assistance card of any child who has been removed or discharged from Provider's placement to the City; otherwise, Provider shall be liable for any charges incurred after discharge. Provider agrees that, upon its return of the child's Medical Assistance card to the City, Provider will cooperate fully with the Department for the purpose of re-enrolling the child with a primary care physician.

3.27 **Service Reports.**

- (a) **Progress Reports.** Provider shall submit to the City, on a quarterly basis, a written progress report for each child for whom Services are provided. The report shall be consistent with the ISP, shall present an evaluation of

8.3 **Personal Services.** Provider acknowledges that the Services and Materials are the personal services of Provider and the City shall have no obligation to accept performance by a third party without the Commissioner's or designee's prior and express written consent.

**ARTICLE IX: INDEPENDENT CONTRACTOR; INDEMNIFICATION;  
LITIGATION COOPERATION**

9.1 **Independent Contractor.** Provider is an independent contractor and shall not in any way or for any purpose be deemed or intended to be an employee or agent of the City. Neither Provider nor its agents, employees or Subcontractors shall in any way represent that they are acting as employees, officials or agents of the City.

9.2 **Indemnification.** Provider shall indemnify, defend and hold harmless the City, its officers, employees and agents, from and against any and all losses, costs (including, but not limited to, litigation and settlement costs and counsel fees and expenses), claims, suits, actions, damages, liability and expenses, occasioned wholly or in part by Provider's act or omission or negligence or fault or the act or omission or negligence or fault of Provider's agents, Subcontractors, independent contractors, suppliers, employees or servants in connection with this Contract, including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, contamination or adverse effects on the environment, intentional acts, failure to pay any Subcontractors and suppliers, any breach of this Contract, loss of data, data security breach, and any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret).

9.3 **Litigation Cooperation.** If, at any time, the City becomes involved in a dispute or receives notice of a claim or is involved in litigation concerning the Services and Materials provided under this Contract, the resolution of which requires the Services or cooperation of Provider, and Provider is not otherwise obligated to indemnify and defend the City pursuant to the provisions of Section 9.2 (Indemnification) above, Provider agrees to provide such Services and to cooperate with the City in resolving such claim or litigation as Additional Services and Materials under Section 3.3 (Additional Services and Materials; Change in Scope of Services) above and require any Subcontractors to abide to this Section 9.3.

9.4 **Notice of Claims.** If Provider receives notice of a legal claim against it in connection with this Contract, Provider shall submit appropriate written notice of such claim to its insurance carrier within the time frame required for submission of claims by the applicable insurance policy and, within ten (10) business days of receipt of notice of the claim, to the Commissioner.

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- 14.5 **Special Suspension Rules.** Suspension of Provider's performance under this Contract after an Event of Default shall not constitute a waiver or release of any liability of Provider for such Event of Default or any of the City's damages or other remedies arising out of such Event of Default; nor shall such suspension be deemed an election of remedies in derogation of any other remedy. Provider acknowledges that the City shall have the right, at its sole discretion, to suspend Provider's performance in the event City Council or the Commonwealth of Pennsylvania does not appropriate funds for the performance of this Contract. In the event that the City issues a Suspension Notice to Provider, such suspension shall continue from the effective date specified in the Suspension Notice until a date specified in the Suspension Notice which shall be not more than one hundred eighty (180) days after the effective date or the date of judgment in any pending trial, whichever is later (such period, the "Suspension Period"). On or prior to the expiration of the Suspension Period, the City shall either terminate this Contract by giving a Termination Notice pursuant to Section 14.2 (Termination or Suspension) above, or by notice to Provider, instruct Provider to resume the delivery of Services and Materials pursuant to this Contract upon the expiration of the Suspension Period. After issuing a Suspension Notice, the City shall pay any invoices submitted by Provider for Services rendered prior to the commencement of the Suspension Period or otherwise payable by the City to Provider under this Contract, subject to all of the City's rights and remedies against Provider, including but not limited to, its rights of set off and its right to review and accept Services and Materials prior to payment therefor.

**ARTICLE XV: ADDITIONAL REPRESENTATIONS AND COVENANTS OF PROVIDER RELATING TO CERTAIN APPLICABLE LAWS**

In addition to the representations, warranties and covenants made by Provider in Article IV, Provider further represents, warrants and covenants that, to the extent of their applicability to Provider, Provider is in compliance with the laws, ordinances, regulations and executive orders described below. By executing this Contract, Provider thereby certifies to such compliance. Provider further certifies that the representations, warranties, and covenants provided pursuant to this Article shall continue to remain true throughout the Term of this Contract or any other period of time required by such laws. In the event said representations, warranties, and covenants are or become untrue or inaccurate, Provider shall promptly give notice thereof to the City, specifying the manner in which said representation, warranty, or covenant is untrue or inaccurate. The provisions of this Article are not intended to limit the applicability of the other provisions of this Contract, including, without limitation, Provider's agreement to comply with all Applicable Law.

- 15.1 **Non-Discrimination; Fair Practices.** This Contract is entered into under the terms of the Charter, the Fair Practices Ordinance (Chapter 9-1100 of the Code) and the Mayor's Executive Order No. 04-86 (the "Executive Order"), as they may be amended from time to time, and in performing this Contract, Provider shall not discriminate or permit discrimination against any individual because of race, color, religion or national origin. Nor shall Provider discriminate or permit

discrimination against individuals in employment, housing and real property practices, and/or public accommodation practices whether by direct or indirect practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person on the basis of actual or perceived race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, source of income, familiar status, genetic information or domestic or sexual violence victim status, Human Immunodeficiency Virus (HIV) infection, or engage in any other act or practice made unlawful under the Charter, Chapter 9-1100, the Executive Order, or under the nondiscrimination laws of the United States or the Commonwealth of Pennsylvania. In the event of any breach of this Section 15.1 (Non-Discrimination; Fair Practices), the City may, in addition to any other rights or remedies available under this Contract, at law or in equity, suspend or terminate this Contract forthwith.

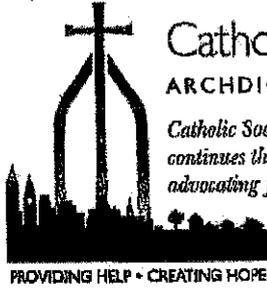
15.2 **Chapter 17-400 of the Philadelphia Code: Exclusionary Private Organizations.**

(a) In accordance with Chapter 17-400 of the Code, Provider agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes, without limiting the applicability of Articles XII (Events of Default) and XII (Remedies) above, a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

(b) Provider agrees to cooperate with the Commission on Human Relations of the City in any manner which the Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of the Code. Provider's failure to so cooperate shall constitute, without limiting the applicability of Articles XI (Events of Default) and XII (Remedies) above, a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

15.3 **Executive Order 03-12: Minority, Woman and Disabled Business Enterprise Participation.** In accordance with Executive Order 03-12 (the "Antidiscrimination Policy"), the City, acting through its Office of Economic Opportunity ("OEO"), has established an antidiscrimination policy that relates to the solicitation and inclusion of Minority Business Enterprises ("MBE"), Woman Business Enterprises ("WBE"), and Disabled Business Enterprises ("DSBE")

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**Catholic Social Services**  
**ARCHDIOCESE OF PHILADELPHIA**

*Catholic Social Services of the Archdiocese of Philadelphia continues the work of Jesus by affirming, assisting, and advocating for individuals, families and communities.*

June 27, 2017

The Board of Catholic Social Services has granted approval for the following individuals to sign contracts.

James Amato	Secretary for Catholic Human Services	<a href="mailto:jamato@chs-adphila.org">jamato@chs-adphila.org</a>
Franz Fruehwald	Chief Financial Officer	<a href="mailto:ffruehwald@chs-adphila.org">ffruehwald@chs-adphila.org</a>

Sincerely,

Gary Miller  
 Controller

Compassion • Charity • Dignity • Justice • Excellence

Financial Affairs • 222 N. 17<sup>th</sup> Street • Philadelphia, PA 19103 • 215-587-3900 • 215-587-3867 (fax)

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CONTRACT SUMMARY AND ENDORSEMENT							DATE	09/19/17	
TO THE LAW DEPARTMENT: The attached bid and award described below is referred to you for certification as to form, and where annual surety bond is on file, to have Contractor post satisfactory bond.									
CONTRACTOR Catholic Social Services				FINANCE CONTR. NO. 16 20030		LAW DEPT. NO. 16 20030 04			
				AMT. OF CONTRACT \$43,178,007.23		ANN. SURETY BOND			
DESCRIPTION Placement Services				PERIOD COVERED		7/1/2015 - 6/30/2018			
<b>ENDORSEMENT</b>									
OFFICE OF THE DIRECTOR OF FINANCE-ACCOUNTING DIVISION Examined: Pat Preston					OFFICE OF THE CITY CONTROLLER Examined:				
(For the Director of Finance)					PP 9-1-17 (Date)		(For the City Controller)		(Date)
This contract approved as to availability of funds under the budget and appropriations pursuant to section 8-200 (2) (a) of the Home Rule Charter.									
Alfred P. Hall (For the Director of Finance)					09-19-17 (Date)		(For the City Controller)		(Date)
DOCUMENT NO.	ACCOUNT CODE						DEPARTMENT OR AGENCY	AMOUNT CHARGEABLE TO ACCOUNT	
	FUND	DEPT.	ELEMENT	SUB ELEMENT	CLASS.				
							Previously Encumbered	\$23,022,293.80 ✓	
MDXX18000210 01	080	22	49	01	0290	HUMAN SERVICES		\$4,534,945.29	
MDXX18000210 02	080	22	49	01	0290	HUMAN SERVICES		\$133,513.41	
MDXX18000210 03	080	22	49	01	0290	HUMAN SERVICES		\$3,300,925.60	
MDXX18000210 04	010	22	49	01	0290	HUMAN SERVICES		\$1,051,791.92	
MDXX18000298 01	080	22	47	01	0290	HUMAN SERVICES		\$2,120,584.00	
MDXX18000298 02	080	22	47	01	0290	HUMAN SERVICES		\$105,836.00	
MDXX18000298 03	080	22	47	01	0290	HUMAN SERVICES		\$5,243,578.00	
MDXX18000298 04	010	22	47	01	0290	HUMAN SERVICES		\$2,939,717.00	
							<b>TOTAL</b>	<b>\$42,453,285.02</b>	
Partial Certification: Contract increased to \$43,178,007.23. Contract extended to 6/30/2018.									
Amendment								Page 1 of 1	

DocuSign Envelope ID: 421E34E1-1109-43FD-9478-27B82F8F845C

CONTRACT SUMMARY AND ENDORSEMENT							DATE	07/18/2018
TO THE LAW DEPARTMENT: The attached bid and award described below is referred to you for certification as to form, and where annual surety bond is on file, to have contractor post satisfactory bond.								
CONTRACTOR Catholic Social Services				FINANCE CONTR. NO. 16 20030		LAW DEPT. NCL 16 20030 04		
				AMT. OF CONTRACT \$43,178,007.23		ANN. SURETY BOND		
DESCRIPTION Placement Services				PERIOD COVERED		7/1/2015 - 6/30/2018		
ENDORSEMENT								
OFFICE OF THE DIRECTOR OF FINANCE-ACCOUNTING DIVISION Examined: Pat Preston (For the Director of Finance)				OFFICE OF THE CITY CONTROLLER Examined: <i>PP 09/15/17</i> (For the City Controller)				
This contract approved as to availability of funds under the budget and appropriations pursuant to section 8-200 (2) (d) of the Home Rule Charter: <i>Abdul P. Halim 09-19-17</i> (For the Director of Finance)				(For the City Controller)				
DOCUMENT NO.	ACCOUNT CODE					DEPARTMENT OR AGENCY	AMOUNT CHARGEABLE TO ACCOUNT	
	FUND	DEPT	ELEMENT	SUB ELEMENT	CLASS			
						Previously Encumbered	\$23,365,446.24 ✓	
MDXX16000054 01	080	22	47	01	0290	HUMAN SERVICES	(\$83,716.94) JE	
MDXX16000054 02	080	22	47	01	0290	HUMAN SERVICES	(\$26,672.20) JE	
MDXX16000054 03	080	22	47	01	0290	HUMAN SERVICES	(\$208,735.91) JE	
MDXX16000054 04	010	22	47	01	0290	HUMAN SERVICES	\$10,633.65 JE	
MDXX16000143 01	080	22	49	01	0290	HUMAN SERVICES	(\$36,811.93) JE	
MDXX16000143 02	080	22	49	01	0290	HUMAN SERVICES	(\$1,083.75) JE	
MDXX16000143 03	080	22	49	01	0290	HUMAN SERVICES	(\$36,739.31) JE	
MDXX16000143 04	010	22	49	01	0290	HUMAN SERVICES	\$39,973.95 JE	
						TOTAL	\$23,022,293.80	
Partial Certification. Contract increased to \$43,178,007.23. Contract extended to 6/30/2018.								



**Certificate Of Completion**

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 Source Envelope:  
 Document Pages: 118 Signatures: 4 Envelope Originator:  
 Supplemental Document Pages: 0 Initials: 0 City of Philadelphia - Department of Human Services  
 Certificate Pages: 4  
 AutoNav: Enabled Payments: 0 City Hall, Room 215  
 Envelope Stamping: Enabled Philadelphia, PA 19107  
 Time Zone: (UTC-05:00) Eastern Time (US & Canada) dhs.contractinitiation@phila.gov  
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**Record Tracking**

Status: Original Holder: City of Philadelphia - Department of Human Service Location: DocuSign  
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 dhs.contractinitiation@phila.gov

**Signer Events**

James Amato  
 Jamato@chs-adphila.org  
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**Signature**

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**Timestamp**

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Using IP Address: 72.237.20.231

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Franz Fruehwald  
 ffruehwald@chs-adphila.org  
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Terri Scarbo  
 Terri.Scarbo@phila.gov  
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**Completed**

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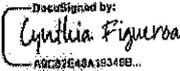
Crystal T. Espanol  
 Crystal.Espanol@phila.gov  
 Security Level: Email, Account Authentication (None)

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Jacqueline Dunn Jacqueline.Dunn@phila.gov City of Philadelphia Security Level: Email, Account Authentication (None)	Completed  Using IP Address: 170.115.248.25	Sent: 9/19/2017 6:18:35 PM Viewed: 9/20/2017 2:08:49 PM Signed: 9/20/2017 2:09:25 PM
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Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

Terri Scarbo  
 Terri.Scarbo@phila.gov  
 Security Level: Email, Account Authentication (None)  
**Electronic Record and Signature Disclosure:**

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Rita Cairy rita.cairy@phila.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	<b>COPIED</b>	Sent: 8/16/2017 1:47:41 PM
Carolyn Pownall Carolyn.Pownall@phila.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	<b>COPIED</b>	Sent: 9/20/2017 2:47:11 PM Viewed: 9/20/2017 3:45:58 PM
Controller Contracts Controller.Contracts@phila.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	<b>COPIED</b>	Sent: 9/20/2017 2:47:11 PM
Linda Chaney linda.chaney@phila.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	<b>COPIED</b>	Sent: 9/20/2017 2:47:11 PM

**Notary Events**      **Signature**      **Timestamp**

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	9/20/2017 2:47:12 PM
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Signing Complete	Security Checked	9/20/2017 2:47:12 PM
Completed	Security Checked	9/20/2017 2:47:12 PM

**Payment Events**      **Status**      **Timestamps**

**Electronic Record and Signature Disclosure**



# Kinship Cares

A comprehensive kinship care curriculum for direct-service workers and caregivers. As the only agency in the country that exclusively delivers services to the entire kinship triad (child, caregiver, and birth parents) – its approach is pure kinship.



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## ABOUT ASCI



A Second Chance, Inc. (ASCI) is a non-profit corporation established in 1994.

Its mission is to provide a safe, secure, and nurturing environment to children who are being cared for by their relatives or a close family friend - formally called "kinship care".

ASCI became a subcontracting agency of Allegheny County Children and Youth Services (now called Allegheny County Children, Youth and Families [CYF]) in July, 1994.

*\* Our NEW website is currently under construction!! Please look for it in Summer/Fall of 2018!*

### CONNECT WITH ASCI

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News

# Philly puts out 'urgent' call - 300 families needed for fostering

Updated: MARCH 8, 2018 — 11:24 AM EST



FOSTER11

View Gallery

MARK C PSORAS/FOR THE INQUIRER

Shakia Rembert enjoys a fun moment with her adopted son Alvin Sahr Rembert ,5, reading a story together at their home in North Philadelphia on Friday March 9, 2018.



by Julia Terruso, Staff Writer [Twitter](#) | [Email](#)

The 2-year-old boy dropped off at Shakia Rembert’s house wouldn’t look at her as she welcomed him with a warm “hello.” And after the social worker left, he ignored everything she said.

As a first-time foster mom, Rembert wondered what she was doing wrong. What trauma may Alvin have experienced

before arriving at her West Oak Lane home? After a few weeks of trying to connect with him, she realized it wasn't just her. He didn't answer anyone, nor startle when she dropped things. He was deaf.



COURTESY OF SHAKIA REMBERT

Shakia Rembert was a first-time foster mom when then 2-year-old Alvin came to her home. The Department of Human Services has put out an urgent call for more foster families.

The boy, who'd been removed from his mother's care as an infant, was living in a crisis nursery before going to stay with Rembert. A doctor would later tell Rembert that at least a year earlier she'd advised the boy's mother to have his hearing checked.

"It was alarming to to me," Rembert recalled. "Everyone missed this. No one was spending one-on one time with him. No one was talking to him the way you're supposed to talk to babies."

Experts agree that children do much better living in family settings than group homes because of the extra level of care and attention they receive.

Article continues below advertisement

But the city needs more families — about 300 more — to meet the need. The Department of Human Services put out an urgent call for parents this month, using phone banks and public service announcements. It's the first major recruitment in a decade.

They've changed the name of what they're seeking, too — from "foster parent" to "resource parent," reflecting a nationwide trend.

“We’re asking people to ask themselves, ‘Can I do this?’ ” said DHS Commissioner Cynthia Figueroa. “If the answer is ‘yes,’ that’s awesome. If, it’s ‘no,’ give us the name of other folks who you think would be excellent resource parents. The system alone can’t be the only resource. We need families who want to provide the best opportunity while families are having to deal with challenges.”



MARK C PSORAS / FOR THE INQUIRER

Shakia Rembert shares a tender moment with her adopted son Alvin Sahr Rembert, 5, at their home in North Philadelphia.

In Philadelphia about 700 children are in group home placements. Of those, Figueroa said, about 250 could be living with families, while 450 more need to stay in a staffed facility due to physical or emotional needs.

Figueroa hopes the campaign can dispel misconceptions about fostering: You don’t need to be married, own a house, or have a car, and there’s no expectation of adoption. Foster parents must be 21 but there’s no age cutoff. Retirees, often with more time to spare, make great foster parents, Figueroa said.

Article continues below advertisement

In addition to fostering, which can last anywhere from a few weeks to two years, the agency needs emergency placements — with families that can take children for just a few days. DHS also uses licensed families as “respite” placement, to give long-term foster parents a break or provide housing for kids older than 18, but might need somewhere to go temporarily, such as during a college break.

“We have a full menu of options,” Figueroa said.

If DHS determines that a child is in danger from abuse or neglect and must be taken from a family, the system looks first to relatives or close friends, then foster placements. As of March, 6,034 kids in Philadelphia were living in foster care, group homes, or with relatives or close friends (known as kinship care). That is 34 fewer than a year ago.

The application process for foster parents involves questions about the family background, employment, income, medical history, education, and community involvement. All adults in the home get criminal and child-abuse background checks.

For Rembert, the first few months caring for Alvin were tough. He drank out of the faucet, feared climbing into the bathtub, and became frustrated easily.

“It was understandable,” Rembert said. “He hadn’t really communicated with anyone” in the first years of his life.

Article continues below advertisement

She downloaded an American Sign Language app and started teaching him (and learning herself). She bought him Capri Suns and tiny bottles of water shaped like basketballs, which she handed him when he headed to the faucet. She experimented with colorful bath dyes to make tub-time more fun. When he got agitated, she'd settle him down by putting on one of her favorite movies, *The Little Rascals*.

Rembert provided Alvin with what he needed outside of her home, too. When she believed that a hospital wasn't giving him proper care, she made sure he was transferred to another institution, where he was fitted for a cochlear implant.

"They come in with absolutely nothing but the clothes on their back, no books, no school books," Rembert said. "Whatever resources you need, you have to fight for. But if your life is stable, and you make the decision to do this, it's the most rewarding experience in the world."

The city pays \$20 to \$36 a day depending on the age of the child. "Some people live off of the stipend," Rembert said. "That's going to be a frustrating situation for the parent and the children."

In the three years she fostered Alvin, Rembert also fostered a boy his age for a few months and later, four sisters. Siblings can be hard to place for space reasons, as can older children because most families request younger kids. There's also a great need for people who will welcome LGBT children and mothers with babies.

Sheina Martinez, 32, works as a foster parent recruiter for Bethany Christian Services. She saw firsthand how badly the system needed caring homes.

Article continues below advertisement

“We’ll get 200 requests a month from DHS and we’ll be able to place maybe 10 of them,” she said. “The need over-exceeds what we have the ability to place. ... We’re sending infants sometimes to infant shelters.” (DHS works with several providers in addition to Bethany to place children).



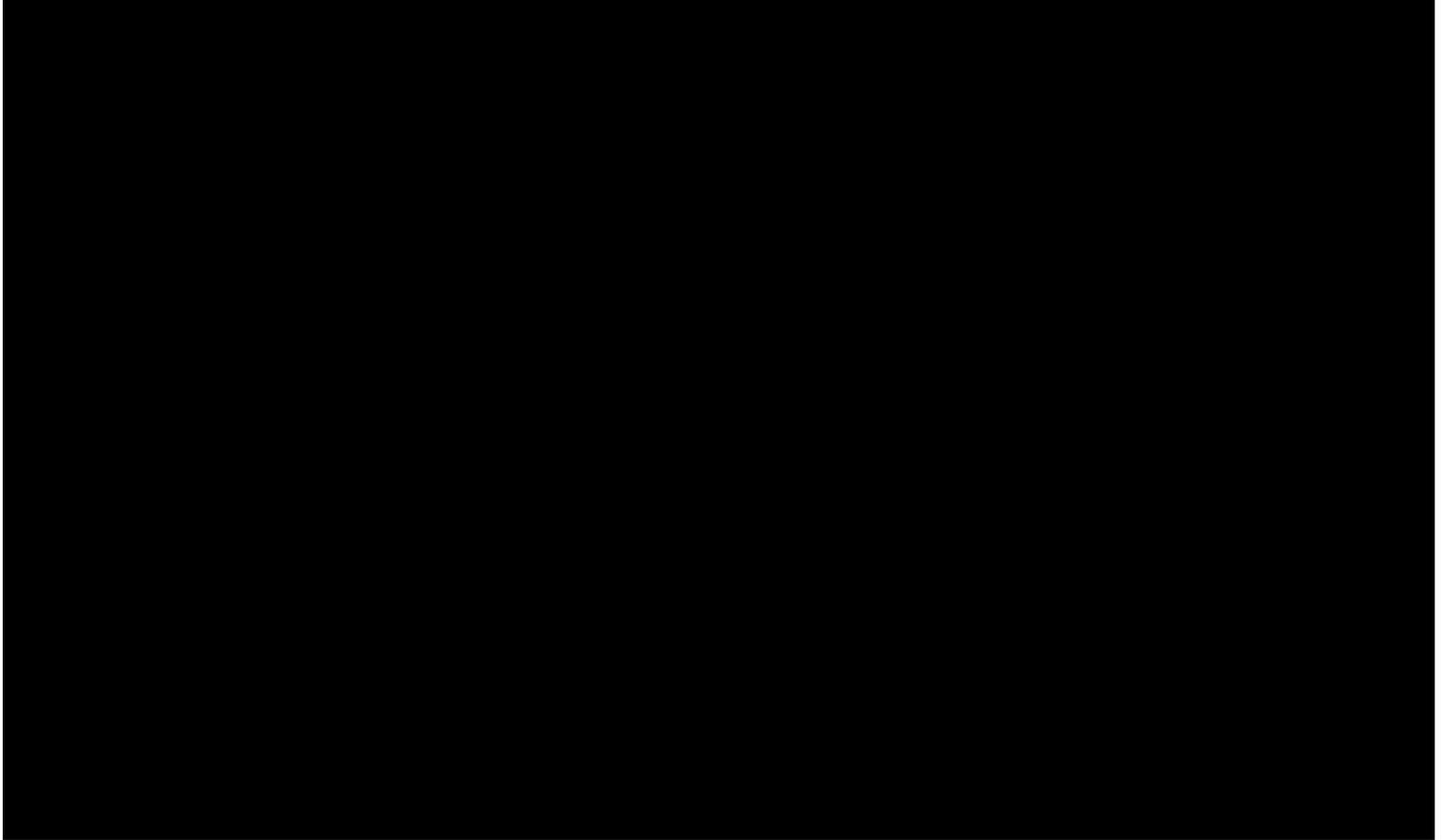
JAMES BLOCKER/STAFF PHOTOGRAPHER

Frequent foster parents Sheina Martinez, a social worker, and Andy Martinez, a firefighter, gather in front of a wall of photographs with their two children, Jada, 13, and Andre, 10. As of now, they are not looking after any children, but Sheina says she could get the call at any moment.

Martinez and her husband Andy, along with their two children, now 13 and 10, added their home to the list of certified foster family options four years ago. They have cared for eight children. All have since been reunited with their families or relatives.

“A lot of people foster in hopes they will adopt,” Martinez said. “They fall in love, naturally, of course. But I always tell people ... this child has been with their family 10 years so multiply that love you feel tenfold. If my kids were to go into foster care, I would really appreciate their resource parents supporting me, cheering me on.”

Rembert didn't have adoption in mind when she started caring for Alvin, but when it became clear his family could not provide a safe, long-term home for him, she jumped at the chance to be his mom. They had spent close to three years together at that point. He was a happy little boy who loved basketball, baseball, swimming, and chicken wings. He was doing well in pre-K and hearing well enough to almost speak in full sentences.



Article continues below advertisement

In January, shortly after his fifth birthday, Alvin became Rembert's son in a family court hearing. He wore a blue Sixers jersey and a gold plastic crown. She wore mini pom-poms in her hair and carried a pendant that read "Go

Rembert.” An elated crew of family members and friends took turns high-fiving the little guy, lifting him for hugs.

Once the commotion had died down, as the two headed to the elevator to leave, Rembert made sure to steal her moment, nuzzling her son close to tell him how much she loved him.

He heard her just fine.

*Interested in fostering? Call 215-683-5709 or email to [fosteringphilly@phila.gov](mailto:fosteringphilly@phila.gov) . Learn more at [is.beta.phila.gov/fosteringphilly](http://is.beta.phila.gov/fosteringphilly)*

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## MORE COVERAGE

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### Amid daunting odds, Philly student shines

Dec 24 - 1:47 PM

### When a foster child runs away, answers are hard to find

Dec 15 - 9:25 AM

### How foster care can help children heal and grow

Aug 9 - 5:00 AM

### Want to give back? These retirees joined nonprofits, or started their own

Sep 29 - 1:09 PM

### Foster-care kids need a chance to succeed

May 16 - 4:53 PM

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Published: March 8, 2018 — 5:31 PM EST

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# Attachment B



Council of the City of Philadelphia  
Office of the Chief Clerk  
Room 402, City Hall  
Philadelphia

(Resolution No. 180252)

RESOLUTION

Authorizing the Committee on Public Health and Human Services to investigate Department of Human Services' policies on contracting with social services agencies that either discriminate against prospective LGBTQ foster parents or allow non-LGBTQ foster parents to discriminate.

WHEREAS, Currently, approximately 700 children in Philadelphia are residing in group home placements, and according to the Philadelphia School Notebook more than 8,000 children were in foster care at some point during 2016; and

WHEREAS, In March 2018 the Department of Human Services announced its first major recruitment of foster parents in more than a decade—putting out an urgent call for 300 parents which included specific appeals to the LGBTQ community—to help move children from group homes into family settings; and

WHEREAS, The Department of Human Services currently has contracts with several social service providers for foster care placement and adoption services which were collectively reimbursed by the City for \$3 million in 2017; and

WHEREAS, According to Section 14.1 of the City of Philadelphia Professional Services Contract, providers “shall not discriminate or permit discrimination against any individual because of race, color, religion, ancestry or national original, sex, gender identity, sexual orientation, age or disability”; and

WHEREAS, At least two of these providers have policies that prohibit the placement of children with LGBTQ people based on religious principles, although the City of Philadelphia has laws in place to protect its people from discrimination that occurs under the guise of religious freedom; and

WHEREAS, The Fair Practices Ordinance is the City's local anti-discrimination law, enacted in 1963 to prohibit discrimination in Philadelphia in employment, housing, and

places of public accommodation in addition to covering over 16 protected categories such as race, religion, national origin, age, sex, disability, sexual orientation, and gender identity; and

WHEREAS, Any agency which violates City contract rules in addition to the Fair Practices Ordinance should have their contract with the City terminated with all deliberate speed; and

WHEREAS, The Department should also conduct a thorough review of its contracts with all of its 26 foster care agencies to ensure that providers are adhering to anti-discrimination policies as they pertain to the City's protected classes, now, therefore, be it

RESOLVED, BY THE COUNCIL OF THE CITY OF PHILADELPHIA, That it hereby authorizes the Committee on Public Health and Human Services to investigate Department of Human Services' policies on contracting with social services agencies that either discriminate against prospective LGBTQ foster parents and allow non-LGBTQ foster parents to discriminate against children.



CERTIFICATION: This is a true and correct copy of the original Resolution, Adopted by the Council of the City of Philadelphia on the fifteenth of March, 2018.

Darrell L. Clarke  
PRESIDENT OF THE COUNCIL

Michael A. Decker  
CHIEF CLERK OF THE COUNCIL

Introduced by: Councilmembers Bass, Green, Gym and Parker

Sponsored by: Councilmembers Bass, Green, Gym, Parker, Reynolds Brown, Jones, Blackwell, Greenlee, Squilla, Oh and Johnson

# Attachment C



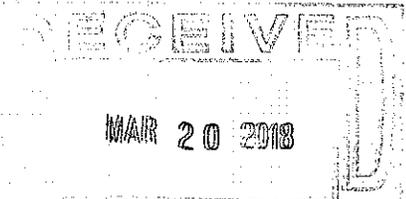
**CITY OF PHILADELPHIA**

COMMISSION ON HUMAN RELATIONS  
601 Walnut Street, Suite 300 South  
Philadelphia, PA 19106  
Telephone (215) 686-4670  
Fax (215) 686-4684

THOMAS H. EARLE, ESQUIRE  
Chairperson

RUE LANDAU, ESQUIRE  
Executive Director

March 16, 2018



Reverend John J. McIntyre  
Board President  
Catholic Social Services  
Auxiliary Bishop, Archdiocese of Philadelphia  
222 North 17th Street, 3rd Floor,  
Philadelphia, PA 19103

We are writing in response to the March 13, 2018 Philadelphia Inquirer article, *Two Foster Agencies in Philly Won't Place Kids with LGBTQ People* that indicated Catholic Social Services (CSS) is denying services to same sex couples, and other individuals in the lesbian, gay, bisexual, transgender, and Queer (LGBTQ) community.

The Philadelphia Commission on Human Relations (PCHR) is the city agency charged with enforcing the anti-discrimination laws, particularly the city's Fair Practices Ordinance, Chapter 9-100 of the Philadelphia Code. The Fair Practices Ordinance prohibits discrimination in employment, housing, and public accommodations, including the delivery of city services in over sixteen protected categories, including sexual orientation and gender identity.

This nondiscrimination language is memorialized in Article XIV, Section 15.1 of the City's Professional Services Contract with your organization. Specifically, the contract states,

[t]his Contract is entered into under the terms of...the Fair Practices Ordinance (Chapter 9-1100 of the Code)...Provider [shall not] discriminate or permit discrimination against individuals in employment, housing and real property practices, and/or public accommodation practices whether by direct or indirect practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person on the basis of actual or perceived race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, source of income, familial status...or engage in any other act or practice made unlawful under...Chapter 9-1100...

The contract also provides that "[i]n the event of any breach of this Section 15.1 (Non-Discrimination; Fair Practices), the City may, in addition to any other rights or remedies available under this Contract, at law or in equity, suspend or terminate this Contract forthwith."

According to the aforementioned article, CSS administrator Ken Gavin said, "The Catholic Church does not endorse same-sex unions, based upon deeply held religious beliefs and principles. As such, CSS would not be able to consider foster care placement within the context of a same-sex union."

Based on the information provided in the article, it appears that CSS may be in violation of Article XIV, Section 14.1. Accordingly, we are writing to ask that you provide written responses to the questions below. Please note that any reference to "foster parent" is inclusive of foster parent(s), kinship parent(s), and/or pre-adoptive foster parent(s).

- 1) What are your policies for selecting foster care families? Please provide a copy of these policies in writing if available;
- 2) Are LGBTQ individuals, whether married or single, eligible to become foster parents with CSS?
- 3) Does CSS ask individuals or couples who apply to be foster parents if any household member identifies as LGBTQ? List and describe all instances in which CSS rejected attempts by persons identifying as LGBTQ to serve as foster parents.
- 4) Does CSS have a policy that denies services to any individual based on their sexual orientation? If so, please provide any applicable policy;
- 5) Does CSS have a specific policy that denies services to people based on their gender identity? If so, please provide any applicable policy;
- 6) Does CSS provide foster care placement to LGBTQ youth?
- 7) Does CSS have a policy that prohibits the completion of Adoption or Permanent Legal Custodianship (PLC) family Profiles for LGBTQ individuals whether married or single?
- 8) Do you have authority as a local affiliate/branch of the larger organization to create or follow your own policies?
- 9) If CSS has policies that deny services to people based on their sexual orientation or gender identity, are you willing to revise your policies so that all people can have equal access to your services?
- 10) If CSS subcontracts any of the services it is obligated to provide under its contract with the City, please provide the name and location of each entity and/or individual.

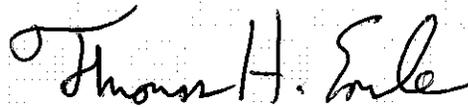
Once the requested information is provided, PCHR would like to arrange a meeting to further discuss CSS's policies with regard to the placement of foster care children and the provision of associated services to foster care children and the families with whom they are placed. If it is determined that CSS is in violation of its contract with the City, we would also like to explore potential remedies to bring CSS into compliance with the non-discrimination provisions of its contract.

Please provide responses to these questions within 10 days.

Sincerely,



Rue Landau, Esquire  
Executive Director



Thomas H. Earle, Esquire  
Chairperson

cc: Marcel S. Pratt, Acting City Solicitor  
Cynthia Figueroa, DHS Commissioner

# Attachment I



**CITY OF PHILADELPHIA**

*F/Y 2017*

October 13, 2016

James Amato, Secretary, Catholic Human Serv.  
Catholic Social Services, Archdiocese of Phila.  
222 North 17th Street, Room 328  
Philadelphia, PA 19103

**Commissioner**  
CYNTHIA F. FIGUEROA  
**First Deputy Commissioner**  
JESSICA S. SHAPIRO  
**Deputy Commissioners**  
**Children and Youth**  
GARY D. WILLIAMS  
**Juvenile Justice Services**  
TIMENE FARLOW  
**Administration and Management**  
VONGVILAY MOUNELASY  
**Performance Management and Accountability**  
LIZA RODRIGUEZ

**RE: Contract #17-20359**

Dear Mr. Amato:

Enclosed is a copy of your conformed **PROVIDER AGREEMENT** for Fiscal Year 2017.

Should you have any questions, please feel free to call me at (215) 683-4251.

Sincerely,

Judith Jones  
Contract Coordinator

/co  
Enclosure

**CONFORMED**

Contract Number 17-20359  
(250) IOC CUA#4

OCT 13 2016

City of Philadelphia  
Department of Human Services

**PROVIDER AGREEMENT**

**Department of Human Services**

THIS PROVIDER AGREEMENT is made as of the 13<sup>th</sup> day of October 20 16, by and between the City of Philadelphia (the "City"), by and through its Department of Human Services ("Department") and **CATHOLIC SOCIAL SERVICES** ("Provider"), a nonprofit corporation, with its principal place of business at **222 NORTH 17<sup>TH</sup> STREET, PHILADELPHIA, PENNSYLVANIA 19103.**

**BACKGROUND**

The City and Provider desire that Provider render various services to the City, in accordance with the provisions of this Provider Agreement, the City of Philadelphia Professional Services Contract General Provisions for the Department of Human Services Improving Outcomes for Children Community Umbrella Agency Contracts (the "IOC CUA General Provisions" or "General Provisions"), Cross Agency Response for Effective Services ("CARES") Limited License Agreement (when applicable) and all of the other attachments, exhibits, and documents which together constitute the Contract Documents as defined in the IOC CUA General Provisions. A copy of the IOC CUA General Provisions is attached hereto and incorporated herein by reference. A copy of the CARES Limited License Agreement is available on the Provider Extranet

([http://dhs.phila.gov/extranet/extrahome\\_pub.nsf/Content/ServiceStandards](http://dhs.phila.gov/extranet/extrahome_pub.nsf/Content/ServiceStandards)) and incorporated by reference. A copy of the applicable below referenced Performance and Service Standards formerly known as Service Description and Contract Requirements, Service Description, Performance Standards, Service Standards, Procedural Manuals and/or Guides ("Standards") are available on the Provider Extranet

([http://dhs.phila.gov/extranet/extrahome\\_pub.nsf/Content/ServiceStandards](http://dhs.phila.gov/extranet/extrahome_pub.nsf/Content/ServiceStandards)) and incorporated by reference.



# CITY OF PHILADELPHIA

DEPARTMENT OF HUMAN SERVICES  
1515 Arch Street, Philadelphia, PA 19102  
215-683-4DHS (4347)  
www.phila.gov/dhs

Commissioner

VANESSA GARRETT HARLEY

Deputy Commissioners

GARY WILLIAMS, CYD  
TIMENE FARLOW, JJS  
CHANELL HANNS, FINANCE

December 1, 2015

Joseph Sweeney, Executive VP  
Catholic Social Services of the Archdiocese of Philadelphia  
222 North 17th Street, Rm 328  
Philadelphia, PA 19103

Re: Contract #: 16-20030

Dear Mr. Sweeney:

Enclosed is a copy of your conformed **PROVIDER AGREEMENT** for Fiscal Year 2016.

Should you have any questions, please feel free to call me at (215) 683-4253.

Sincerely,

Rita Cairy  
Contract Coordinator

RC/kb  
Enclosure

**CONFORMED**

**Contract Number 16-20030  
(290) Placement Services**

**NOV 30 2015**

**City of Philadelphia  
Department of Human Services**

## **PROVIDER AGREEMENT**

### **Department of Human Services**

**THIS PROVIDER AGREEMENT** is made as of the 30th day of November 20 15, by and between the City of Philadelphia (the "City"), by and through its Department of Human Services ("Department") and **CATHOLIC SOCIAL SERVICES** ("Provider"), a **STATE OF PENNSYLVANIA NON-PROFIT CORPORATION**, with its principal place of business at **222 N. 17<sup>TH</sup> STREET, ROOM 328, PHILADELPHIA, PENNSYLVANIA 19103.**

#### **BACKGROUND**

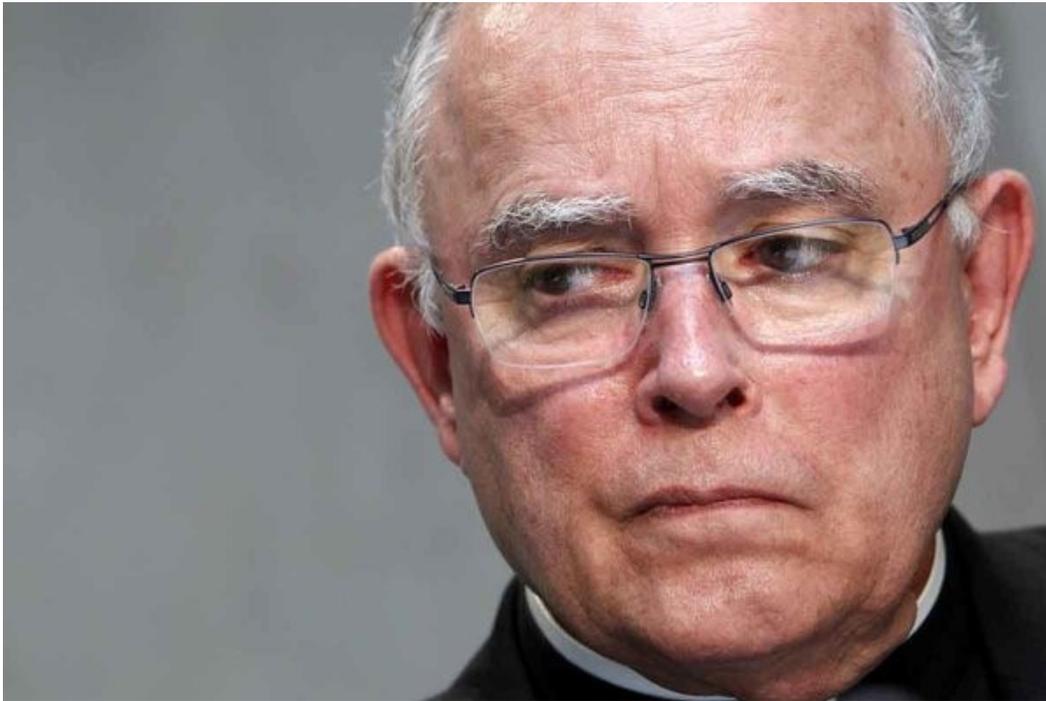
The City and Provider desire that Provider render various services to the City, in accordance with the provisions of this Provider Agreement, the City of Philadelphia Professional Services Contract General Provisions for the Department of Human Services (the "General Provisions"), Cross Agency Response for Effective Services ("CARES") Limited License Agreement (when applicable) and all of the other attachments, exhibits, and documents which together constitute the Contract Documents as defined in the General Provisions. A copy of the General Provisions is attached hereto and incorporated herein by reference. A copy of the CARES Limited License Agreement is available on the Provider Extranet ([http://dhs.phila.gov/extranet/extrahome\\_pub.nsf/Content/ServiceStandards](http://dhs.phila.gov/extranet/extrahome_pub.nsf/Content/ServiceStandards)) and incorporated by reference. A copy of the applicable below referenced Performance and Service Standards formerly known as Service Description and Contract Requirements, Service Description, Performance Standards, Service Standards, Procedural Manuals and/or Guides ("Standards") are available on the Provider Extranet ([http://dhs.phila.gov/extranet/extrahome\\_pub.nsf/Content/ServiceStandards](http://dhs.phila.gov/extranet/extrahome_pub.nsf/Content/ServiceStandards)) and incorporated by reference.

In consideration of the mutual obligations set forth herein, and intending to be legally bound, the City and Provider covenant and agree as follows:

PSC (PA) 290  
Rev. Date: June 2015  
Page 1

# Attachment J

# Chaput edict draws mixed reviews; Kenney calls it 'not Christian'





**AP**

**Photo/Riccardo De Luca, File**

In this June 25, 2015, file photo, Archbishop Charles Chaput attends a news conference at the Vatican.

Mayor Kenney on Wednesday denounced as "not Christian" Archbishop Charles J. Chaput's insistence that Catholics living in relationships the church considers sinful may not receive Holy Communion or hold positions of responsibility in parishes.

**[Related links](#)**

-

[From 2016: Abuse victim: Chaput canceled face-to-face after media attention](#)

•

[Polaneczky: Who's more Christian - Kenney or Chaput?](#)

•

[Flowers: Chaput controversy is a sham](#)

•

[Commentary: Chaput edict is a sound lesson](#)

•

[Letters: Archbishop Charles Chaput's arrogant contradiction of Pope Francis](#)

•

[Chaput: No Communion for sexually active gay, unwed or divorced couples](#)

Kenney's was among the sharper reactions Chaput's decree drew from around the region. Some were swift to denounce the archbishop as an "old white man" whose church was out of touch.

Others, though, hailed the archbishop for upholding traditional church teaching or deferred with a shrug to his authority.

The mayor, who was raised Catholic, has often been sharply critical of Chaput's conservative stances on matters of faith.

On Friday, Chaput posted on the archdiocesan website six pages of guidelines for clergy and other local church leaders on how to implement *Amoris Laetitia*, a major document on the family Pope Francis issued in April.

Some theologians have said *Amoris* calls on church leaders to be more welcoming of Catholics who are estranged from parish life because the church disapproves of their sexual relationships.

Chaput was emphatic that this does not mean Francis has reformulated the church's traditional ban on Communion for those Catholics who live in what the church views as sin - such as divorced Catholics who remarry outside the church, sexually active gays, and cohabiting unmarried couples.

In *Amoris*, Francis "states clearly that neither Church teaching nor the canonical discipline concerning marriage has changed," Chaput remarked in his guidelines.

Holy Communion is a central element of the Catholic faith, which holds that the prayers a priest utters over bread and wine during Mass transform them physically into the body and blood of Jesus.

Barring a person from receiving Communion does not mean that he or she is excommunicated. But many of those barred have complained of feeling shunned, embarrassed, or marginalized.

Many laypeople and clergy had hoped Francis might ease the church's position regarding Communion in *Amoris Laetitia*, but despite his call for clergy to listen compassionately to the pain of those who feel excluded, he did not make any explicit changes to the teaching.

Chaput's guidelines may be the first of their kind issued by the bishop of any American diocese in response to *Amoris Laetitia*, Latin for "the joy of love."

Chaput's position did not upset Lydia Carbone, a member of St. Patrick's parish in Center City.

"It's not for me to judge the church's teachings," she said.

Unmarried after a divorce more than 16 years ago, she has led programs at her parish designed to help the newly divorced understand the church's stance that they may not remarry in the faith unless their first marriage is declared invalid by a diocesan tribunal.

But she was pleased, she said, that Pope Francis "seems to be opening dialogue in the gray areas" around divorce and remarriage. "I'm hoping the church will be more open and welcoming."

Others were fuming.

An article on the guidelines in Wednesday's *Inquirer* generated more than 1,000 comments, most of them harshly critical of Chaput.

Across the street from the Cathedral of SS Peter and Paul, an 18-year-old Catholic questioned the wisdom of the guidelines Wednesday afternoon.

"It's isolating people," said Mia Trotz, a college student in Philadelphia selling water ice at Sister Cities Park.

But Carl Miller, 58 and gay, said he admired Chaput for his stance. "I believe the Catholic Church's teachings are ultimate truth," said Miller.

"I struggle with living it perfectly," said Miller, who attends Mass weekly and receives Communion, "but I think the archbishop is right in restating what the Catholic teaching is." He declined to name his hometown or parish.

A large part of the debate involves just what Francis meant to say about the inclusion in parish life of unmarried but cohabiting Catholics, those in same-sex relationships, and the estimated 4.5 million who are divorced and remarried without an annulment.

"It's being read in different ways by different individuals and different bishops," said John Grabowski, associate professor of moral theology at Catholic University of America.

Grabowski, an authority on *Amoris Laetitia*, noted that in one place Francis writes that priests have the duty to accompany those who divorce and remarry outside the church "in helping them to understand their situation according to the teaching of the Church and the guidelines of the bishop."

But Grabowski noted that Francis also wrote in *Amoris* that "I would also point out that the Eucharist 'is not a prize for the perfect, but a powerful medicine and nourishment for the weak.' "

And for those struggling to reconcile what appear to be Francis' positions, Grabowski pointed to yet more lines from the pope:

"I understand those who prefer a more rigorous pastoral care which leaves no room for confusion," wrote Francis. "But I sincerely believe that Jesus wants a Church attentive to the goodness which the Holy Spirit sows in the midst of human weakness, a Mother who, while clearly expressing her objective teaching, always does what good she can, even if in the process, her shoes get soiled by the mud of the street."

"I don't want to say this is murky," said Grabowski, "but it's not crystal clear. So what happens is that people find support for differing positions. So it's going to be up to different bishops to decide how this document should be implemented in their dioceses."

[doreilly@phillynews.com](mailto:doreilly@phillynews.com)

856-779-3841

Staff writer Robert Moran contributed to this article.

## More Coverage

•

[Chaput: No Communion for sexually active gay, unwed or divorced couples](#)

[Jul 6 - 11:59 PM](#)

**Published:** July 6, 2016 — 6:57 PM EDT | **Updated:** July 6, 2016 — 11:04 PM EDT

**The Philadelphia Inquirer**

# Attachment K

## Philadelphia

# Jim Kenney's Long War with the Archdiocese

The mayoral nominee is a disaffected Catholic disgusted by local church leadership.

by **PATRICK KERKSTRA** • 7/9/2015, 11:23 p.m.



Charles Chaput and Jim Kenney. | Photos by Jeff Fusco.

Democratic mayoral nominee **Jim Kenney** is a proud graduate of St. Joe's Prep *and* La Salle. He was born and raised in a Irish Catholic family. He is the single most devoted fan of the Neuman-Goretti women's basketball team in the world.

And yet, Kenney's relationship with the Catholic Church is fraught. Actually, the more accurate adjective is probably just "hostile." Kenney showed vividly just how little regard he has for local

“cowardly men” in the Archdiocese of Philadelphia of orchestrating the firing. “If you’re a church official and you feel that strongly that this woman and her partner are such a threat to society, stand up and say so,” Kenney told the paper.

That might seem like extraordinarily blunt language coming from the likely next mayor of the city and aimed not-so-subtly at Archbishop Charles J. Chaput. But it’s actually not all that different from Kenney’s past public statements about the archdiocese. Like the time he urged Pope Francis to “kick some ass” in the archdiocese.

 **MetroPhilly** @MetroPhilly Nov 14, 2014  
Relics have been removed from St. Laurentius Church in Fishtown, but former parishioners' appeal is still pending  
[ow.ly/EeWII](http://ow.ly/EeWII)

 **Jim Kenney**  
@JimFKenney

@MetroPhilly The Arch don't care about people. It's about image and money. Pope Francis needs to kick some ass here!

10:06 AM - Nov 14, 2014

1 See Jim Kenney's other Tweets

Kenney began feuding with the archdioceses as far back as 1998, when Catholic leaders **mobilized to block** a City Council bill granting benefits to partners of gay city employees that Kenney co-sponsored. More recently, he’s sparred with archdiocesan leadership **over the closing** of parochial schools, **publicly criticized** their decision to ban an 11-year-old girl from playing CYO football and wished out-loud that Pope Francis will straighten out Chaput and company when he comes to town in September.

In a lot of respects, of course, Kenney’s fight with the archdiocese is just a microcosm of the broader debate playing out in the Catholic community. Church conservatives, like Chaput, are digging in, even as the broader culture embraces marriage equality. Liberal Catholics, like Kenney (and a lot of other Philadelphia Catholics), desperately want the church to change with the times, not just on gay marriage, but on the role of women and a host of other issues. The ascension of liberal Pope Francis has raised the stakes of the debate. And now the liberal Francis is coming to Philadelphia, where he’ll be hosted by the very-conservative Chaput, all while Kenney (who can summon dozens of news cameras and microphones whenever he likes) looks on....

Does this latest episode hurt Kenney at all? Might he have alienated true-blue city Catholics with his criticism? It's certainly possible that it will, but it's also likely to further enhance Kenney's standing in progressive circles and among gay voters.

The harder question is this: should a mayor speak so bluntly on such charged issues? Or is it unbecoming of the office to weigh in so strongly so quickly? This is a controversy about a school outside city limits, after all. Mayor Nutter hasn't issued any press releases.

There's no simple answer to that one. Mayors do need to exercise more discretion than Council members. Mayors are emissaries for the whole city, and Philadelphia is a complicated place that's home to people with a lot of different beliefs.

But for Kenney, justice is justice, and a wrong is a wrong. He doesn't take a black-and-white approach to everything. But on certain matters — like gay equality, like gender equality — Kenney is a moral absolutist, and he's not going mince words or avoid fights, even if he does become mayor. Lauren Hitt, Kenney's communications director, told me a while back in a conversation about a completely different topic that he "has an annoyingly strong moral compass." Right now, Kenney's moral compass is the pointing in the polar opposite direction of the Archdiocese of Philadelphia. And in recent years, Kenney has been his most convincing — and his popular appeal has been strongest — when he has framed his policy preferences in stark moral terms.

We just put in a request with Kenney's campaign to talk to him about his faith and his relationship with the Catholic church, and if he's got time for an interview we'll bring you his answers in depth.

But Kenney being Kenney, a lot of his feelings are already out there on Twitter. See below.

**Jim Kenney**  
@JimFKenney

The sisters who do the work for meager salaries, will be the only ones who save the Catholic Church [#whatsistersmeantome](#)

10:33 AM - Apr 23, 2012

[See Jim Kenney's other Tweets](#)

**Jim Kenney**  
@JimFKenney

The sisters who do the work for meager salaries, will be the only ones who save the Catholic Church [#whatsistersmeantome](#)

9:44 AM - Jun 25, 2012

See Jim Kenney's other Tweets



**Miriamhill** @Miriamhill

Jul 12, 2012

Replying to @myantkinney

@myantkinney so hard to know, b/c so few women in leadership positions.



**Jim Kenney**

@JimFKenney

@Miriamhill Monica, I agree. Same prob with the Catholic Church. Too male centered with no opportunity for dissent.

11:01 AM - Jul 12, 2012

See Jim Kenney's other Tweets



**Jim Kenney**

@JimFKenney

On Action News tonight; why would the Archdiocese of Phila try to stop a young girl from playing CYO Football with the boys if she is able?

12:09 AM - Jan 7, 2013

See Jim Kenney's other Tweets



**Jim Kenney**

@JimFKenney

@SheinelleJones Every girl should be able to compete at any level she is capable. Why would the Archdiocese keep her from being her best?

8:06 AM - Jan 7, 2013

See Jim Kenney's other Tweets



**Jim Kenney**

@JimFKenney

[fb.me/25XJ5EvIX](https://www.facebook.com/25XJ5EvIX)

3:13 PM - Jan 9, 2013

See Jim Kenney's other Tweets



**Jim Kenney**

@JimFKenney

Thank you to Archbishop Chaput for making the right decision and to Caroline for being so determined! [fb.me/2ooBk5vib](https://www.facebook.com/2ooBk5vib)

4:03 PM - Mar 14, 2013

See Jim Kenney's other Tweets



**Jim Kenney**

@JimFKenney

Having been Jesuit-educated myself, I've always had confidence and trust in their commitment to fairness and... [fb.me/115hpc9S5](https://www.facebook.com/115hpc9S5)

1:35 PM - Jul 29, 2013

See Jim Kenney's other Tweets



**Brian P. Hickey** @BrianPHickey

Jul 29, 2013

Replying to @JimFKenney

[@JimFKenney](https://www.facebook.com/115hpc9S5) I'm not running back to church but I'm down with new Pope.



**Jim Kenney**

@JimFKenney

[@BrianPHickey](https://www.facebook.com/115hpc9S5) Just taking a few steps in that direction. Moral authority was lost. Pope Frank might repair much of that. I pray!

9:11 PM - Jul 29, 2013

See Jim Kenney's other Tweets



**Jim Kenney**

@JimFKenney

Saddened by the closing of 49 Catholic schools. I feel for the students & teachers affected by this decision [ow.ly/8lvkr](https://www.ow.ly/8lvkr)



**Jim Kenney**  
@JimFKenney

Archbishop Chaput: Philadelphians 'confused' by Pope Francis's words [po.st/veMrff](#) via [@po\\_st](#) I wasn't confused at all.

4:34 PM - Sep 26, 2013



**Archbishop Chaput: Philadelphians 'confused' by Pope Franc...**

Six days after the release of an extensive interview with Pope Francis in a Jesuit journal, Philadelphia Archbishop Charles Chaput [philly.com](#)

1 See Jim Kenney's other Tweets



**Jim Kenney**  
@JimFKenney

Watching CNN. Pope Francis is awesome! Freaking awesome! Makes me want to turn back to my church. I worry about him though.

7:50 PM - Dec 24, 2013

3 See Jim Kenney's other Tweets



**Mike Jerrick** @MikeFOX29

Mar 8, 2014

Lets do this! RT [@JimFKenney](#): [@MikeFOX29](#) How about a regional effort to Tweet [@Pontifex](#) to come to Philly in 2015 to bless us in person?

@MikeFOX29 @Pontifex Pope Francis is a social media guy. The Mucky Mucks are going to Rome but Papa listens to the real people!

3:43 PM - Mar 8, 2014

1 See Jim Kenney's other Tweets

Follow @pkerkstra and @CitifiedPHL on Twitter.

### Read More About:

Archdiocese of Philadelphia

Charles Chaput

Jim Kenney

### You Might Also Like



The Coolest Ice Cream Shops in Philadelphia



# Attachment P

## Mother/Baby Host Home

### Children & Families

Therapeutic Foster Care

CRR Host Home

Mother/Baby Host Home

Behavioral Health  
Rehabilitation Services

Case Management &  
Resource Coordination  
Services

Relief Support

Emergency After Hours  
Placement Response  
Service

Family-Based Services

### Adults with Disabilities

It takes a village to raise a child, and at Pennsylvania MENTOR, we help build a community of support for the young mothers we serve. In this program, young mothers living in the homes of our foster parents, who we call Mentors, receive intensive case management services to help them be the best moms they can be. The teenage girls are in foster care when they are pregnant or have already given birth. The baby lives with their mother in the Mentor's home. As long as it remains in the best interest of the child, the mother maintains full custody. Through our Mother Baby Host Home program, we help these young mothers learn how to support and care for their child.



### Personalized Support

Our dedicated program service coordinators visit the young mothers in their Mentors' homes. We make sure the young mothers are working with the support system we help them develop, a support system that includes:

- Parenting classes
- Independent living classes
- Day care
- Support groups
- Access to health care, WIC, and transportation

Our experienced team is available to the young mothers 24/7, offering constant guidance and support. Our goal is to make sure these young women have everything they need to be the best moms possible.

This program is available in Philadelphia, Bucks, Montgomery, Delaware, and Chester Counties. Please call 215-925-3461 \*5025 for more information.

If you would like to help a young mother and her baby have the best start possible, go to [www.makeadifferenceathome.com](http://www.makeadifferenceathome.com) to learn more about becoming a Mentor!

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF PENNSYLVANIA

- - -

SHARONELL FULTON, ET AL : CIVIL DOCKET FOR CASE  
: NO. 18-2075  
-VS- :  
: CITY OF PHILADELPHIA, ET AL :

- - -

PHILADELPHIA, PA.

JUNE 18, 2018

BEFORE HONORABLE JUDGE PETRESE B. TUCKER

TEMPORARY RESTRAINING ORDER

DAY 1

APPEARANCES:

FOR THE PLAINTIFF: BECKET FUND FOR RELIGIOUS LIBERTY  
BY: LORI H. WINDHAM, ESQ.  
MARK L. RIENZI, ESQ.  
STEPHANIE H. BARCLAY, ESQ.  
1200 NEW HAMPSHIRE AVE, N.W.  
SUITE 700  
WASHINGTON, DC 20036

FOR THE DEFENDANTS: CITY OF PHILADELPHIA LAW DEPARTMENT  
BY: ELEANOR N. EWING, ESQ.  
BENJAMIN H. FIELD, ESQ.  
SCHAUNDRA OLIVER, ESQ.  
1515 ARCH STREET, 16TH FLOOR  
PHILADELPHIA, PA 19102

LYNN MCCLOSKEY, RPR  
OFFICIAL COURT REPORTER  
1234 US COURTHOUSE  
601 MARKET STREET  
PHILADELPHIA, PA 19106  
(856) 649-4774



1 MS. BARCLAY: GOOD AFTERNOON, YOUR HONOR.  
2 STEPHANIE BARCLAY FOR THE PLAINTIFFS, AND WE WOULD LIKE  
3 TO CALL MS. TONI SIMMS-BUSCH TO THE STAND.

4 (WITNESS SWORN.)

5 THE WITNESS: TONI SIMMS-BUSCH, T-O-N-I,  
6 LAST NAME SIMMS, S-I-M-M-S-B-U-S-C-H.

7 MS. BARCLAY: WOULD YOU LIKE ME AT THE  
8 PODIUM?

9 THE COURT: YES, PLEASE.

10 DIRECT EXAMINATION

11 BY MS. BARCLAY:

12 Q. GOOD AFTERNOON.

13 A. GOOD AFTERNOON.

14 Q. PLEASE STATE YOUR NAME FOR THE RECORD.

15 A. TONI SIMMS-BUSCH.

16 Q. CAN YOU DESCRIBE YOUR CURRENT RELATIONSHIP WITH  
17 CATHOLIC SOCIAL SERVICES?

18 A. I AM A FOSTER MOTHER.

19 Q. IN WHAT CITY DO YOU LIVE?

20 A. PHILADELPHIA, PENNSYLVANIA.

21 Q. HOW LONG HAVE YOU LIVED THERE?

22 A. PHILADELPHIA, PENNSYLVANIA? MY ENTIRE LIFE,  
23 38 YEARS.

24 Q. CAN YOU DESCRIBE YOUR EDUCATIONAL BACKGROUND?

25 A. YES. I HAVE A BACHELOR'S DEGREE FROM CHATHAM

1 COLLEGE IN FORENSIC PSYCHOLOGY AND I STARTED A MASTER'S  
2 PROGRAM AT ARGOSY UNIVERSITY FOR COUNSELING FORENSIC  
3 PSYCHOLOGY.

4 Q. HOW DID YOU DO ACADEMICALLY IN THESE PROGRAMS?

5 A. I DID VERY WELL.

6 Q. CAN YOU DESCRIBE A LITTLE BIT ABOUT YOUR  
7 RELEVANT WORK EXPERIENCE?

8 A. YES. WHEN I GRADUATED IN 2002, I WORKED AS A  
9 YOUTH COUNSELOR WITH A PARTIAL CARE PROGRAM FOR CHILDREN  
10 3 TO 5 AND 6 TO 9. I THEN WORKED IN A RESIDENTIAL  
11 TREATMENT FACILITY FOR ADOLESCENT MALE AND FEMALES IN  
12 NEW JERSEY. I THEN WORKED AT PSI FAMILY SERVICES AS A  
13 FOSTER CARE AGENCY WORKER. AFTER THAT I WAS A CHILD  
14 ADVOCATE SOCIAL WORKER FOR NEARLY FOUR YEARS WITH THE  
15 DEFENDER ASSOCIATION OF PHILADELPHIA.

16 Q. WERE YOU A FOSTER CARE SOCIAL WORKER IN  
17 PHILADELPHIA?

18 A. YES.

19 Q. AND WERE YOU A CHILD ADVOCATE SOCIAL WORKER IN  
20 PHILADELPHIA?

21 A. YES.

22 Q. YOU MENTIONED THAT YOU WORKED AT AN IN-STAFF AND  
23 GROUP HOMES. HOW LONG DID YOU WORK IN THAT POSITION?

24 A. A LITTLE OVER TWO YEARS.

25 Q. WHEN YOU WERE A FOSTER CARE SOCIAL WORKER, HOW

1 LONG DID YOU WORK IN THAT POSITION?

2 A. A LITTLE OVER TWO YEARS.

3 Q. AND WHEN YOU WERE A CHILD ADVOCATE SOCIAL  
4 WORKER, HOW MANY YEARS WERE YOU IN THAT POSITION?

5 A. APPROXIMATELY FOUR YEARS.

6 Q. I WOULD LIKE TO TALK TO YOU A LITTLE BIT ABOUT  
7 YOUR OBSERVATIONS AS A FOSTER WORKER IN PHILADELPHIA.  
8 DURING YOUR WORK, DID YOU EVER OBSERVE IN YOUR  
9 EXPERIENCE THERE TO BE A SHORTAGE OF FOSTER HOMES FOR  
10 CHILDREN?

11 A. YES.

12 Q. WHAT SORT OF THINGS DID YOU OBSERVE THAT LED YOU  
13 TO THINK THAT?

14 A. AS A FOSTER CARE WORKER, AS A CHILD ADVOCATE  
15 SOCIAL WORKER, MY PROFESSIONAL EXPERIENCE WAS THAT  
16 CHILDREN WERE CONSTANTLY BEING RELOCATED DUE TO  
17 PLACEMENT ISSUES. SEVERAL CHILDREN HAD TO BE PLACED --  
18 SEVERAL TEENAGE CHILDREN HAD TO BE PLACED IN SHELTERS  
19 DUE TO A LACK OF AVAILABLE FOSTER HOMES. CHILDREN HAD  
20 TO BE PLACED IN RESPITE FOR TEMPORARY HOLD UNTIL  
21 PERMANENT FOSTER HOMES COULD BE LOCATED, AND CHILDREN  
22 SOMETIMES -- I HAD A FEW CASES WHERE CHILDREN WOULD HAVE  
23 TO STAY AT THE DHS BUILDING UNTIL A PLACEMENT WOULD BE  
24 FOUND.

25 Q. WHAT SORT OF IMPACT DID YOU EXPERIENCE THAT TO

1 BY MS. BARCLAY:

2 Q. AS A FOSTER CARE WORKER, DID YOU EVER REFER  
3 PROSPECTIVE FOSTER FAMILIES TO OTHER AGENCIES?

4 A. YES. THERE WERE INSTANCES WHERE I NEEDED TO  
5 REFER THEM OUT TO OTHER AGENCIES FOR VARIOUS REASONS.  
6 PERHAPS THERE WAS A LANGUAGE BARRIER, PERHAPS THERE WAS  
7 A DIFFICULT MEDICAL CASE OR BEHAVIORAL HEALTH CASE THAT  
8 MY AGENCY COULD NOT SUPPORT.

9 Q. I WANT TO TAKE EACH OF THOSE WITH YOU IN TURN.  
10 IN THE CONTEXT OF A LANGUAGE ISSUE, WALK ME THROUGH WHAT  
11 A REFERRAL WOULD LOOK LIKE AND WHY THAT WOULD ARISE?

12 A. RIGHT. SO IF I HAD A CLIENT OR A FAMILY WHO WAS  
13 OF ANOTHER LANGUAGE AND FOR SOME REASON I COULD NOT  
14 ACCOMMODATE THEM OR MY AGENCY COULD NOT ACCOMMODATE  
15 THEM, I WOULD CONTACT A SPECIALIZED AGENCY AND MAKE THAT  
16 REFERRAL FOR THAT FAMILY TO BE SERVICED.

17 Q. WHAT WAS THE NAME OF ONE OF THE AGENCIES WITH  
18 LANGUAGE SPECIALTY YOU REFERRED FAMILIES TO?

19 A. CONCILIO.

20 Q. DID YOU EVER REFER FAMILIES FOR GEOGRAPHIC  
21 REASONS?

22 A. YES. WE HAD TO REFER FAMILIES FOR GEOGRAPHICAL  
23 REASONS. PERHAPS A CHILD WAS IN A SPECIFIC SCHOOL  
24 DISTRICT AND WE WANTED TO KEEP THEM IN THAT SCHOOL  
25 DISTRICT, OR EVEN FOR SAFETY REASONS, IF A PARENT WAS IN

1 A CERTAIN NEIGHBORHOOD AND WE WANTED TO REFER THEM OUT,  
2 THE FAMILIES WOULD REFER THEM OUT TO A DIFFERENT AGENCY  
3 IN ANOTHER NEIGHBORHOOD.

4 Q. DID YOU EVER REFER FAMILIES FOR BEHAVIORAL  
5 HEALTH SPECIALTY REASONS?

6 A. YES. YES, WE HAD TO DO THAT AS WELL. AGAIN, IF  
7 OUR AGENCY WAS NOT ABLE TO COPE WITH THAT CHILD OR THE  
8 FAMILY WAS UNABLE TO COPE WITH IT AND NEEDED SPECIALIZED  
9 -- AND THAT CHILD NEEDED SPECIALIZED SERVICES, WE WOULD  
10 REFER OUT TO A DIFFERENT AGENCY.

11 Q. WERE YOU AWARE OF REFERRALS ALSO BEING MADE FOR  
12 SPECIALIZED MEDICAL NEEDS OF A CHILD?

13 A. YES, MEDICAL WOULD BE THE SAME.

14 Q. DID DHS EVER PENALIZE OR SANCTION YOU FOR  
15 ENGAGING IN THESE REFERRALS?

16 A. NO.

17 Q. DID YOU THINK THAT YOU WERE DOING ANYTHING OUT  
18 OF THE ORDINARY WHEN YOU MADE THESE SORTS OF REFERRALS?

19 A. NO. REFERRALS ARE MADE ALL THE TIME.

20 Q. WHEN A NEW PROSPECTIVE FOSTER FAMILY APPROACHES  
21 AN AGENCY AND COMES TO THEM THROUGH THE INTAKE PROCESS,  
22 IS THAT A DHS REFERRAL TO THE AGENCY?

23 A. NO, THAT'S AN INDEPENDENT REFERRAL, LIKE A SELF  
24 REFERRAL, IT'S NOT AN DHS REFERRAL.

25 Q. SO THAT'S A SEPARATE PIPELINE FOR OBTAINING

1 FAMILIES?

2 A. YES. DHS DID NOT REFER ME TO BE A FOSTER  
3 PARENT, I SELF REFERRED MYSELF.

4 Q. DO YOU HAVE ANY EXPERIENCE WITH HOW FOSTER CARE  
5 PLACEMENT WORKS FOR NATIVE AMERICAN CHILDREN IN  
6 PENNSYLVANIA?

7 A. YES. I HAVE HAD PERSONAL EXPERIENCE WITH THAT,  
8 SO PRIOR TO ME BECOMING A FOSTER PARENT WITH CATHOLIC  
9 SOCIAL SERVICES, I HAVE NATIVE AMERICAN HERITAGE, I WAS  
10 THINKING ABOUT ADOPTING OR FOSTERING A NATIVE AMERICAN  
11 CHILD AND BECAUSE I CANNOT CERTIFY MYSELF AS A NATIVE  
12 AMERICAN, I WAS UNABLE TO DO THAT.

13 Q. AND WAS YOUR EXPERIENCE THAT YOU COULD HAVE GONE  
14 TO ANY AGENCY TO TRY AND FOSTER A NATIVE AMERICAN CHILD?

15 A. NO, I CANNOT. I CANNOT.

16 Q. SO WHAT WOULD HAPPEN IF YOU WENT TO AN AGENCY,  
17 ANY AGENCY IN PHILADELPHIA, FOR EXAMPLE, TRYING TO  
18 FOSTER A NATIVE AMERICAN CHILD?

19 A. I WOULD NOT BE ABLE TO DO THAT BECAUSE I CANNOT  
20 CERTIFY MYSELF AS A NATIVE AMERICAN.

21 Q. WHAT WOULD THE AGENCY DO FOR YOU?

22 A. REFER ME TO -- YOU KNOW, I WAS NOT DENIED TO  
23 BECOME A FOSTER PARENT, BUT I CANNOT BE A FOSTER PARENT  
24 OF A NATIVE AMERICAN CHILD.

25 Q. IF YOU WENT TO AN AGENCY THAT SPECIALIZED IN

1 THE COURT: SUSTAINED.

2 BY MS. BARCLAY:

3 Q. DID YOU EVER OBSERVE WAYS IN WHICH CATHOLIC  
4 SOCIAL SERVICES PROVIDED SERVICES THAT WERE BENEFICIAL  
5 FOR CHILDREN?

6 A. YES.

7 Q. CAN YOU GIVE SOME EXAMPLES OF THAT FROM YOUR  
8 PERSONAL EXPERIENCE?

9 A. AS A PROFESSIONAL AND ALSO AS A FOSTER MOTHER, I  
10 RECEIVED A GREAT DEAL OF SUPPORT, A GREAT DEAL OF CARE.  
11 IF I HAVE A PROBLEM OR DIFFICULTY OR JUST NEED TO VENT,  
12 I CAN CONTACT MY SOCIAL WORKER, MY SUPERVISOR, MY  
13 DIRECTOR AT ANY TIME.

14 Q. HOW WOULD YOU DESCRIBE THE CONTINUITY OF STAFF  
15 AND HOW THAT IMPACTED CHILDREN AT CATHOLIC SOCIAL  
16 SERVICES?

17 A. I HAVE WORKED WITH CATHOLIC SOCIAL SERVICES FOR  
18 A VERY LONG TIME, BOTH PROFESSIONALLY AND AS A FOSTER  
19 PARENT, AND THERE IS A GREAT DEAL OF CONTINUITY. I HAVE  
20 NOT EXPERIENCED ANY TURNOVER AT ALL IN STAFF, AND THAT  
21 CERTAINLY HELPS THE CHILDREN BECAUSE THEY SEE THE SAME  
22 FACES, THEY ARE ABLE TO CREATE BONDS WITH THE WORKERS  
23 AND ALSO THE FOSTER PARENTS BECAUSE THEY KNOW WHO THEY  
24 ARE GOING TO BE ABLE TO CONTACT.

25 Q. AS A CHILD ADVOCATE SOCIAL WORKER, WERE YOU EVER

1 AWARE OF INSTANCES WHERE CITY ATTORNEYS WOULD NOT SPEAK  
2 WITH YOU ABOUT A CHILD'S CASE?

3 A. NO.

4 Q. THAT WAS NOT SOMETHING YOU OBSERVED TO BE A  
5 COMMON PRACTICE?

6 A. NO, I HAD VERY GOOD RELATIONSHIPS WITH THE DHS  
7 ATTORNEYS.

8 Q. WERE PEOPLE YOU INTERACTED WITH GENERALLY AWARE  
9 OF THE RELIGIOUS NATURE OF CATHOLIC SOCIAL SERVICES?

10 A. YES.

11 MS. CORTES: OBJECTION, SPECULATION AS  
12 WELL, YOUR HONOR.

13 THE COURT: OVERRULED.

14 BY MS. BARCLAY:

15 Q. HOW LONG -- LET'S TALK ABOUT YOUR TIME AS A  
16 FOSTER PARENT. HOW LONG HAVE YOU BEEN A FOSTER PARENT?

17 A. FOR APPROXIMATELY TWO-AND-A-HALF YEARS.

18 Q. CAN YOU TELL US ABOUT WHAT INFLUENCED YOUR  
19 DECISION TO BECOME A FOSTER PARENT?

20 A. MY WORK AS A PROFESSIONAL AND ALSO MY PERSONAL  
21 INABILITY TO HAVE CHILDREN. AND ALSO MY BELIEF THAT --  
22 I BELIEVE THAT GOD PLACED IT IN MY HEART AS A CALLING.

23 Q. WHAT INFLUENCED YOUR DECISION TO CHOOSE CATHOLIC  
24 SOCIAL SERVICES?

25 A. MY PROFESSIONAL WORK WITH THEM AND ALSO MY

1 CATHOLIC BELIEFS. I KNEW THAT WE WOULD SHARE THE SAME  
2 FOUNDATIONAL BELIEFS.

3 Q. CAN YOU DESCRIBE SOME OF THE SUPPORT YOU HAVE  
4 RECEIVED FROM CATHOLIC SOCIAL SERVICES AND HOW THAT HAS  
5 BEEN IMPORTANT FOR YOU?

6 A. AGAIN, I KNOW THAT I CAN CALL ANYONE ON MY TEAM  
7 AT ANY HOUR OF THE DAY AND SOMETIMES AT NIGHT, OR TEXT  
8 THEM AND I KNOW THAT THEY ARE GOING TO BE THERE. I KNOW  
9 IF I MY CALL WORKER, HE IS GOING TO COME AS SOON AS HE  
10 CAN. HE WILL SPEND ANYWHERE BETWEEN A HALF AN HOUR TO A  
11 COUPLE OF HOURS IF HE NEEDS TO OR IF HE WANTS TO, JUST  
12 PLAYING WITH MY BOYS OR BEING THERE FOR ME AS A SUPPORT.

13 Q. ARE YOU CURRENTLY CARING FOR FOSTER CHILDREN?

14 A. I HAVE TWO YOUNG BOYS. I HAVE A TWO YEAR OLD  
15 WHO HAS BEEN WITH ME FOR 16 MONTHS AND I HAVE A -- HE  
16 WILL BE FIVE MONTHS OLD ON THE 21ST OF THIS MONTH AND HE  
17 HAS BEEN WITH ME SINCE HE WAS THREE DAYS OLD. THEY ARE  
18 SIBLINGS.

19 Q. ARE YOU INTERESTED IN FOSTERING ADDITIONAL  
20 CHILDREN IN THE FUTURE?

21 A. I WOULD, YES. I WOULD BE VERY OPEN.

22 Q. WOULD YOU BE OPEN TO FOSTERING SIBLINGS OF YOUR  
23 BOYS?

24 A. YES.

25 Q. ARE THERE THINGS THAT YOU HAVE EXPERIENCED

1 CATHOLIC SOCIAL WORKERS TO DO TO HELP YOUR BOYS TO LOVE,  
2 TO BE CARED FOR?

3 A. YES. AGAIN, WHEN MY WORKER COMES, HE SPENDS  
4 TIME WITH MY BOYS, HE PLAYS WITH THEM, HE INTERACTS WITH  
5 THEM. AND HE -- I BELIEVE MY BOYS HAVE A BOND WITH HIM.  
6 WHEN MY TWO-YEAR OLD SEES MY WORKER COMING, HE RUNS TO  
7 HIM. HE DOES NOT RUN TO MANY PEOPLE, SO THAT'S A GOOD  
8 THING.

9 Q. DO YOU WORK WITH CUA AS WELL?

10 A. I DO.

11 Q. WHICH CUA DO YOU WORK WITH?

12 A. NET CUA 7.

13 Q. IS THAT CUA AFFILIATED WITH CATHOLIC SOCIAL  
14 SERVICES?

15 A. NO.

16 Q. HOW DID YOUR RELATIONSHIP WITH SOCIAL WORKERS AT  
17 THAT CUA DIFFER, IF AT ALL?

18 MS. CORTES: OBJECTION, RELEVANCE.

19 MS. BARCLAY: YOUR HONOR, THIS IS  
20 RELEVANT TO THE TYPE OF HARM THAT MS. SIMMS-BUSCH WILL  
21 EXPERIENCE IF SHE IS NO LONGER ABLE TO HAVE SOME OF  
22 THESE UNIQUE RELATIONSHIPS WITH HER SOCIAL WORKERS AT  
23 CATHOLIC SOCIAL SERVICES.

24 THE COURT: OVERRULE.

25 AND CAN YOU SPECIFICALLY SAY WHAT CUA IS?

1 THERE'S A LOT OF ACRONYMS.

2 BY MS. BARCLAY:

3 Q. COULD YOU STATE AGAIN WHICH CUA YOU WORK WITH?

4 A. NET CUA 7, NORTHEAST CUA 7, CUA, COMMUNITY  
5 UMBRELLA AGENCY.

6 THE COURT: AND WHAT DOES CUA STAND FOR?

7 THE WITNESS: COMMUNITY UMBRELLA AGENCY,  
8 YOUR HONOR.

9 THE COURT: OKAY.

10 THE WITNESS: IT'S AN AGENCY WHICH DHS  
11 HAS CREATED IN ORDER TO SUPERVISE CHILDREN IN THEIR  
12 FOSTER HOMES.

13 MS. CORTES: YOUR HONOR, WE WOULD RENEW  
14 OUR OBJECTION TO THE RELEVANCE REGARDING THE CUA IN THIS  
15 CASE, SINCE THEY ARE NOT PART OF THIS LAWSUIT AND MORE  
16 SO IT DEALS WITH GEOGRAPHIC ISSUES.

17 MS. BARCLAY: YOUR HONOR, AGAIN, I JUST  
18 WANT TO POINT OUT THE WAY IN WHICH HER RELATIONSHIP WITH  
19 THE CATHOLIC SOCIAL SERVICES SOCIAL WORKER IS UNIQUE AND  
20 COMPARE THAT TO RELATIONSHIPS WITH OTHER SOCIAL WORKERS.

21 THE COURT: I WILL OVERRULE THE  
22 OBJECTION.

23 BY MS. BARCLAY:

24 Q. MS. SIMMS-BUSCH, HOW DOES YOUR RELATIONSHIP AND  
25 THE RELATIONSHIP OF YOUR CHILDREN WITH YOUR CATHOLIC

1 SOCIAL WORKER DIFFER IF AT ALL FROM YOUR RELATIONSHIP  
2 WITH THE SOCIAL WORKER AT THE CUA?

3 A. AGAIN, MY BOYS RUN TO MY CATHOLIC SOCIAL  
4 SERVICES -- OR AT LEAST MY TWO-YEAR OLD RUNS TO MY  
5 CATHOLIC SOCIAL SERVICES WORKER. HE INTERACTS WITH HIM.  
6 THERE IS NO INTERACTION WITH MY CUA WORKER. I'VE  
7 ACTUALLY -- IN THE TIME THAT I HAVE HAD MY BOYS THE LAST  
8 16 MONTHS, I HAVE HAD FOUR CUA WORKERS. THERE IS NO  
9 CONTINUITY, THERE IS NO CONTINUATION OF CARE. MY BOYS  
10 HAVE NO RELATIONSHIP. THERE IS NO TIME TO BUILD A  
11 RELATIONSHIP OR A BOND.

12 Q. AND IN YOUR EXPERIENCE, IS THE CONTINUITY WITH  
13 THE SOCIAL WORKERS AT CATHOLIC SOCIAL SERVICES SOMETHING  
14 UNIQUE?

15 A. ABSOLUTELY.

16 Q. HOW WOULD YOU BE IMPACTED AS A FOSTER MOTHER IF  
17 CATHOLIC HAS TO CLOSE ITS FOSTER PROGRAM?

18 A. I HAVE NO IDEA. I WAS SITTING THERE LISTENING  
19 TO THE OPENING ARGUMENTS AND DIDN'T REALIZE HOW CLOSE  
20 THE DEADLINE WAS AND IT ALMOST BROUGHT TEARS TO MY EYES.  
21 I HAVE NO IDEA WHAT IS GOING TO HAPPEN TO THE CARE OF MY  
22 BOYS OR TO MYSELF OR WHAT DECISION I AM GOING TO HAVE TO  
23 MAKE.

24 Q. HOW WILL YOU BE IMPACTED BY THE LOSS OF SUPPORT,  
25 IF AT ALL?

1 A. I DON'T KNOW WHAT I WOULD DO.

2 Q. WOULD YOU BE ABLE TO CONTINUE AS A FOSTER PARENT  
3 WITH A DIFFERENT AGENCY?

4 A. AGAIN, I AM SITTING HERE QUESTIONING THIS AS I  
5 SIT HERE BECAUSE I CARE ABOUT MY BOYS SO MUCH, SO WHAT  
6 -- IT'S LIKE I AM BEING BACKED INTO A CORNER. WHAT  
7 CHOICE DO I HAVE?

8 Q. WOULD IT BE DIFFICULT FOR YOU AND A LOSS IF YOU  
9 HAD TO CONTINUE AS A FOSTER PARENT WITH A DIFFERENT  
10 AGENCY?

11 A. ABSOLUTELY.

12 Q. HOW HAVE YOU FELT OF THE WAY THAT THE CITY HAS  
13 TREATED CATHOLIC SOCIAL SERVICES OVER THE LAST FEW  
14 MONTHS?

15 MS. CORTES: OBJECTION, YOUR HONOR.

16 THE COURT: SUSTAINED.

17 MS. BARCLAY: THANK YOU, MS. SIMMS-BUSCH.  
18 NO FURTHER QUESTIONS.

19 THE WITNESS: THANK YOU.

20 THE COURT: CROSS-EXAMINE.

21 MS. BARCLAY: YOUR HONOR, PLAINTIFFS  
22 WOULD LIKE TO CALLS SHARONELL FULTON.

23 THE COURT: CROSS-EXAMINE.

24 MS. BARCLAY: SORRY.

25 CROSS EXAMINATION

1 A. ABSOLUTELY.

2 Q. CAN YOU EXPLAIN THAT A LITTLE BIT?

3 A. YES. SO WHEN I DECIDED TO BECOME A FOSTER  
4 PARENT, I --

5 MS. CORTES: YOUR HONOR, I WOULD OBJECT  
6 THAT THIS GOES BEYOND THE SCOPE OF THE CROSS.

7 MS. BARCLAY: YOUR HONOR, SHE --

8 THE COURT: IT DOES NOT.

9 THE WITNESS: WHEN I LOOKED AT BECOMING A  
10 FOSTER PARENT, I REVIEWED MY EXPERIENCE WITH OTHER  
11 AGENCIES. I ACTUALLY WENT TO OTHER AGENCIES. I WENT TO  
12 BETHANY CHRISTIAN SERVICES. I DID NOT FEEL THE SAME  
13 RELATIONSHIP THAT I HAD, EVEN THOUGH PROFESSIONALLY I  
14 HAD A RELATIONSHIP WITH BETHANY, I DID NOT FEEL THAT I  
15 WOULD HAVE THE SAME SUPPORT OR RELATIONSHIP THAT I HAD  
16 WITH CATHOLIC SOCIAL SERVICES. AND I HONESTLY DIDN'T  
17 FEEL LIKE THE CORE BELIEFS WERE THERE. IT IS A  
18 CHRISTIAN AGENCY, BUT IT WASN'T THE ONE THAT I FELT  
19 CALLED TO.

20 BY MS. BARCLAY:

21 Q. WAS THERE ALSO ANYTHING ABOUT THE SUPPORT THAT  
22 YOU ANTICIPATED YOU WOULD RECEIVE FROM CATHOLIC SOCIAL  
23 SERVICES THAT WAS RELEVANT TO YOUR DECISION?

24 A. YES, I KNEW THAT I WOULD RECEIVE SUPPORT THERE  
25 BECAUSE AGAIN OF MY PROFESSIONAL RELATIONSHIPS THAT I

1 Q. HOW LONG HAVE YOU LIVED IN PHILADELPHIA?

2 A. MY WHOLE LIFE.

3 Q. CAN YOU TELL US JUST A LITTLE BIT ABOUT YOUR  
4 EDUCATIONAL BACKGROUND?

5 A. I HAD 16 YEARS OF CATHOLIC EDUCATION, GRADUATED  
6 FROM VILLANOVA UNIVERSITY WITH A BSN.

7 Q. AND DID YOU HAVE ANY WORK EXPERIENCE THAT IS  
8 RELEVANT?

9 A. YES. AFTER GETTING MY DEGREE, I WENT TO  
10 CHILDREN'S HOSPITAL OF PHILADELPHIA, WORKED THERE FOR  
11 TWO YEARS. THEN HAD MY OWN FAMILY AND STAYED IN THE  
12 HOME. MISSED NURSING VERY, VERY MUCH BECAUSE IT'S AN  
13 AVOCATION AND THEN HEARD ABOUT FOSTERING IN CATHOLIC  
14 SOCIAL SERVICES.

15 Q. LET'S TALK ABOUT YOUR TIME AS A FOSTER PARENT.  
16 HOW LONG HAVE YOU BEEN A FOSTER PARENT?

17 A. I HAVE BEEN A FOSTER PARENT FOR 46 YEARS.

18 Q. HOW MANY CHILDREN APPROXIMATELY HAVE YOU  
19 FOSTERED?

20 A. I HAVE FOSTERED 133 CHILDREN.

21 Q. DID YOU EVER ADOPT ANY OF THESE CHILDREN?

22 A. I HAVE ADOPTED SIX.

23 Q. HAVE YOU EVER BEEN RECOGNIZED FOR YOUR CARE BY  
24 THE CITY?

25 A. YES. THREE YEARS AGO IN MAY I RECEIVED A --

1           WHATEVER, A CERTIFICATE STATING THAT THEY RECOGNIZED ME  
2           AS A LOVING, CARING FOSTER PARENT.

3                           MS. BARCLAY:   AND MAY I HAVE PERMISSION  
4           TO APPROACH THE WITNESS, YOUR HONOR?

5                           THE COURT:    YES.

6           BY MS. BARCLAY:

7           Q.            MS. PAUL, I HAVE HANDED YOU WHAT HAS BEEN MARKED  
8           AS PLAINTIFF'S EXHIBIT 1. DO YOU RECOGNIZE THIS  
9           DOCUMENT?

10          A.            YES, I DO.

11          Q.            WHAT IS THIS DOCUMENT?

12          A.            I DIDN'T HEAR WHAT YOU SAID.

13          Q.            WHAT IS THIS DOCUMENT?

14          A.            IT'S A DOCUMENT, A CERTIFICATE OF APPRECIATION  
15          FROM THE CITY OF PHILADELPHIA ISSUED BY DHS, THE  
16          COMMISSIONER AT THAT TIME WAS VANESSA HARLEY WHO  
17          PRESENTED IT TO ME ON MAY 26, 2015.

18          Q.            WHAT DOES THE AWARD SAY THAT IT WAS FOR?

19          A.            EXCUSE ME?

20          Q.            WHAT DOES THE AWARD SAY THAT --

21          A.            THE AWARD SAYS, FOR ANSWERING THE CALL OF OUR  
22          MOST VULNERABLE CHILDREN, FOR HELPING TO RIGHT THE  
23          WRONGS, FOR BEING A SHOULDER TO CRY ON, AND MOST  
24          IMPORTANTLY FOR PROVIDING PHILADELPHIA'S FOSTER CHILDREN  
25          WITH LOVE, COMPASSION AND RESPECT THEY DESERVE. YOU

1 MAKE THE DIFFERENCE IN THE LIVES OF CHILDREN AND YOUTH.

2 MS. BARCLAY: YOUR HONOR, MAY I HAVE  
3 PERMISSION TO ENTER THIS AS EXHIBIT 1 FOR THE PLAINTIFFS  
4 INTO THE RECORD?

5 THE COURT: YES.

6 BY MS. BARCLAY:

7 Q. MS. PAUL, WHAT INFLUENCED YOUR DECISION TO  
8 BECOME A FOSTER PARENT?

9 A. HAVING THE CATHOLIC BACKGROUND, I CHOSE CATHOLIC  
10 SOCIAL SERVICES FOR THE CARING THAT THEY GIVE CHILDREN,  
11 FOR THE COMMITMENT THEY GIVE CHILDREN, AND THE BELIEFS  
12 THAT I BELIEVE IN AND THEY DO TOO.

13 Q. WHAT INFLUENCED YOUR DECISION TO BECOME A FOSTER  
14 PARENT, GENERALLY?

15 A. BECAUSE I FEEL THAT I HAVE BEEN GIVEN A GIFT  
16 FROM GOD TO HELP CHILDREN AND CARE FOR THEM AND LOVE  
17 THEM ALONG WITH MY OWN CHILDREN WHO ALSO ACCEPT THEM AND  
18 LOVE THEM.

19 Q. IN ADDITION TO YOUR -- YOU MENTIONED EARLIER  
20 THAT YOU HAD A PEDIATRIC NURSING BACKGROUND. WAS THAT  
21 RELEVANT AT ALL?

22 A. CERTAINLY, BECAUSE I HAD A LOT OF TRAINING WITH  
23 CHILDREN, ESPECIALLY AT CHILDREN'S HOSPITAL, AND WANTED  
24 TO KEEP THAT GOING. EVEN THOUGH I COULDN'T DO IT ON A  
25 PROFESSIONAL LEVEL AS A NURSE IN A HOSPITAL, I COULD DO

1 IT IN MY HOME.

2 Q. CAN YOU TELL US ABOUT THE TYPE OF SUPPORT YOU  
3 RECEIVED FROM CATHOLIC SOCIAL SERVICES?

4 A. THE KIND OF SUPPORT I RECEIVED FROM THEM IS  
5 EXCELLENT. THEY ARE ALWAYS THERE FROM -- FOR ME NO  
6 MATTER WHAT KIND OF QUESTION I MIGHT HAVE, THEY ARE  
7 ALWAYS THERE TO ANSWER AND CARE -- YOU KNOW, COME OUT.  
8 IF I NEED THEIR HELP FACE-TO-FACE OR ON THE PHONE, THEY  
9 ARE THERE.

10 Q. ARE YOU CURRENTLY RECEIVING NORMAL REFERRALS FOR  
11 FOSTER CHILDREN?

12 A. NO.

13 Q. WHEN DID THE LAST FOSTER CHILD LEAVE YOUR HOME?

14 A. IN EARLY APRIL.

15 Q. SO YOU HAVE NOT RECEIVED ANY NORMAL FOSTER CARE  
16 REFERRALS SINCE APRIL?

17 A. NO REFERRALS, NO.

18 Q. HAVE YOU EVER GONE WITHOUT FOSTER CARE REFERRALS  
19 FOR THIS LONG?

20 A. NOT USUALLY, NO.

21 Q. HOW HAVE YOU FELT NOT BEING ABLE TO CARE FOR  
22 FOSTER CHILDREN?

23 A. I FEEL VERY LOST, VERY LOST BECAUSE I CAN'T USE  
24 THE TALENT THAT WAS GIVEN TO ME TO HELP WITH THESE  
25 CHILDREN WHO ARE OUT THERE, MAINLY INFANTS THAT I GET

1 WHO ARE DRUG ADDICTED, WHO COME INTO MY HOME AND NEED A  
2 LOT OF CARE, WHICH I AM MORE THAN HAPPY TO GIVE, AND MY  
3 FAMILY ALSO IS INVOLVED IN GIVING, AND NOT ABLE TO DO IT  
4 LEAVES ME VERY UPSET.

5 Q. HAVE YOU EVER FOSTERED TEEN CHILDREN IN THE  
6 PAST?

7 A. YES, I HAVE.

8 Q. ARE YOU INTERESTED IN FOSTERING ANY ADDITIONAL  
9 CHILDREN IN THE FUTURE?

10 A. I AM, YES.

11 Q. HOW WOULD IT IMPACT YOU IF CATHOLIC SOCIAL  
12 SERVICES HAD TO CLOSE ITS FOSTER CARE PROGRAM?

13 A. I WOULD REALLY HAVE TO GIVE IT A LOT OF THOUGHT.  
14 I DON'T KNOW WHETHER I COULD BE ABLE TO GO TO ANOTHER  
15 AGENCY. THEY ARE LIKE FAMILY TO ME, CATHOLIC SOCIAL  
16 SERVICES. AND THAT'S HARD TO START OVER AGAIN AND HAVE  
17 THAT FEELING THAT I HAVE FOR THEM.

18 Q. HOW DO YOU THINK YOU WOULD BE AFFECTED BY THE  
19 LOSS OF SERVICES THAT YOU RELY ON?

20 A. FROM CATHOLIC SOCIAL SERVICES YOU MEAN?

21 Q. YES.

22 A. I DON'T KNOW. I DON'T WHAT KIND OF SERVICE I  
23 COULD RECEIVE FROM OTHER AGENCIES BECAUSE I DON'T KNOW  
24 -- YOU KNOW, OTHER AGENCIES. THIS IS THE ONLY ONE I  
25 HAVE EVER WORKED WITH.

1 Q. WOULD IT BE A LOSS TO YOU THE RELATIONSHIPS THAT  
2 YOU HAVE?

3 A. IF I WOULD CHOOSE -- YES, IT IS, JUST TO END IT,  
4 THAT'S AN ENDING AND THAT WOULD BE VERY, VERY HARMFUL.

5 MS. BARCLAY: NO FURTHER QUESTIONS, YOUR  
6 HONOR.

7 THE COURT: CROSS-EXAMINE

8 MS. CORTES: NO QUESTIONS.

9 THE COURT: OKAY. THANK YOU, MA'AM, YOU  
10 MAY STEP DOWN.

11 THE WITNESS: THANK YOU.

12 MS. BARCLAY: PLAINTIFFS WOULD LIKE TO  
13 CALL MRS. SHARONELL FULTON TO THE STAND.

14 MS. CORTES: YOUR HONOR, I WOULD LIKE TO  
15 ASK FOR AN OFFER OF PROOF AT THIS POINT.

16 THE COURT: CAN YOU PROVIDE COUNSEL WITH  
17 A PRIVATE OFFER?

18 (BRIEF PAUSE IN THE PROCEEDING.)

19 THE COURT: ARE WE READY TO PROCEED?

20 MS. BARCLAY: YES, YOUR HONOR.

21 (WITNESS SWORN.)

22 THE WITNESS: MY NAME IS SHARONELL,  
23 S-H-A-R-O-N-E-L-L, LAST NAME FULTON, F-U-L-T-O-N.

24 DIRECT EXAMINATION

25 BY MS. BARCLAY:

1 Q. MS. FULTON, WHAT IS YOUR CURRENT RELATIONSHIP TO  
2 CATHOLIC SOCIAL SERVICES?

3 A. I AM CURRENTLY A FOSTER PARENT WITH CATHOLIC  
4 SOCIAL SERVICES.

5 Q. AND WHAT CITY DO YOU CURRENTLY LIVE?

6 A. PHILADELPHIA.

7 Q. AND HOW LONG HAVE YOU LIVED THERE?

8 A. MOST OF MY LIFE.

9 Q. HOW LONG HAVE YOU BEEN A FOSTER PARENT?

10 A. FOR 26 YEARS.

11 Q. AND HOW MANY CHILDREN HAVE YOU FOSTERED OVER THE  
12 YEARS?

13 A. 40.

14 Q. HOW DID YOUR RELIGIOUS BELIEFS IF AT ALL  
15 MOTIVATE YOUR DESIRE TO BECOME A FOSTER PARENT?

16 A. WELL, I STARTED THINKING ABOUT IT IN THE EARLY  
17 '90'S AND I KEPT SEEING THE COMMERCIAL. SO BECAUSE I AM  
18 CATHOLIC, I WENT TO CHURCH AND I PRAYED ABOUT IT AND I  
19 BELIEVE THAT IT WAS MY FAITH THAT LED ME TO IT.

20 Q. WHAT LED YOU TO CHOOSE CATHOLIC SOCIAL SERVICES  
21 AS THE AGENCY THAT YOU WORK WITH?

22 A. WELL, BECAUSE I WENT TO CHURCH, I GO TO A  
23 CATHOLIC CHURCH AND I HAVE FOR 55 YEARS, SO I DECIDED  
24 THAT I WOULD START THERE BECAUSE THEY SHARE THE VALUES.  
25 I SHARE THE SAME VALUES.

1 Q. CAN YOU TELL US A LITTLE BIT ABOUT, ASIDE FROM  
2 THE SHARED VALUES, SOME OF THE SUPPORT THAT YOU RECEIVE  
3 FROM CATHOLIC SOCIAL SERVICES?

4 A. WELL, WHEN I BECAME A FOSTER PARENT IN 1992, IT  
5 WAS A LOT DIFFERENT THAN IT IS TODAY. THE SUPPORT WAS  
6 THERE, IT WAS LIKE FAMILY. WHENEVER I HAD A PROBLEM,  
7 AND YOU WILL HAVE PROBLEMS, I WAS ABLE TO CALL ANY HOUR  
8 OF THE NIGHT. MRS. FULTON, YES. THIS IS HAPPENING,  
9 THAT IS HAPPENING, HOW AM I SUPPOSED TO HANDLE THIS,  
10 CHILDREN WANTING TO KILL ONE ANOTHER AND VARIOUS  
11 DIFFERENT PROBLEMS. I ALWAYS GOT THE SUPPORT THAT I  
12 NEEDED, AND THE RESPECT.

13 Q. WHAT SORT OF TRAINING HAVE YOU RECEIVED FROM  
14 CATHOLIC SOCIAL SERVICES THAT HAS HELPED YOU ADDRESS  
15 SPECIAL NEEDS OF CHILDREN YOU CARE FOR?

16 A. THEY ALWAYS OFFER IN-SERVICES THAT -- IT WAS  
17 MANDATORY THAT WE TAKE AND THEY TRY TO SCHEDULE  
18 EDUCATORS TO COME IN TO ADDRESS SOME OF THE MANY  
19 PROBLEMS THAT THE FOSTER PARENT WAS HAVING.

20 Q. ARE YOU INTERESTED IN FOSTERING MORE CHILDREN IN  
21 THE FUTURE?

22 A. YES.

23 Q. ARE YOU CURRENTLY CARING FOR ANY FOSTER  
24 CHILDREN?

25 A. YES. I HAVE A BROTHER AND SISTER, 4 AND 5 YEARS

1 OLD, THAT HAVE BEEN WITH ME FOR NINE MONTHS.

2 Q. ARE THERE THINGS THAT CATHOLIC SOCIAL SERVICES  
3 DOES TO HELP YOU CARE FOR THE SPECIAL NEEDS OF THESE  
4 CHILDREN?

5 A. ABSOLUTELY. THEY SUPPORT ME, THEY PROVIDE ME  
6 WITH RESOURCES, THEY PUSH ME IN THE DIRECTION WHERE I  
7 CAN GET ADDITIONAL EDUCATION, AND THEY VISIT OFTEN.

8 Q. HAVE YOU EVER RECEIVED TRAINING FROM ANOTHER  
9 AGENCY?

10 A. YES. SOME YEARS AGO I RECEIVED SERVICE FROM THE  
11 DHS. THEY CALLED US ALL IN AND WE WENT IN FOR AN  
12 IN-SERVICE THERE, AND I FELT VERY SAD BECAUSE THE FIRST  
13 THING THE INSTRUCTOR SAID WAS, KEEP IN MIND THAT THESE  
14 ARE NOT YOUR CHILDREN, YOU ARE JUST A SURROGATE. AND I  
15 FELT THAT WAS VERY COLD TO START THE DAY BECAUSE I  
16 THOUGHT OF MYSELF OF A LITTLE MORE THAN WHAT SHE WAS  
17 PROJECTING.

18 Q. HOW IF AT ALL DID THAT COMPARE WITH HOW SOCIAL  
19 WORKERS AT CATHOLIC TREAT YOU?

20 A. WELL, I KNOW THIS, WHEN WE HAVE SERVICES THERE,  
21 WE START WITH PRAYER. AND TO ME THAT SETS THE PLATFORM  
22 FOR A GOOD START.

23 Q. AND WHAT SORT OF RELATIONSHIPS DO YOU HAVE WITH  
24 THE SOCIAL WORKERS AT CATHOLIC SOCIAL SERVICES?

25 A. I CARE ABOUT ALL OF THEM.

1 Q. HOW DO THEY TREAT YOU?

2 A. GOOD. GOOD. IT'S A FAMILY AFFAIR.

3 Q. DOES ANYONE YOU KNOW WORK WITH OTHER AGENCIES?

4 A. I KNOW MANY OTHER FOSTER PARENTS FOR BELONGING  
5 TO PIN, PARENT INVOLVED NETWORK, AND THEY DON'T HAVE THE  
6 SAME --

7 MS. CORTES: OBJECTION, YOUR HONOR,  
8 SPECULATION.

9 THE COURT: SUSTAINED.

10 MS. CORTES: LACK OF PERSONAL KNOWLEDGE.  
11 I ASK THAT HER ANSWER BE STRICKEN.

12 THE COURT: IT IS STRICKEN.

13 MS. BARCLAY: YOUR HONOR, THIS NOT BEING  
14 OFFERED FOR THE TRUTH OF THE MATTER, BUT FOR THE  
15 INFLUENCE IT IS GOING TO HAVE ON MS. FULTON AND HER  
16 DECISIONS MOVING FORWARD AS FAR AS WHAT SHE CAN DO AS A  
17 FOSTER PARENT.

18 THE COURT: SUSTAINED.

19 BY MS. BARCLAY:

20 Q. HOW WOULD YOU BE IMPACTED IF CATHOLIC SOCIAL  
21 SERVICES HAD TO CLOSE ITS PROGRAM?

22 A. I HAVE BEEN THINKING ABOUT THIS AND I DON'T  
23 KNOW. I WOULD BE DEVASTATED.

24 Q. HOW DO YOU THINK THE CHILDREN IN YOUR CARE COULD  
25 BE IMPACTED IF CATHOLIC SOCIAL SERVICES HAD TO CLOSE THE

1 FOSTER PROGRAM?

2 MS. CORTES: OBJECTION, YOUR HONOR.

3 SPECULATION, LACK OF PERSONAL KNOWLEDGE. SHE IS ASKING  
4 ABOUT --

5 THE COURT: I THINK SHE CAN ANSWER AS TO  
6 WHAT MIGHT PHYSICALLY HAPPEN, BUT ANY KIND OF EMOTIONAL  
7 IMPACT SHE CAN'T ANSWER.

8 MS. BARCLAY: IF I COULD PROFFER WHAT SHE  
9 WOULD TALK ABOUT. SHE WAS GOING TO TALK ABOUT WHAT SHE  
10 UNDERSTANDS HER THERAPIST HAS SAID ABOUT WHAT THE IMPACT  
11 WOULD BE THE CHILDREN.

12 MS. CORTES: OBJECTION, YOUR HONOR.

13 THE COURT: SUSTAINED.

14 MS. BARCLAY: AND ALSO A TIME IN THE PAST  
15 IMPACT, YOUR HONOR, THAT WE WILL DISCUSS AS FAR AS THE  
16 EFFECT ON CHILDREN.

17 THE COURT: I AM SUSTAINING THE  
18 OBJECTION.

19 BY MS. BARCLAY:

20 Q. WHAT YOU UNDERSTAND TO BE THE PHYSICAL IMPACT ON  
21 THE CHILDREN IN YOUR CARE IF CATHOLIC SOCIAL SERVICES  
22 CLOSED ITS PROGRAM?

23 A. WELL, THE TWO CHILDREN THAT I HAVE NOW WOULD BE  
24 GREATLY IMPACTED BECAUSE WHEN I GOT THESE TWO LITTLE  
25 SISTER AND BROTHER, THEY DIDN'T TRUST, THEY WOULD NOT

1 EAT, IT WAS AWAY FROM THEIR ORDINARY TO BE PLACED WITH  
2 ME, BUT I HAD TO GAIN THEIR TRUST. I HAD --

3 THE COURT: THEY WOULD END UP MOVING?

4 THE WITNESS: YES, THEY WOULD END UP  
5 MOVING.

6 BY MS. BARCLAY:

7 Q. WAS THERE A TIME IN THE PAST WHEN YOU WERE  
8 WORRIED THAT ONE OF THE CHILDREN IN YOUR CARE MAY END UP  
9 MOVING?

10 A. YES.

11 Q. WAS THERE ANY DIFFICULTY IN FINDING A POTENTIAL  
12 PLACEMENT FOR HIM?

13 A. THERE WAS DIFFICULTY. I WAS TOLD THAT THEY DID  
14 NOT HAVE A PLACEMENT FOR HIM AND YOU NORMALLY HAVE TO  
15 GIVE 30 DAYS AND IT HAS BEEN SIX MONTHS.

16 Q. SO AFTER SIX MONTHS THE CITY WAS NOT AWARE OF  
17 ANY OTHER POTENTIAL PLACEMENT FOR THIS CHILD?

18 A. NO.

19 MS. BARCLAY: NO FURTHER QUESTIONS, YOUR  
20 HONOR.

21 THE COURT: CROSS-EXAMINE.

22 MS. CORTES: VERY BRIEFLY, YOUR HONOR.

23 CROSS-EXAMINATION

24 BY MS. CORTES:

25 Q. GOOD AFTERNOON, MS. FULTON.

1 A. YES.

2 Q. WILL YOU PLEASE INFORM THE COURT AS TO THAT?

3 MS. BARCLAY: OBJECTION, YOUR HONOR, AS  
4 TO SPECULATION.

5 THE COURT: WELL, OVERRULED. YOU JUST  
6 SAID INFORM, YOU DIDN'T SAY REASONS WHY.

7 MS. OLIVER: THANK YOU, YOUR HONOR.

8 BY MS. OLIVER:

9 Q. WILL YOU PLEASE PROVIDE THE COURT WITH REASONS  
10 AS TO WHY SOME FOSTER PARENTS CHANGE AGENCIES?

11 MS. BARCLAY: OBJECTION, YOUR HONOR, FOR  
12 SPEAKING ABOUT INFORMING AND THAT IS HEARSAY OF THIRD  
13 PARTIES.

14 BY MS. OLIVER:

15 Q. TO YOUR KNOWLEDGE AS THE DEPUTY --

16 THE COURT: OVERRULED.

17 MS. OLIVER: THANK YOU.

18 THE WITNESS: CAN YOU REPEAT THE  
19 QUESTION?

20 BY MS. OLIVER:

21 Q. WHY DO SOME FOSTER PARENTS CHANGE AGENCIES?

22 A. TO MY KNOWLEDGE AND IN MY EXPERTISE, THE REASON  
23 WHY FOSTER PARENTS CHANGE AGENCIES IS SOMETIMES THERE  
24 MAY BE DISSATISFACTION WITH A PARTICULAR FOSTER CARE  
25 AGENCY. OTHER TIMES THEY MAY HAVE A YOUNG PERSON IN

1           THEIR HOME WHO IS IN NEED OF SPECIALIZED SERVICES, SUCH  
2           AS SPECIALIZED BEHAVIORAL HEALTH, BECAUSE THEY HAVE A  
3           BEHAVIORAL HEALTH NEED THAT EXCEEDS THE EXPERTISE OF  
4           PARTICULAR FOSTER CARE AGENCIES. IN EITHER SITUATION,  
5           WE TRY TO OBTAIN OR WE DO OBTAIN AT THE DEPARTMENT A  
6           REASON WHY THE FOSTER PARENT WANTS TO TRANSFER. IF IT  
7           IS DISSATISFACTION FOR OUR FOSTER CARE AGENCY, THEN WE  
8           TRY TO RESOLVE THOSE DIFFERENCES BETWEEN THE FOSTER  
9           PARENT AS WELL AS THE AGENCY. IF IT IS BECAUSE A YOUNG  
10          PERSON NEEDS A HIGHER LEVEL OF CARE, WE ASK THE FOSTER  
11          PARENT IF THEY ARE WILLING TO CONTINUE TO CARE FOR THE  
12          YOUNG PERSON. IF THEY ARE WILLING TO CARE FOR THE YOUNG  
13          PERSON, THEN AS OPPOSED TO ALLOWING THE YOUNG PERSON TO  
14          DISRUPT FROM THE FOSTER HOME IN WHICH WE WOULD HAVE TO  
15          REMOVE THE CHILD FROM THE FOSTER HOME, WE TRANSFER THAT  
16          ENTIRE FOSTER HOME TO A DIFFERENT PROVIDER AGENCY.

17          Q.           SO IN OTHER WORDS, IS IT YOUR TESTIMONY THAT IF  
18          A FOSTER PARENT CHANGES AGENCIES, THAT DOES NOT  
19          NECESSITATE THE DISRUPTION IN THAT CHILD'S PLACEMENT?

20          A.           ABSOLUTELY. THE FIRST THING WE ASK FOSTER  
21          PARENTS WHO HAVE CHILDREN IN THEIR HOME IS WHETHER OR  
22          NOT THEY WILL BE WILLING TO CONTINUE TO FOSTER THAT  
23          CHILD OR YOUTH BECAUSE WE WANT TO MINIMIZE AND AVOID  
24          DISRUPTIONS.

25          Q.           AND IF WE CAN GO BACK FOR JUST A MOMENT BECAUSE

1 MS. OLIVER: MAY I HAVE A MOMENT, PLEASE?

2 THE COURT: YES.

3 (BRIEF PAUSE IN THE PROCEEDING.)

4 MS. OLIVER: COULD YOU PLEASE AGAIN STATE  
5 WHAT YOU ARE REFERRING HER TO?

6 BY MS. BARCLAY:

7 Q. MS. ALI, IF I COULD TURN YOUR ATTENTION TO THE  
8 BOTTOM OF PAGE 27 OF DOCUMENT ECF 13-3. THIS SAYS:  
9 PROVIDER ORGANIZATIONAL OVERVIEW. THE MISSION  
10 STATEMENT. CATHOLIC SOCIAL SERVICES OF THE ARCHDIOCESE  
11 OF PHILADELPHIA CONTINUES TO WORK -- THE WORK OF JESUS  
12 BY AFFIRMING, ASSISTING, AND ADVOCATING FOR INDIVIDUALS,  
13 FAMILIES, AND COMMUNITIES. THE VISION AND VALUE  
14 STATEMENT OF CATHOLIC SOCIAL SERVICES.

15 THEN IT GOES ON TO TALK ABOUT THE WAYS  
16 THAT -- IF YOU TURN TO THE NEXT PAGE -- CATHOLIC SOCIAL  
17 SERVICES EXISTS TO TRANSFORM LIVES AND TO BRING ABOUT A  
18 JUST AND COMPASSIONATE SOCIETY WHERE EVERY INDIVIDUAL IS  
19 VALUED, FAMILIES ARE HEALTHY AND STRONG, AND COMMUNITIES  
20 ARE UNITED IN THEIR COMMITMENT TO THE GOOD OF ALL. WE  
21 ENVISION A WORLD TOUCHED BY GOD'S MERCY WHERE POVERTY  
22 AND NEED ARE ALLEVIATED AND THE PEOPLE SHARE JUSTLY THE  
23 BLESSINGS OF CREATION.

24 AND THEN IF I COULD TURN YOUR ATTENTION,  
25 MS. ALI -- DID I READ THAT CORRECTLY?

1 A. YES.

2 Q. IF I COULD TURN YOUR ATTENTION TO DOCUMENT ECF  
3 13-3, PAGE 38. THIS IS AN ORGANIZATIONAL CHART, AND IT  
4 SAYS: CATHOLIC SOCIAL SERVICES. ARCHDIOCESE OF  
5 PHILADELPHIA. ORGANIZATIONAL STRUCTURE.

6 IS IT POSSIBLE THAT --

7 MS. OLIVER: NO. EXCUSE ME. WE DON'T  
8 SEEM TO HAVE THAT. OURS GOES TO 37.

9 MS. BARCLAY: IT'S RIGHT HERE.

10 BY MS. BARCLAY:

11 Q. IS IT POSSIBLE THAT THE RELIGIOUS NATURE OF  
12 CATHOLIC SOCIAL SERVICES ALLOWS IT TO REACH DIFFERENT  
13 POPULATIONS AND DIFFERENT FAMILIES IN UNIQUE WAYS?

14 A. ASK THE QUESTION -- CAN YOU REPEAT THAT  
15 QUESTION?

16 MS. OLIVER: IS THAT A QUESTION?

17 BY MS. BARCLAY:

18 Q. IS IT POSSIBLE THAT THE RELIGIOUS NATURE AND  
19 MISSION OF CATHOLIC SOCIAL SERVICES ALLOWS IT TO REACH  
20 DIFFERENT UNIQUE FAMILIES IN UNIQUE WAYS COMPARED TO  
21 OTHER AGENCIES?

22 MS. OLIVER: OBJECTION; CALLS FOR  
23 SPECULATION.

24 THE COURT: SUSTAINED.

25

1 BY MS. BARCLAY:

2 Q. SO YOU ARE NOT AWARE OF ANY PERSONALLY?

3 A. I DON'T -- I DON'T KNOW.

4 Q. YOU ARE FAMILIAR WITH DHS'S OPERATIONS,  
5 POLICIES, AND PROCEDURES, INCLUDING THE PRACTICES THAT  
6 ARE THE SUBJECT OF THIS ACTION?

7 A. YES.

8 Q. THE DHS FOSTER CARE CONTRACT SAYS THAT, QUOTE,  
9 THE PROVIDER SHALL NOT REJECT A CHILD OR FAMILY FOR  
10 SERVICES BASED UPON THE LOCATION OR CONDITION OF THE  
11 FAMILY'S RESIDENCE, THEIR ENVIRONMENTAL OR SOCIAL  
12 CONDITION, OR FOR ANY OTHER REASON IF THE PROFILES OF  
13 SUCH CHILD OR FAMILY ARE CONSISTENT WITH THE PROVIDER'S  
14 SCOPE OF SERVICES OR DHS'S APPLICABLE STANDARDS AS  
15 LISTED IN THE PROVIDER AGREEMENT, UNLESS THE EXCEPTION  
16 IS GRANTED BY THE COMMISSIONER OR THE COMMISSIONER'S  
17 DESIGNEE IN HIS SOLE DISCRETION.

18 MY QUESTION IS: THIS PARAGRAPH IS  
19 DEALING WITH A REJECTION OF REFERRALS, CORRECT?

20 A. YES.

21 Q. AND THIS IS REFERRING TO A REJECTION OF A  
22 REFERRAL FROM DHS, CORRECT?

23 A. YES.

24 Q. NON-RELATIVE FAMILY MEMBERS GENERALLY APPROACH  
25 FOSTER AGENCIES ABOUT BECOMING FOSTER PARENTS.

1 SO WE LEAD WITH THE NEEDS OF THE PARTICULAR CHILD.

2 Q. LET'S ASSUME THAT THERE WAS A FAMILY THAT WAS  
3 PRIMARILY SPANISH SPEAKING. DHS WOULD CONSIDER THAT IN  
4 A KIN CARE REFERRAL AS FAR AS REFERRING TO AN AGENCY  
5 THAT WAS ABLE TO COMMUNICATE WITH THE FAMILY AND THE  
6 CHILD, CORRECT?

7 A. IT WOULD DEPEND.

8 Q. SO YOU WOULD REFER A SPANISH-SPEAKING FAMILY TO  
9 ANOTHER AGENCY THAT DIDN'T COMMUNICATE WITH THEM?

10 A. IF THE PARTICULAR AGENCY HAS SPANISH-SPEAKING  
11 STAFF, THEN WE WOULD MAKE THAT REFERRAL TO THAT  
12 PARTICULAR AGENCY.

13 Q. AND THAT WOULD BE A CONSIDERATION?

14 A. THAT WOULD BE A CONSIDERATION.

15 Q. THIS PARAGRAPH ALSO REFERS TO A PROVIDER'S SCOPE  
16 OF SERVICES. PROVIDERS ARE REQUIRED TO COMPLY WITH  
17 STATE LAW, CORRECT?

18 A. WHICH DOCUMENT ARE YOU REFERRING TO?

19 Q. IF YOU WANT TO TURN TO -- THIS IS ECF 13-4 OF  
20 THE DOCUMENT YOU HAVE IN FRONT OF YOU AT PAGES 14 TO 15.

21 MS. OLIVER: COULD COUNSEL PLEASE STATE  
22 AGAIN WHICH DOCUMENT YOU ARE REFERRING TO.

23 MS. BARCLAY: THIS IS THE CONTRACT.

24 MS. OLIVER: AND THE SPECIFIC PAGE AND  
25 SECTION?

1 A. IT'S NOT TRUE.

2 Q. BEHAVIOR ISSUES ARE ONES THAT REQUIRE ADDITIONAL  
3 EXPERTISE PROVIDED BY CERTAIN AGENCIES, CORRECT?

4 A. DEPENDING ON THE LEVEL OF BEHAVIORAL HEALTH  
5 NEEDS OF THE YOUNG PERSON.

6 Q. BUT YOU HAVE PREVIOUSLY SAID UNDER OATH THAT  
7 BEHAVIORAL ISSUES REQUIRE ADDITIONAL EXPERTISE THAT CAN  
8 BETTER BE PROVIDED SOMETIMES BY ANOTHER AGENCY.

9 A. I ACTUALLY SAID SPECIALIZED BEHAVIORAL HEALTH,  
10 WHICH IS DIFFERENT FROM THE BROADER BEHAVIORAL HEALTH.  
11 YOUNG PEOPLE WHO COME INTO PLACEMENT BECAUSE OF THE  
12 TRAUMA THAT THEY SUFFER MORE OFTEN THAN NOT HAVE SOME  
13 BEHAVIORAL HEALTH NEEDS, WHICH WOULD BE SEPARATE AND  
14 APART FROM SPECIALIZED BEHAVIORAL HEALTH, WHICH IS  
15 OFTENTIMES A DIAGNOSIS, PRESCRIPTION MEDICATION, THE  
16 FOSTER PARENT HAS TO MAINTAIN MEDICATION LOGS. SO THAT  
17 IS DIFFERENT FROM JUST BEHAVIORAL HEALTH.

18 Q. OKAY. SO SPECIALIZED BEHAVIORAL HEALTH IS AN  
19 ISSUE THAT REQUIRES ADDITIONAL EXPERTISE BY AN AGENCY?

20 A. YES.

21 Q. SUCH AGENCIES HAVE TO OFFER PARENTS SPECIALIZED  
22 TRAINING, RIGHT?

23 A. YES.

24 Q. THEY ALSO HAVE TO MEET ADDITIONAL REQUIREMENTS  
25 WITH REGARD TO STAFF?

1 A. YES.

2 Q. THESE AGENCIES HAVE AN ADD-ON CONTRACT WITH THE  
3 CITY THAT LETS THEM PROVIDE THOSE SPECIALIZED BEHAVIORAL  
4 HEALTH SERVICES FOR THOSE CHILDREN, CORRECT?

5 A. YES.

6 Q. FOR INSTANCE, ONE AGENCY THAT HAS THOSE  
7 BEHAVIORAL HEALTH ADD-ON CONTRACTS IS DEVEREUX?

8 A. YES.

9 Q. SOME FOSTER PARENTS MIGHT ONLY BE INTERESTED IN  
10 FOSTERING A CHILD WITH THOSE SORT OF SPECIALIZED  
11 BEHAVIORAL ISSUES. IF SUCH A PARENT SHOWED UP AT AN  
12 AGENCY WITHOUT THAT SPECIALTY IN THAT CONTRACT, THEN  
13 THAT AGENCY WOULD NEED TO REFER THAT FAMILY TO AN AGENCY  
14 WITH A CONTRACT LIKE DEVERO, RIGHT?

15 A. IF THE FOSTER PARENT IS REQUESTING THAT.

16 Q. RIGHT.

17 A. YES.

18 Q. IF THE FOSTER PARENT IS REQUESTING TO FOSTER A  
19 CHILD WITH SPECIALIZED BEHAVIORAL HEALTH ISSUES.

20 A. SO WHAT WE WOULD ASK THE FOSTER CARE PROVIDER  
21 AGENCY TO DO IS EXPLAIN TO THE POTENTIAL FOSTER PARENT  
22 ABOUT THE TYPE OF YOUNG PEOPLE THAT THEY PROVIDE FOSTER  
23 CARE FOR, AND IF THE FOSTER PARENT DOES NOT WANT TO  
24 FOSTER WITH THAT PARTICULAR AGENCY, THEN IT WOULD BE  
25 THEIR CHOICE TO FOSTER FOR ANOTHER AGENCY.

1 Q. AND SO IF THEY ONLY WANTED TO FOSTER YOUNG  
2 PEOPLE WITH THAT SPECIALIZED BEHAVIORAL HEALTH ISSUE,  
3 THEY WOULD NEED TO BE REFERRED TO AN AGENCY WITH THAT  
4 SPECIALTY?

5 A. YES.

6 Q. HAVE YOU GRANTED A FORMAL EXCEPTION FOR THESE  
7 TYPES OF REFERRALS?

8 THE COURT: FORMAL EXCEPTION, THAT IS  
9 ASSUMING THAT AN EXCEPTION IS NECESSARY OR REQUIRED.

10 MS. BARCLAY: I AM NOT ASSUMING THAT AN  
11 EXCEPTION IS REQUIRED. I AM ASKING IF AN EXCEPTION HAS  
12 EVER BEEN GRANTED. THAT YOU ARE AWARE OF.

13 THE COURT: WELL, UNDER THE CIRCUMSTANCES  
14 THAT YOU HAVE OUTLINED, YOU ARE ASSUMING THAT ONE IS  
15 REQUIRED.

16 BY MS. BARCLAY:

17 Q. IS AN EXCEPTION REQUIRED FROM THE DHS POLICY WE  
18 WERE DISCUSSING EARLIER?

19 THE COURT: IF?

20 BY MS. BARCLAY:

21 Q. TO REFER A FAMILY TO A DIFFERENT AGENCY WITH THE  
22 SPECIALIZED BEHAVIORAL HEALTH SPECIALTY.

23 A. I GUESS THE DIFFICULTY THAT I AM HAVING IS THAT  
24 THIS SPEAKS TO FOSTER PARENTS WHO ARE -- WHO --  
25 INDIVIDUALS WHO ARE ALREADY FOSTER PARENTS AND NOT A

1 POTENTIAL .

2 Q. NO, MY HYPOTHETICAL IS ASSUMING PROSPECTIVE  
3 FOSTER PARENTS WHO ARE ONLY INTERESTED IN FOSTERING  
4 YOUTH WITH SPECIALIZED BEHAVIORAL HEALTH ISSUES. SO IT  
5 DOES NOT REQUIRE A FORMAL EXCEPTION IN ORDER FOR AN  
6 AGENCY TO REFER THEM TO A DIFFERENT AGENCY IF THEY COULD  
7 PROVIDE THAT BEHAVIORAL HEALTH EXPERTISE, DOES IT?

8 A. NO.

9 Q. ONLY CERTAIN AGENCIES ARE ALLOWED TO CARE FOR  
10 FOSTER CHILDREN WITH CERTAIN SPECIALIZED MEDICAL ISSUES,  
11 RIGHT?

12 A. DEPENDS, AGAIN. AND IT DEPENDS ON THE LEVEL OF  
13 MEDICAL NEED. FOR EXAMPLE, A MEDICAL ONE IN WHICH A  
14 YOUNG PERSON MAY HAVE ASTHMA, FOR EXAMPLE, COULD BE  
15 CARED FOR BY A GENERAL FOSTER CARE FOSTER PARENT.

16 Q. SO -- BUT THERE ARE SOME MEDICAL NEEDS THAT CAN  
17 ONLY BE PROVIDED FOR BY AN AGENCY WITH THAT SPECIALTY,  
18 CORRECT?

19 A. YES.

20 Q. AND THESE AGENCIES ALSO HAVE TO RECEIVE AN  
21 ADDITIONAL LICENSE THROUGH THE STATE OFFICE OF MEDICAL  
22 ASSISTANCE?

23 A. YES.

24 Q. THEY THEN RECEIVE AN ADDITIONAL LINE ITEM,  
25 ADD-ON ON THE FOSTER CARE CONTRACT, TO PROVIDE THESE

1 SPECIAL MEDICAL SERVICES, RIGHT?

2 A. I AM NOT COMPLETELY FAMILIAR WITH THE LINE ITEM.

3 Q. JEWISH FAMILY CHILDREN SERVICES IS ONE AGENCY  
4 THAT HAS THIS MEDICAL EXPERTISE THAT THEY PROVIDE FOR  
5 FAMILIES, CORRECT?

6 A. YES.

7 Q. SOME FOSTER PARENTS -- PROSPECTIVE FOSTER  
8 PARENTS MIGHT ONLY WANT TO FOSTER A CHILD WITH  
9 PARTICULAR MEDICAL ISSUES, RIGHT?

10 A. YES.

11 Q. IF SUCH A PARENT SHOWED UP IN AN AGENCY THAT  
12 DIDN'T HAVE THIS SPECIAL CONTRACT, THEY WOULD NEED TO BE  
13 REFERRED TO AN AGENCY LIKE JEWISH FAMILY THAT DOES HAVE  
14 THAT EXPERTISE, CORRECT?

15 A. WE WOULD ASK THE FOSTER CARE PROVIDER AGENCY TO  
16 EXPLAIN THE CHILDREN THAT THEY SERVICE, SOME OF WHICH  
17 WILL BE MEDICAL LEVEL ONE, AND LET THE FOSTER PARENT  
18 DECIDE WHETHER OR NOT THEY WANT TO TRANSFER -- POTENTIAL  
19 FOSTER PARENT, WHETHER OR NOT THEY WANT TO PROVIDE  
20 FOSTER CARE FOR MEDICAL AGENCY.

21 Q. BUT IF THEY ONLY WANTED TO FOSTER YOUTH WITH  
22 THIS SPECIALIZED MEDICAL ISSUE, THERE ARE SOME AGENCIES  
23 THAT THEY CANNOT RECEIVE THAT SERVICE FROM, CORRECT?

24 A. CORRECT.

25 Q. AND SO IF THEY WANTED TO BE FOSTER PARENTS, THEY

1 FOSTER CHILD PLACEMENT, CORRECT?

2 A. YES.

3 Q. AND YOU WEREN'T THERE, AT DHS --

4 MS. OLIVER: OBJECTION, YOUR HONOR. THIS  
5 LINE OF QUESTIONING IS BEYOND THE SCOPE OF DIRECT.

6 MS. BARCLAY: THIS LINE OF QUESTIONING IS  
7 RELEVANT TO THE ASSERTION BY DHS THAT WAS MADE ON DIRECT  
8 AS FAR AS THEIR ENSURING THAT PLACEMENTS WILL STILL BE  
9 MADE IN THE BEST INTEREST OF CHILDREN, AND THAT BEING A  
10 PRIORITY FOR THEM, YOUR HONOR.

11 THE COURT: I'M GOING TO SUSTAIN THE  
12 OBJECTION. BUT I'M ALSO GOING TO RECESS. UNTIL  
13 TOMORROW. AT 1 O'CLOCK.

14 MS. BARCLAY: THANK YOU, YOUR HONOR.

15 (ALL RISE.)

16

17 I N D E X .

18 WITNESS	DIRECT	CROSS	REDIRECT	RE CROSS
19 TONI SIMMS-BUSCH	34	53	56	-
20 CECILIA PAUL	58	-	-	-
21 SHARONELL FULTON	64	70	-	-
22 KIMBERLY ALI	74	97	-	-

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I CERTIFY THAT THE FOREGOING IS A CORRECT  
TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE  
ABOVE-ENTITLED MATTER.

DATE OFFICIAL COURT REPORTER  
LYNN MCCLOSKEY, RPR

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF PENNSYLVANIA

- - -

SHARONELL FULTON, ET AL : CIVIL DOCKET FOR CASE  
: NO. 18-2075  
-VS- :  
: CITY OF PHILADELPHIA, ET AL :

- - -

PHILADELPHIA, PA.

JUNE 19, 2018

BEFORE HONORABLE JUDGE PETRESE B. TUCKER

TEMPORARY RESTRAINING ORDER

DAY 2

APPEARANCES:

FOR THE PLAINTIFF: BECKET FUND FOR RELIGIOUS LIBERTY  
BY: LORI H. WINDHAM, ESQ.  
MARK L. RIENZI, ESQ.  
STEPHANIE H. BARCLAY, ESQ.  
1200 NEW HAMPSHIRE AVE, N.W.  
SUITE 700  
WASHINGTON, DC 20036

FOR THE DEFENDANTS: CITY OF PHILADELPHIA LAW DEPARTMENT  
BY: ELEANOR N. EWING, ESQ.  
BENJAMIN H. FIELD, ESQ.  
SCHAUNDRA OLIVER, ESQ.  
1515 ARCH STREET, 16TH FLOOR  
PHILADELPHIA, PA 19102

LYNN MCCLOSKEY, RPR  
OFFICIAL COURT REPORTER  
1234 US COURTHOUSE  
601 MARKET STREET  
PHILADELPHIA, PA 19106  
(856) 649-4774



1 HAVE MADE RELEVANT IN THIS LITIGATION.

2 MS. OLIVER: YOUR HONOR, I OBJECT ON THE  
3 GROUNDS THAT THAT'S A LEGAL ISSUE.

4 MS. BARCLAY: WHETHER OR NOT A FOSTER-CARE  
5 BUSINESS -- A FOSTER CASE AGENCY IS A BUSINESS IS NOT A  
6 LEGAL ISSUE. THAT'S A FACTUAL QUESTION.

7 THE COURT: BUT I DON'T KNOW WHETHER SHE IS  
8 IN A POSITION TO ANSWER THAT. ANYTHING SHE WOULD SAY WOULD  
9 BE HER OPINION, AND THAT'S NOT RELEVANT TO THESE  
10 PROCEEDINGS.

11 BY MS. BARCLAY:

12 Q. HAVE YOU EVER PERSONALLY REFERRED TO FOSTER-CARE  
13 AGENCIES AS BUSINESSES?

14 A. NO.

15 Q. YOU KNOW THAT CATHOLIC IS A NONPROFIT  
16 ORGANIZATION, RIGHT?

17 A. YES.

18 Q. ARE YOU AWARE THAT CATHOLIC ACTUALLY LOSES MONEY  
19 PROVIDING FOSTER-CARE SERVICES?

20 MS. OLIVER: OBJECTION.

21 THE COURT: OVERRULED, IF SHE IS AWARE.

22 THE WITNESS: I DON'T KNOW.

23 BY MS. BARCLAY:

24 Q. ARE YOU AWARE THAT CATHOLIC PROVIDES THESE  
25 SERVICES AS PART OF THEIR RELIGIOUS MISSION?

1 A. I AM NOT SURE.

2 Q. SO YOU SAID YOU HAVE NEVER REFERRED TO --  
3 PERSONALLY REFERRED TO FOSTER-CARE AS A BUSINESS. I  
4 JUST WANT TO CONFIRM, YOU HAVE ALSO NEVER REFERRED TO  
5 CATHOLIC SOCIAL SERVICES AS A BUSINESS, HAVE YOU?

6 MS. OLIVER: OBJECTION.

7 THE COURT: SUSTAINED.

8 BY MS. BARCLAY:

9 Q. YOU ARE FAMILIAR WITH POLICIES AND PROCEDURES  
10 GOVERNING FOSTER-CARE, CORRECT?

11 A. YES.

12 Q. AND YOU'RE FAMILIAR WITH POLICIES AND LEGAL  
13 REQUIREMENTS THAT AGENCIES HAVE TO COMPLY WITH IN ORDER  
14 TO BE A PROVIDER IN PHILADELPHIA?

15 A. I AM FAMILIAR WITH POLICIES AND REGULATIONS. I  
16 WOULD NOT SAY THAT I AM FAMILIAR WITH ALL OF THE LEGAL.

17 Q. IS IT YOUR POSITION -- WHAT WAS THE BASIS FOR  
18 THE REFERRAL FREEZE TO CATHOLIC SOCIAL SERVICES?

19 A. SO THE BASIS OF THE REFERRAL FREEZE OR THE  
20 INTAKE CLOSURE TO CATHOLIC COMMUNITY SERVICES IS BECAUSE  
21 CATHOLIC COMMUNITY SERVICES REFUSED TO CERTIFY FOSTER  
22 PARENTS OR PROVIDE AN ADOPTION HOME STUDY FOR FOSTER  
23 PARENTS WHO WERE IN A SAME-SEX UNION.

24 Q. AND WHAT WAS THE EXPLANATION FOR THE DHS POLICY  
25 THAT THAT VIOLATED WHEN YOU COMMUNICATED THAT REFERRAL

1 FOR USE TO CATHOLIC?

2 A. ACCORDING TO OUR ATTORNEYS, IT WAS FAIR  
3 PRACTICE.

4 Q. THE FAIR PRACTICE ORDINANCE, MEANING WHAT?

5 A. I DON'T KNOW ALL THE DETAILS.

6 Q. DO YOU THINK FOSTER-CARE IS A PUBLIC  
7 ACCOMMODATION?

8 A. I CAN'T ANSWER THAT QUESTION.

9 MS. OLIVER: OBJECTION.

10 THE COURT: SHE SAID SHE CAN'T ANSWER IT.

11 BY MS. BARCLAY:

12 Q. YESTERDAY I THINK I UNDERSTOOD YOUR TESTIMONY TO  
13 BE, AND CORRECT ME IF I'M NOT GETTING THIS RIGHT, THAT I  
14 THINK I UNDERSTOOD YOUR TESTIMONY TO BE THAT IF A  
15 QUALIFIED FOSTER FAMILY WANTED TO RECEIVE A HOME STUDY  
16 FROM A PARTICULAR AGENCY, THEN THAT AGENCY WOULD HAVE TO  
17 PROVIDE THE HOME STUDY?

18 A. I'M SORRY. REPEAT IT AGAIN.

19 Q. YESTERDAY I UNDERSTOOD YOUR TESTIMONY TO BE THAT  
20 UNDER DHS POLICY IF A QUALIFIED FOSTER FAMILY WANTED TO  
21 RECEIVE A HOME STUDY FROM A FOSTER AGENCY, THEN THAT  
22 PARTICULAR FOSTER AGENCY WOULD HAVE TO PROVIDE IT. THEY  
23 COULD NOT TURN THAT FAMILY AWAY?

24 A. UNLESS IT WAS THE FAMILY'S CHOICE, YES.

25 Q. SO PRESUMABLY THIS IS AN IMPORTANT POLICY FOR

1 DHS?

2 A. YES.

3 Q. AND THIS IS A POLICY THAT YOU HAVE A COMPELLING  
4 INTEREST IN ENFORCING, CORRECT?

5 THE COURT: WHAT DO YOU MEAN BY "COMPELLING"?  
6 BY MS. BARCLAY:

7 Q. THIS IS A POLICY THAT YOU HAVE A STRONG INTEREST  
8 IN ENFORCING, CORRECT?

9 A. I WOULD SAY INTEREST IN ENFORCING.

10 Q. YOU HAVE AN INTEREST IN ENFORCING THIS POLICY.

11 A. YES.

12 Q. NOT A STRONG INTEREST?

13 A. I HAVE AN INTEREST IN ENFORCING ALL POLICY.  
14 WHETHER IT'S STRONG OR WEAK, I CANNOT SAY THAT.

15 Q. OKAY. SO YOU HAVE AN INTEREST THAT IS NO  
16 STRONGER OR NO WEAKER THAN ENFORCING ANY OTHER POLICY?

17 A. YES.

18 Q. AND WHEN DID YOU FIRST PUT THIS PARTICULAR  
19 POLICY IN WRITING?

20 A. WHAT PARTICULAR POLICY?

21 MS. OLIVER: OBJECTION.

22 MS. BARCLAY: I AM NOT SURE WHAT THE  
23 OBJECTION IS, YOUR HONOR.

24 THE COURT: I WAS GOING TO READY TO ASK YOU  
25 WHAT POLICY.

1 MS. BARCLAY: THE POLICY I JUST DESCRIBED TO  
2 HER FROM YESTERDAY'S TESTIMONY THAT SHE AGREED TO, WHICH IS  
3 THAT IF A QUALIFIED FOSTER FAMILY WANTED TO RECEIVE A HOME  
4 STUDY FROM A PARTICULAR AGENCY AND THAT WAS THE FAMILY'S  
5 CHOICE, THEN THAT AGENCY WOULD NEED TO PROVIDE THAT HOME  
6 STUDY.

7 BY MS. BARCLAY:

8 Q. I AM TRYING TO UNDERSTAND, MS. ALI, WHEN DID YOU  
9 FIRST PUT THAT POLICY IN WRITING?

10 MS. OLIVER: OBJECTION, YOUR HONOR. ASSUMING  
11 FACTS NOT IN EVIDENCE.

12 MS. BARCLAY: I AM JUST BASING ON HER OWN  
13 TESTIMONY, YOUR HONOR, THAT IS IN EVIDENCE.

14 THE COURT: WHEN YOU SAY "IN WRITING," I  
15 DON'T KNOW THAT IT'S BEEN PLACED IN WRITING.

16 BY MS. BARCLAY:

17 Q. OKAY. HAVE YOU EVER PUT THIS POLICY IN WRITING?

18 A. IT IS MY UNDERSTANDING OF THE CONTRACT, SO ME  
19 PERSONALLY, NO, I DON'T PUT CONTRACTS IN WRITING OR  
20 POLICIES IN WRITING. THOSE ARE DONE BY A SEPARATE  
21 DEPARTMENT.

22 Q. GREAT. SO YOUR UNDERSTANDING IS THAT THIS  
23 POLICY -- THE PLACE WHERE IT IS WRITTEN DOWN EXCLUSIVELY  
24 COMES FROM THE FOSTER-CARE CONTRACT?

25 THE COURT: EXCLUSIVELY? SHE DIDN'T SAY

1 THAT .

2 MS. BARCLAY: I AM JUST CONFIRMING IF THAT IS  
3 TRUE .

4 THE WITNESS: I WAS GOING TO SAY THE SAME  
5 THING, AS EXCLUSIVELY .

6 THE COURT: YES .

7 BY MS. BARCLAY:

8 Q. IS THERE ANOTHER SPOT YOU'RE AWARE, OTHER THAN  
9 THE CONTRACT, WHERE THIS POLICY IS WRITTEN DOWN?

10 A. I AM NOT SURE .

11 Q. SO YOU ARE NOT AWARE, RIGHT, AT THIS TIME OF  
12 ANOTHER SPOT WHERE IT IS WRITTEN DOWN?

13 MS. OLIVER: OBJECTION, ASKED AND ANSWERED .  
14 THE WITNESS IS NOT SURE .

15 THE COURT: OVERRULED. SHE CAN ANSWER .

16 THE WITNESS: I SAID I AM NOT SURE .

17 BY MS. BARCLAY:

18 Q. THANK YOU. AND I AM JUST TRYING TO CLARIFY AT  
19 THIS TIME YOU ARE NOT AWARE OF ANYWHERE ELSE WHERE THIS  
20 POLICY IS WRITTEN DOWN. THAT'S JUST A YES OR NO  
21 QUESTION .

22 THE COURT: SHE IS NOT SURE .

23 MS. BARCLAY: OKAY .

24 BY MS. BARCLAY:

25 Q. HOW HAVE YOU COMMUNICATED THIS PARTICULAR POLICY

1 TO FOSTER AGENCIES?

2 A. I HAVE NOT. IT'S IN THE CONTRACT.

3 Q. OKAY. SO THE CONTRACT IS THE MAIN WAY IN WHICH  
4 YOU COMMUNICATE THIS WITH THE AGENCIES?

5 A. YES.

6 Q. AND HOW DO YOU COMMUNICATE TO FOSTER AGENCIES,  
7 IF AT ALL, WHETHER OR NOT THEY ARE REQUIRED TO COMPLY  
8 WITH PUBLIC ACCOMMODATION REQUIREMENTS?

9 A. I HAVE NOT.

10 Q. OKAY. YOU HAVE BEEN DOING THIS WORK FOR  
11 18 YEARS?

12 A. YES.

13 Q. HAVE YOU EVER HAD CONVERSATIONS WITH ANYONE  
14 ABOUT DHS'S OWN OBLIGATIONS FOR PROVIDING A PUBLIC  
15 ACCOMMODATION REGARDING FOSTER-CARE SERVICES UNDER THE  
16 FAIR PRACTICES ORDINANCE?

17 MS. OLIVER: OBJECTION.

18 THE COURT: OVERRULED.

19 THE WITNESS: REPEAT IT, PLEASE.

20 BY MS. BARCLAY:

21 Q. HAVE YOU EVER HAD CONVERSATIONS WITH ANYONE  
22 ABOUT DHS'S OWN OBLIGATIONS PROVIDING A PUBLIC  
23 ACCOMMODATION WITH RESPECT TO FOSTER-CARE SERVICES UNDER  
24 THE FAIR PRACTICES ORDINANCE?

25 A. OTHER THAN IN THIS SITUATION?

1 Q. YES, OTHER THAN IN THIS SITUATION.

2 A. NO.

3 Q. AND IN THIS SITUATION, HAVE YOU HAD  
4 CONVERSATIONS ABOUT YOUR OWN REQUIREMENTS AND DHS'S OWN  
5 OBLIGATIONS TO PROVIDE PUBLIC ACCOMMODATION SERVICES  
6 WITH RESPECT TO FOSTER-CARE?

7 A. NO.

8 Q. HAVE YOU -- SO YOU HAVE NEVER TRAINED STAFF  
9 ABOUT THAT ISSUE EITHER?

10 A. NO.

11 Q. THANK YOU.

12 YOU STATE IN YOUR DECLARATION THAT A  
13 SITUATION IN WHICH A FOSTER AGENCY SHUT DOWN -- OR EXCUSE  
14 ME.

15 YOU DESCRIBED IN YOUR DECLARATION A SITUATION  
16 IN WHICH A FOSTER AGENCY SHUT DOWN AND THE CHILDREN NEEDED  
17 TO BE TRANSFERRED, CORRECT?

18 A. YES.

19 Q. YOU STATED THAT, QUOTE, THE GOAL IS TO KEEP  
20 CHILDREN IN THE SAME HOME AND NOT DISRUPT THE CHILDREN  
21 AND THEIR CARE, END QUOTE. CORRECT?

22 A. YES.

23 Q. AND THAT WAS THE GOAL BECAUSE MOVING CHILDREN  
24 FROM ONE HOME TO ANOTHER CAN BE TRAUMATIC?

25 A. ABSOLUTELY.

1 Q. AND IN GENERAL, MOVING CHILDREN BETWEEN ANY  
2 SORTS OF PLACEMENTS CAN COMPOUND THEIR TRAUMA?

3 A. IT DEPENDS.

4 Q. IS IT A POSSIBILITY THAT MOVING CHILDREN BETWEEN  
5 PLACEMENTS COMPOUNDS THEIR TRAUMA?

6 A. IT'S A POSSIBILITY.

7 Q. IN YOUR EXPERIENCE AND YOUR YEARS OF DOING IT,  
8 IS IT A LIKELY POSSIBILITY THAT CHILDREN WILL EXPERIENCE  
9 TRAUMA FROM MOVING FROM ONE PLACEMENT TO ANOTHER AND  
10 LOSING THE FAMILIARITY OF THE PAST PLACEMENT?

11 A. NOT NECESSARILY. DEPENDS ON THE SITUATION.

12 Q. YOUR GOAL WAS TO KEEP CHILDREN IN THEIR SAME  
13 HOME SO THAT THEY COULD AVOID THAT SORT OF DISRUPTION,  
14 CORRECT?

15 A. IN THAT PARTICULAR SITUATION WHEN -- THE  
16 FOSTER-CARE SITUATION YOU ARE TALKING ABOUT?

17 Q. YES.

18 A. YES.

19 Q. AND YOU WERE TREATING IT AS IN THE BEST INTEREST  
20 OF CHILDREN IN THAT SITUATION TO BE ABLE TO STAY WITH  
21 THEIR SAME FOSTER PARENT?

22 A. YES.

23 Q. IF CATHOLIC WERE FORCED TO SHUT ITS PROGRAM  
24 DOWN, YOU AGREE THAT CHILDREN AND FAMILIES WOULD NEED TO  
25 BE TRANSITIONED TO ANOTHER AGENCY?

1 A. IT DEPENDS ON THE INDIVIDUAL CHILD.

2 Q. BUT IF CATHOLIC IS SHUT DOWN, THEN THE FAMILIES  
3 AND CHILDREN THAT WERE PREVIOUSLY UNDER CATHOLIC'S CARE  
4 HAVE TO BE MOVED TO THE CARE OF ANOTHER AGENCY, RIGHT?

5 A. NOT NECESSARILY, BECAUSE WE WILL LOOK AT WHETHER  
6 OR NOT ANY OF THOSE CHILDREN OR YOUTH THAT ARE PLACED IN  
7 THE CATHOLIC COMMUNITY -- CATHOLIC SOCIAL SERVICES,  
8 EXCUSE ME, FOSTER HOME IF THEY ARE ABOUT TO ACHIEVE  
9 PERMANENCY. SO IF THOSE YOUNG PEOPLE WERE GOING TO  
10 EITHER BE REUNIFIED WITH THEIR FAMILY, IF THEY WERE  
11 GOING TO BE ADOPTED, OR IF THEY WERE GOING TO ACHIEVE  
12 PERMANENTLY THE CUSTODIANSHIP, THEN WE WOULD NOT WANT  
13 THE FOSTER PARENT TO REMAIN -- AND THE CHILD TO REMAIN  
14 WITH CATHOLIC COMMUNITY SERVICES. SO IT DEPENDS ON THE  
15 -- AND WE WOULD LOOK AT EACH CHILD AND YOUTH  
16 INDIVIDUALLY.

17 Q. SO SOME CHILDREN ARE GOING TO BE TO ABLE TO  
18 ACHIEVE PERMANENCY OR MAYBE BE REUNITED, AND SO WOULD  
19 NOT NEED TO BE A FOSTER CHILD ANY MORE. IS THAT RIGHT?

20 A. YES.

21 Q. FOR THE CHILDREN THAT NEEDED TO REMAIN FOSTER  
22 CHILDREN BECAUSE THEY COULD NOT ACHIEVE THOSE GOALS, IS  
23 IT CORRECT THAT THEY WOULD NEED TO BE TRANSITIONED TO  
24 ANOTHER AGENCY?

25 A. YES.

1 Q. IF SOME PARENTS DID NOT CHOOSE TO TRANSITION TO  
2 THE OTHER AGENCY, THEN THOSE CHILDREN WOULD HAVE TO BE  
3 REMOVED FROM THAT FAMILY, CORRECT?

4 A. YES.

5 Q. AND THAT COULD POSSIBLY CAUSE TRAUMA FOR THOSE  
6 CHILDREN, CORRECT?

7 A. YES.

8 MS. BARCLAY: NO FURTHER QUESTIONS, YOUR  
9 HONOR.

10 THE COURT: OKAY. ANY REDIRECT?

11 MS. OLIVER: YES, YOUR HONOR.

12 GOOD AFTERNOON, YOUR HONOR.

13 THE COURT: GOOD AFTERNOON.

14 REDIRECT EXAMINATION

15 BY MS. OLIVER:

16 Q. MS. ALI, LET'S START WITH -- YOU PROVIDED  
17 TESTIMONY ABOUT THE INTAKE CLOSURE AT CATHOLIC SOCIAL  
18 SERVICES, AND YOU ALSO SAID THAT THERE WERE SOME  
19 EXCEPTIONS, CORRECT?

20 A. YES.

21 Q. WILL YOU PLEASE INFORM THE COURT AS TO WHAT  
22 TYPES OF EXCEPTIONS THERE ARE?

23 A. SO THE EXCEPTIONS THAT WE WILL MAKE IS THAT WE  
24 WILL DETERMINE WHETHER OR NOT THAT CHILD HAD SIBLINGS  
25 THAT WERE PLACED IN A PARTICULAR FOSTER HOME THROUGH

1 A. GOOD AFTERNOON.

2 Q. WHAT IS YOUR CURRENT RELATIONSHIP TO CATHOLIC  
3 SOCIAL SERVICES?

4 A. I SERVE AS A SECRETARY FOR CATHOLIC HUMAN  
5 SERVICES, OVERSEE CATHOLIC SOCIAL SERVICES AND  
6 NUTRITIONAL DEVELOPMENT SERVICES.

7 Q. IN WHAT CITY DO YOU CURRENTLY LIVE?

8 A. PHILADELPHIA.

9 Q. HOW LONG HAVE YOU LIVED THERE?

10 A. MY LIFE, MY WHOLE LIFE.

11 Q. CAN YOU TELL ME A LITTLE BIT ABOUT YOUR WORK  
12 EXPERIENCE IN THE CHILD WELFARE ARENA?

13 A. YES. I HAVE BEEN INVOLVED IN CHILD WELFARE  
14 SINCE 1976 WHEN I GRADUATED FROM TEMPLE WITH A DEGREE IN  
15 SOCIAL WORK. WORKED FOR A COUPLE OF YEARS IN  
16 RESIDENTIAL CARE FOR CHILDREN AT AN AGENCY AFFILIATED  
17 WITH THE ARCHDIOCESE, AND THEN WENT ON TO GET A MASTER'S  
18 DEGREE IN SOCIAL WORK AND WORKED AT CHILDREN'S AID  
19 SOCIETY AND FOSTER-CARE AGENCY FOR A COUPLE OF YEARS.  
20 AND THEN MOVED INTO PROGRESSIVE MANAGEMENT, RUNNING A  
21 HOME FOR CHILDREN RUN BY CATHOLIC SOCIAL SERVICES, AND  
22 THEN INTO SENIOR MANAGEMENT.

23 Q. HOW LONG TOTAL HAVE YOU BEEN WORKING IN CHILD  
24 WELFARE?

25 A. 42 YEARS.

1 Q. CAN YOU DESCRIBE A LITTLE BIT MORE ABOUT YOUR  
2 ROLE AT CATHOLIC SOCIAL SERVICES?

3 A. MY ROLE INVOLVES TWO THINGS BASICALLY. ONE, I  
4 AM THE EXECUTIVE VICE-PRESIDENT OF ALL 13 OF OUR  
5 NONPROFIT CORPORATIONS, AND I MANAGE THE OPERATIONS, THE  
6 DAILY OPERATIONS OF THE CATHOLIC HUMAN SERVICES.

7 Q. AND CAN YOU TELL US A LITTLE BIT ABOUT THE WAY  
8 IN WHICH CATHOLIC SOCIAL SERVICES AS A NONPROFIT  
9 ORGANIZATION IS ORGANIZED?

10 A. CATHOLIC SOCIAL SERVICES IS ORGANIZED INTO  
11 SEVERAL DIFFERENT DIVISIONS. YOUTH SERVICES IS A  
12 PROMINENT DIVISION. DEVELOPMENTAL PROGRAM SERVING THOSE  
13 WITH INTELLECTUAL DISABILITIES. HOUSING AND HOMELESS  
14 AND FAMILY BASED SERVICES. AND WE ALSO HAVE CATHOLIC  
15 HOUSING AND COMMUNITY SERVICES, WHICH ADDRESSES THE  
16 NEEDS OF SENIORS.

17 Q. DOES SENIOR LEADERSHIP REPORT TO YOU?

18 A. YES.

19 Q. AND DO YOU HAVE A HAND IN BOTH GOVERNANCE AND  
20 OPERATIONS?

21 A. I DO.

22 Q. I BELIEVE CATHOLIC SOCIAL SERVICES HAS TWO  
23 PROGRAMS RELEVANT TO FOSTER CHILDREN. CAN YOU TELL US A  
24 LITTLE BIT ABOUT BOTH OF THOSE.

25 A. THE MOST LONG-STANDING PROGRAM IS CATHOLIC

1 SOCIAL SERVICES FOSTER-CARE DEPARTMENT, WHICH HAS BEEN  
2 -- HAS ITS ROOTS IN 1917 AS THE CATHOLIC CHILDREN'S  
3 BUREAU AND THEN GREW INTO CATHOLIC SOCIAL SERVICES  
4 FOSTER-CARE DEPARTMENT, TODAY SERVING ABOUT 120 SOME  
5 CHILDREN AND 100 FOSTER HOMES. AND WE ALSO HAVE OUR  
6 RESIDENTIAL SERVICES FOR ADJUDICATED DELINQUENT YOUTH,  
7 RUN BY SAINT GABRIEL'S SYSTEM AND DEPENDENT ADOLESCENT,  
8 TEENS, BOYS AND GIRLS, RUN BY ST. FRANCIS AND ST.  
9 VINCENT'S HOMES.

10 Q. DOES CATHOLIC SOCIAL SERVICES ALSO HAVE A CUA?

11 A. WE ALSO HAVE A CUA THAT HANDLES MOST OF  
12 NORTHEAST PHILADELPHIA.

13 Q. I WANT TO TALK TO YOU A LITTLE BIT ABOUT THE  
14 RELIGIOUS MINISTRY OF CATHOLIC SOCIAL SERVICES. CAN YOU  
15 TELL US SOME OF THE WAYS IN WHICH, ON A DAILY OR WEEKLY  
16 BASIS, CATHOLIC SOCIAL SERVICES IS OPERATING IN A  
17 RELIGIOUS FASHION?

18 A. YES. ALL OF OUR MEETINGS BEGIN WITH -- AND MANY  
19 TIMES END WITH PRAYER. OUR FACILITIES ALL HAVE CHAPELS.  
20 THEY ARE WELL USED BY STAFF. AND THAT OUR CATHOLIC  
21 IDENTITY IS VERY APPARENT IN OUR RELIGIOUS ARTIFACTS ON  
22 THE WALLS AND THOSE KINDS OF THINGS.

23 Q. AND HOW FREQUENTLY IS PRAYER INVOLVED IN WHAT  
24 YOU DO?

25 A. DAILY, SEVERAL TIMES DAILY.

1 Q. HOW HAS YOUR RELIGIOUS MISSION BEEN MADE  
2 APPARENT TO THOSE YOU INTERACT WITH, INCLUDING THE CITY?

3 A. WELL, AS FAR AS THE CITY GOES, EVERY YEAR WE  
4 SUBMIT A PROGRAM DESCRIPTION THAT I BELIEVE IS PART OF  
5 THE CONTRACT, AND THAT CLEARLY IDENTIFIES OUR CATHOLIC  
6 IDENTITY, OUR HISTORY AND OUR MISSION, SO THAT'S VERY  
7 CLEAR. ALSO WE DO A LOT IN ORIENTATION TRAINING WITH  
8 STAFF THAT UNDERLINES THE IMPORTANCE OF THAT TO WHO WE  
9 ARE AND WHY WE DO WHAT WE DO.

10 Q. HOW MANY AT-RISK CHILDREN WERE SERVED ACROSS ALL  
11 CATHOLIC SOCIAL SERVICES PROGRAMS LAST YEAR?

12 A. OVER 1500.

13 Q. IS PROVIDING FOSTER-CARE SERVICES A RELIGIOUS  
14 MINISTRY FOR CATHOLIC SOCIAL SERVICES?

15 A. THE CHURCH'S CARE FOR ORPHANS -- WHICH IS AN  
16 OUTDATED WORD -- AND AT-RISK CHILDREN IS CENTURIES OLD.  
17 IN PHILADELPHIA IT DATES BACK TO 1797, WHEN WE RESPONDED  
18 TO THE NEEDS OF CHILDREN WHOSE FAMILIES -- PARENTS HAD  
19 DIED DUE TO YELLOW FEVER. SO INTRINSIC TO WHO WE ARE  
20 AND WHAT WE DO IS THE CARE OF AT-RISK CHILDREN AND WHO  
21 ARE MANY TIMES THE POOREST CHILDREN IN OUR COMMUNITIES.

22 Q. AND SO JUST TO CONFIRM, IS FOSTER-CARE SERVICES  
23 A RELIGIOUS MINISTRY OF CATHOLIC SOCIAL SERVICES?

24 A. IT ABSOLUTELY IS, YES.

25 Q. YOU MENTIONED SOME OF THE ROOTS OF YOUR PROGRAM

1 WAS THE EPIDEMIC OF YELLOW FEVER. DID THAT ULTIMATELY  
2 FORMALIZE IN A SPECIFIC PROGRAM IN THE EARLY 1900'S?

3 A. YES. THE FIRST RESPONSE WAS THAT, AND THEN THAT  
4 GREW INTO THE ORPHANAGE MOVEMENT IN THE MID-19TH  
5 CENTURY. AND THAT FOLLOWED BY THE ESTABLISHMENT OF THE  
6 CATHOLIC CHILDREN'S BUREAU IN 1917, WHICH WAS DEDICATED  
7 TO FOSTER-CARE.

8 Q. SO THAT 1917 CATHOLIC CHILDREN'S BUREAU WAS  
9 PROVIDING FOSTER-CARE TO CHILDREN?

10 A. YES.

11 Q. WAS THERE ANY GOVERNMENT INVOLVEMENT WITH THIS  
12 PROGRAM IN 1917?

13 A. TO MY UNDERSTANDING, NO.

14 Q. HOW DID IT WORK? HOW DID YOU FIND CHILDREN AND  
15 CARE FOR THEM? CAN YOU WALK US THROUGH THAT A LITTLE  
16 BIT?

17 A. WELL, THE RELIGIOUS SISTERS WHO RAN CATHOLIC  
18 CHILDREN'S BUREAU HAD A DEEP NETWORK OF RELATIONSHIPS  
19 AROUND THE CITY WITH PARISHES AND COMMUNITY GROUPS. AND  
20 WHEN IT BECAME KNOWN THAT A CHILD WAS AT RISK, THEY  
21 WOULD DO A HOME EVALUATION. IF THE CHILD NEEDED TO BE  
22 REMOVED -- IN THOSE TIMES, MANY TIMES THE PARENTS WOULD  
23 AGREE TO THAT, BECAUSE THEY ARE CALLED VOLUNTARY  
24 PLACEMENT. THE CHILD WOULD BE REMOVED, PLACED IN A  
25 FOSTER HOME AND WE WOULD TRACK THEM AND THE CHILD'S

1           PROGRESS IN THAT HOME.

2           Q.           I THINK YOU SAID WERE THESE NETWORKS KNOWN  
3           THROUGH CATHOLIC PARISHES?

4           A.           CATHOLIC PARISHES WERE A GREAT SOURCE OF  
5           REFERRALS FOR THAT PROGRAM.

6           Q.           SO WHEN DID CATHOLIC PARTNERSHIP WITH GOVERNMENT  
7           BEGIN TO PROVIDE THESE SERVICES?

8           A.           WELL, I CAME INTO THE WORK IN 1976, AND I CAN  
9           TELL YOU THEN, IT WAS WELL ESTABLISHED. SO MY GUESS IS  
10          THAT THIS HAPPENED IN THE LATE '40'S, EARLY '50'S, THAT  
11          THE CONTRACTS BECAME INVOLVED WITH GOVERNMENT.

12          Q.           AND AT THAT POINT WHEN THE GOVERNMENT BECAME  
13          INVOLVED, IS IT YOUR UNDERSTANDING THAT THE GOVERNMENT  
14          TOOK OVER ALL ASPECTS OF IT OR WERE THERE THINGS THAT  
15          CATHOLIC SOCIAL SERVICES WAS STILL DOING AT THE  
16          BEGINNING OF THAT PARTNERSHIP?

17                       MR. FIELD: YOUR HONOR, I OBJECT, THE WITNESS  
18          SAID HE WAS NOT AROUND WHEN THE GOVERNMENT BECAME INVOLVED.

19                       THE COURT: TO THE EXTENT HE KNOWS THE  
20          HISTORY, I AM GOING TO OVERRULE THE OBJECTION.

21                       THE WITNESS: SO REPEAT THE QUESTION, PLEASE.

22          BY MS. BARCLAY:

23          Q.           SURE. SO WHEN THIS GOVERNMENT PARTNERSHIP  
24          BEGAN, WHAT IS YOUR UNDERSTANDING AS FAR AS THE ROLE  
25          THAT CATHOLIC SOCIAL SERVICES WOULD PLAY WITH REGARD TO

1 REMOVING AND PLACING CHILDREN AND THE ROLE THAT THE  
2 GOVERNMENT PLAYED.

3 A. CATHOLIC SOCIAL SERVICES, TO MY UNDERSTANDING AT  
4 THOSE TIMES, HAD TREMENDOUS OVERSIGHT OF THE INTAKE  
5 FUNCTION. SO THAT ONCE A CHILD BECAME KNOWN TO BE AT  
6 RISK AND WAS EVALUATED AS SUCH, WE WOULD PLACE THE CHILD  
7 AND SIMPLY ADVISE THE CITY THAT THERE WAS A VOLUNTARY  
8 PLACEMENT AND THEY WOULD THEN MOVE FORWARD AND SUPPORT  
9 THAT.

10 Q. BY THE TIME YOU JOINED CATHOLIC SOCIAL SERVICES  
11 IN THE '70'S, HOW HAD THE ROLES CHANGED AS FAR AS WHAT  
12 THE GOVERNMENT WAS IN CHARGE OF?

13 A. WELL, THINGS CHANGED FOR THE BETTER AND THEY  
14 CHANGED SWIFTLY. AND THEY'RE NOW -- IN MY TIME FROM THE  
15 MID-'70'S ON, ALL THE INTAKE WAS HANDLED THROUGH THE  
16 DEPARTMENT OF HUMAN SERVICES, AND THAT WAS DONE AFTER A  
17 CHILD PROTECTIVE SERVICES INVESTIGATION, THE CHILD WAS  
18 SEEN AS NEEDING TO BE PLACED.

19 Q. NOW AT THIS TIME IS CATHOLIC SOCIAL SERVICES  
20 AUTHORIZED TO PROVIDE FOSTER-CARE SERVICES WITHOUT A  
21 GOVERNMENT CONTRACT?

22 A. YOU REALLY CAN'T DO IT WITHOUT A GOVERNMENT  
23 CONTRACT.

24 Q. SO YOU WOULD BE BREAKING THE LAW IF YOU TRIED TO  
25 PROVIDE FOSTER-CARE SERVICES WITHOUT A CONTRACT?

1 A. YES.

2 Q. DOES CATHOLIC SOCIAL SERVICES MAKE MONEY FROM  
3 THIS GOVERNMENT CONTRACT IN PROVIDING THESE SERVICES?

4 A. ABSOLUTELY NOT. AND JUST TO GIVE YOU AN IDEA IN  
5 -- LAST YEAR WE SUBSIDIZED THESE SERVICES TO THE TUNE OF  
6 \$3.8 MILLION.

7 Q. WHERE DO THOSE SUBSIDIES COME FROM?

8 A. THEY COME FROM ENDOWMENTS, DONATIONS AND GENERAL  
9 ARCHDIOCESAN SUPPORT.

10 Q. YESTERDAY THE ATTORNEYS FOR DHS REFERRED TO  
11 CATHOLIC SOCIAL SERVICES AS A BUSINESS. IS THAT HOW YOU  
12 THINK OF YOUR WORK?

13 A. I REALLY DON'T KNOW OF ANY BUSINESS THAT WOULD  
14 START OR BE ABLE TO FINISH WITH A \$3.8 MILLION SUBSIDY.  
15 I NEVER THOUGHT OF IT AS A BUSINESS.

16 Q. SO BEFORE YESTERDAY, HAVE YOU EVER HEARD THAT?

17 A. NEVER.

18 Q. HOW WOULD YOU DESCRIBE THE WORK THAT CATHOLIC  
19 SOCIAL SERVICES IS DOING?

20 A. A RELIGIOUS MINISTRY BASED ON A NONPROFIT  
21 CORPORATION -- CORPORATIONS THAT HAVE A DEEP COMMITMENT  
22 TO THE POOR AND THE VULNERABLE IN OUR COMMUNITY.

23 Q. I WANT TO TALK TO YOU A LITTLE BIT MORE ABOUT  
24 SOME OF THE LOGISTICS OF FOSTER-CARE. WHEN CATHOLIC  
25 SOCIAL SERVICES PERFORMS A HOME STUDY, WHAT DOES THAT

1 PROCESS ENTAIL?

2 A. IT ENTAILS AN ASSESSMENT OF THE RELATIONSHIPS  
3 THAT EXIST IN THAT FOSTER HOME, THE SUITABILITY OF THE  
4 PHYSICAL PLAN OF THE FOSTER HOME TO BE SAFE FOR A CHILD,  
5 AND THEN OBVIOUSLY GETTING CLEARANCES TOO FOR EVERYBODY  
6 IN THE HOME. IF ALL OF THOSE THINGS ARE UP TO PAR, THEN  
7 WE -- THEN THE HOME IS CERTIFIED AS A FOSTER HOME AND  
8 THE HOME STUDY IS COMPLETE.

9 Q. DOES CATHOLIC SOCIAL SERVICES REQUEST A PASTORAL  
10 REFERENCE AS PART OF THAT PROCESS?

11 A. IT REQUESTS A REFERENCE FROM CLERGY FOR ALL  
12 INTERESTED PEOPLE WHO APPLY TO BE FOSTER PARENTS.

13 Q. SO IS IT CORRECT THAT THEY ASK FOR A PASTORAL  
14 REFERENCE?

15 A. YES, THEY REQUEST A PASTORAL REFERENCE.

16 Q. WITH REGARD TO THE RELATIONSHIPS THAT YOU SAID  
17 THAT YOU WOULD ANALYZE, DOES THIS PROCESS CULMINATE IN  
18 ANYTHING RELEVANT TO THOSE RELATIONSHIPS AS FAR AS  
19 WRITING THAT YOU WOULD PROVIDE?

20 A. THE PROCESS CULMINATES AFTER THE EVALUATION IS  
21 DONE AND A CERTIFIED HOME STUDY, WHICH WOULD ENABLE THE  
22 FAMILY TO ACTUALLY BEGIN RECEIVING CHILDREN IN THEIR  
23 HOME.

24 Q. DOES THAT HOME STUDY INCLUDE ANY WRITTEN  
25 ENDORSEMENTS OF THOSE RELATIONSHIPS?

1 A. IT IS -- THE HOME STUDY IS A WRITTEN EVALUATION,  
2 YES.

3 Q. AND AN ENDORSEMENT?

4 A. AND AN ENDORSEMENT, YES.

5 Q. ARE YOU AWARE OF ANY POLICY OR LAW THAT SAYS  
6 THAT AN AGENCY MUST CERTIFY ANY QUALIFIED PROSPECTIVE  
7 FOSTER FAMILY THAT WANTS TO BE CERTIFIED BY THAT AGENCY?

8 A. NO, I AM NOT AWARE OF THAT LAW.

9 MS. BARCLAY: PERMISSION TO APPROACH THE  
10 WITNESS, YOUR HONOR.

11 THE COURT: YES.

12 BY MS. BARCLAY:

13 Q. MR. AMATO, I AM APPROACHING YOU WITH WHAT HAS  
14 BEEN LABELED AND IT'S EXHIBIT NUMBER 4. MR. AMATO, I  
15 HAVE APPROACHED YOU WITH WHAT IS DESCRIBED AS  
16 PENNSYLVANIA STATE RESOURCE -- FAMILY ASSOCIATION  
17 RESOURCE PARENT MANUAL. ARE YOU FAMILIAR WITH THIS  
18 DOCUMENT?

19 A. I HAVE HEARD OF IT, YES.

20 Q. AND AT THE TOP OF PAGE 7, IT SAYS THAT: NOTE,  
21 THESE ARE MINIMUM REQUIREMENTS AND INDIVIDUAL AGENCIES  
22 WILL VARY WITH THEIR POLICIES. IS THAT CONSISTENT WITH  
23 YOUR UNDERSTANDING THAT AGENCIES CAN HAVE THEIR OWN  
24 ADDITIONAL REQUIREMENTS OR CONSIDERATIONS FOR WHY THEY  
25 WOULD CERTIFY A FOSTER PARENT?

1 A. YES, IT IS.

2 Q. WHAT ARE THE RELIGIOUS BELIEFS OF CATHOLIC  
3 SOCIAL SERVICES WITH RESPECT TO MARRIAGE?

4 A. THAT A MARRIAGE IS A SACRED BOND BETWEEN A MAN  
5 AND A WOMAN.

6 Q. ACROSS ALL PROGRAMS WHAT DOES THAT MEAN FOR  
7 LGBTQ INDIVIDUALS WHO MIGHT WANT OR NEED SERVICES FROM  
8 CATHOLIC?

9 A. WE REGULARLY SERVE PROUDLY PEOPLE OF ALL FAITHS,  
10 ALL BACKGROUNDS, WITHOUT REGARD TO SEXUAL IDENTITY, SO  
11 THAT TODAY WE ARE SERVING FOLKS FROM THE LGBTQ  
12 COMMUNITY.

13 Q. WHAT ABOUT THE SAME-SEX COUPLES WHO APPROACHED  
14 CATHOLIC ABOUT RECEIVING A HOME STUDY SERVICE TO BECOME  
15 FOSTER PARENTS? HAS THAT SITUATION EVER ARISEN?

16 A. WELL, THAT SITUATION HAS NOT ARISEN, AND -- TO  
17 MY KNOWLEDGE SINCE THE TIME THAT I'VE BEEN IN CATHOLIC  
18 SOCIAL SERVICES.

19 Q. AND HYPOTHETICALLY SPEAKING, IF CATHOLIC WERE  
20 FORCED TO PROVIDE A WRITTEN CERTIFICATION ENDORSING A  
21 SAME-SEX MARRIAGE, WOULD THAT VIOLATE THE RELIGIOUS  
22 EXERCISE OF CATHOLIC SOCIAL SERVICES?

23 A. YES, IT WOULD.

24 Q. I WANT TO TALK TO YOU A LITTLE BIT ABOUT SOME OF  
25 THE STRENGTHS AND HALLMARKS OF CATHOLIC SOCIAL SERVICES

1 WORKER WHO HAS DONE MOST OF THESE HOME STUDY, WHO HAS  
2 BEEN THERE ABOUT 35 YEARS, AND SHE IS READILY AVAILABLE  
3 AND ACCESSIBLE AND I FIND THAT FOSTER PARENTS SEE THAT  
4 AS A GREAT SOURCE OF SUPPORT AND HOPE.

5 Q. FROM YOUR PERSONAL EXPERIENCE HAVE YOU EVER  
6 OBSERVED THERE TO BE A SURPLUS -- OR WHICH HAVE YOU  
7 OBSERVED, A SURPLUS OR A SHORTAGE OF FOSTER FAMILIES FOR  
8 FOSTER CHILDREN?

9 A. ABSOLUTELY THERE IS A SHORTAGE OF FOSTER  
10 FAMILIES FOR CHILDREN, PARTICULARLY ADOLESCENT CHILDREN.

11 Q. WHAT LED YOU TO ARRIVE AT THIS CONCLUSION?

12 A. READING, GOING TO MEETINGS WITH THE SENIOR  
13 MANAGEMENT FROM DHS, SEEING SOME OF THE CHILDREN THAT WE  
14 HAVE SERVED IN GROUP CARE THAT HAVE THE PROFILE THAT  
15 COULD BE MATCHED WITH A FOSTER FAMILY BUT THERE'S SIMPLY  
16 NOT SUFFICIENT FAMILIES FOR THE ADOLESCENT CHILDREN.

17 Q. WHAT PHYSICALLY HAPPENS -- WHAT ELSE PHYSICALLY  
18 HAPPENS TO CHILDREN WHEN THERE ARE NOT ENOUGH FOSTER  
19 HOMES FOR CHILDREN?

20 A. I THINK THE MOST SAD THING THAT HAPPENS IS THAT  
21 A CHILD WOULD HAVE TO WAIT AND SIT IN THE CHILD CARE  
22 ROOM AT THE CITY WHILE AGENCIES ARE APPROPRIATELY  
23 PRESSED TO FIND A FOSTER HOME FOR THEM. THAT WOULD BE  
24 ONE ITEM THAT WE ALL ARE TRYING TO AVOID. NUMBER TWO  
25 WOULD BE THE POTENTIAL PLACEMENT OF A YOUNG KID IN A

1 BUDGET PROPOSAL AND A BRIEF DESCRIPTION OF WHAT WE COULD  
2 OFFER TO MEET THAT EMERGENT NEED.

3 Q. JUST DESCRIBE AGAIN FOR US, WHAT WAS THE NEED  
4 THAT THIS SHELTER WAS MEANT TO ADDRESS?

5 A. AN IMMEDIATE RESOURCE - AN IMMEDIATE GROUP CARE  
6 RESOURCE FOR UP TO 12 CHILDREN WHO WERE IN -- THERE WAS  
7 NOT AN IMMEDIATE FOSTER FAMILY AVAILABLE.

8 Q. AND SO WAS THIS SHELTER OPTION SEEKING TO MAKE  
9 IT SO THAT LESS CHILDREN WOULD END UP STAYING OVERNIGHT  
10 IN THAT CHILDCARE ROOM?

11 A. YES.

12 Q. ARE YOU AWARE OF INSTANCES WHERE A FOSTER AGENCY  
13 WILL CHOOSE NOT TO PERFORM A HOME STUDY FOR A  
14 PROSPECTIVE COUPLE FOR VARIOUS REASONS?

15 A. YES. THERE'S A COUPLE OF REASONS THAT I AM  
16 AWARE OF. ONE WOULD BE THE GEOGRAPHICAL LOCATION OF THE  
17 FOSTER PARENT, SO THAT IT WOULD BE BETTER FOR THEM TO  
18 HAVE THE HOME TO BE DONE TO AN AGENCY CLOSER TO THEM.  
19 ANOTHER WOULD BE A SPECIAL MEDICAL SITUATION, WHERE WE  
20 WOULD REFER A FOSTER PARENT BECAUSE WE DON'T HAVE A  
21 SPECIAL MEDICAL SERVICE, NOR DO WE HAVE A LICENSE FOR  
22 THAT. ANOTHER WOULD BE BEHAVIORAL -- A SPECIALIZED  
23 BEHAVIORAL HEALTH HOME, BECAUSE AGAIN, WE DON'T PROVIDE  
24 SPECIALIZED BEHAVIORAL HEALTH. IT USED TO BE CALLED  
25 TREATMENT FOSTER-CARE. THERE ARE ALSO SOME AGENCIES

1 COMMUNITY VOICE FOR THE DIVERSE LATINO COMMUNITY ON  
2 ISSUES AFFECTING CHILDREN, YOUTH AND FAMILY.

3 THIS IS CONSISTENT WITH YOUR  
4 UNDERSTANDING THAT THIS IS AN AGENCY THAT HAS TARGETED  
5 OUTREACH TO THE LATINO COMMUNITY.

6 MR. FIELD: OBJECTION, YOUR HONOR, ON THE  
7 BASIS OF HEARSAY AND RELEVANCE.

8 THE COURT: SUSTAINED, AS TO RELEVANCE.

9 MR. FIELD: I ASK THAT THE READING WOULD BE  
10 STRICKEN FROM THE RECORD.

11 THE COURT: IT WILL BE STRICKEN.

12 BY MS. BARCLAY:

13 Q. IS IT YOUR UNDERSTANDING THAT THERE ARE ANY  
14 AGENCIES WHO SPECIALIZE IN SERVICING KIN CARE  
15 POPULATIONS?

16 A. I THINK THE MOST RENOWNED AGENCY FOR THAT IS  
17 SECOND CHANCE.

18 Q. AND ARE YOU AWARE -- ANY TIME HAS THERE BEEN A  
19 TIME WHERE THEY EXCLUSIVELY SERVED KIN CARE POPULATIONS?

20 A. WHEN THEY FIRST BECAME --

21 MR. FIELD: OBJECTION.

22 THE WITNESS: WHEN THEY FIRST BECAME KNOWN TO  
23 PHILADELPHIA, MY UNDERSTANDING IS --

24 THE COURT: OVERRULED.

25 THE WITNESS: -- THEY WERE ROOTED IN

1 ALLEGHENY COUNTY WITH AN EXPERTISE IN THE KIN CARE FAMILIES,  
2 PARTICULARLY MINORITY KIN CARE FAMILIES.

3 BY MS. BARCLAY:

4 Q. THANK YOU.

5 HAVE YOU EVER UNDERSTOOD IT TO BE A  
6 PROBLEM FOR AN AGENCY TO DECLINE TO PERFORM A HOME STUDY  
7 AND INSTEAD CONNECT A FAMILY WITH A DIFFERENT AGENCY  
8 THAT THE AGENCY BELIEVED WOULD BE A BETTER FIT FOR THEM?

9 A. NEVER SAW IT AS A PROBLEM. IN FACT, IT'S BEST  
10 PRACTICE AND WIDELY KNOWN IN SOCIAL WORK IS INFORMATION  
11 REFERRAL TO GET A FAMILY OR AN INDIVIDUAL CONNECTED WITH  
12 THE AGENCY THAT CAN BEST SERVE THEM.

13 Q. SO YOU JUST USED THE TERM "INFORMATION  
14 REFERRAL," AND I JUST WANT TO CLARIFY. THAT'S NOT THE  
15 SAME THING AS WHEN DHS MAKES A REFERRAL TO AN AGENCY,  
16 RIGHT?

17 A. NO, THAT'S --

18 MR. FIELD: OBJECTION, LEADING.

19 THE COURT: OVERRULED.

20 YOU MAY ANSWER.

21 THE WITNESS: THAT'S INFORMATION REFERRAL  
22 DIRECTLY TO A CLIENT INQUIRING ABOUT A SERVICE THAT HE OR  
23 SHE MIGHT BE INTERESTED IN.

24 BY MS. BARCLAY:

25 Q. HOW DOES THAT DIFFER FROM THE DHS REFERRAL TO AN

1 MS. BARCLAY: IF YOU CAN WAIT ONE MOMENT.

2 BY MS. BARCLAY:

3 Q. OKAY. WHEN DID YOU FIRST LEARN ABOUT THE CITY'S  
4 CONCERN WITH THE HYPOTHETICAL SITUATION WHERE CATHOLIC  
5 SOCIAL SERVICES WOULD BE UNABLE TO PROVIDE WRITTEN  
6 CERTIFICATION FOR SAME-SEX COUPLES?

7 A. IN MID MARCH FOLLOWING AN EVENT, A PROMOTION  
8 THAT THE CITY HELD, DHS HELD, FOR 300 MORE FOSTER  
9 FAMILIES, I GOT A CALL ON MY CELL PHONE, I THINK IT WAS  
10 A FRIDAY AFTERNOON, FROM COMMISSIONER FIGUEROA AND FIRST  
11 DEPUTY SHAPIRO INQUIRING AS TO CATHOLIC SOCIAL SERVICES'  
12 POSITION ON PROVIDING HOME STUDIES TO SAME-SEX  
13 INDIVIDUALS OR COUPLES.

14 Q. AND WHAT WAS COMMISSIONER FIGUEROA ASKING YOU?

15 A. SHE WAS ASKING ME WHETHER WE DO THAT.

16 Q. WHETHER WE DO WHAT?

17 A. WHETHER WE WOULD COMPLETE A HOME STUDY ON A  
18 SAME-SEX COUPLE OR INDIVIDUAL.

19 Q. WHAT WAS YOUR RESPONSE?

20 A. MY ANSWER WAS NO, THAT WE WOULD NOT DO THAT,  
21 THAT IT'S AGAINST THE TEACHINGS OF THE CHURCH.

22 Q. DID THEY SAY ANYTHING TO YOU THEN IN RESPONSE?

23 A. THEY SAID TO ME THAT YOU ARE DISCRIMINATING. I  
24 SAID THAT I AM FOLLOWING THE TEACHINGS OF THE CATHOLIC  
25 CHURCH.

1 Q. AND THIS WAS A PHONE CALL IN MID MARCH?

2 A. IT WAS A PHONE CALL IN MID MARCH, YES.

3 Q. DID YOU HAVE A FOLLOWUP IN-PERSON CONVERSATION?

4 A. THERE WAS A MEETING THE NEXT WEEK WITH DHS  
5 SENIOR MANAGEMENT, CATHOLIC SOCIAL SERVICES SENIOR  
6 MANAGEMENT, AND ARCHDIOCESAN LEGAL COUNSEL.

7 Q. WHAT WERE THE THINGS THAT DHS SENIOR MANAGEMENT  
8 COMMUNICATED TO YOU AT THAT MEETING?

9 A. THEIR GREAT CONCERNS ABOUT US NOT COMPLETING  
10 HOME STUDIES FOR SAME-SEX INDIVIDUALS AND COUPLES, THE  
11 FACT THAT THIS HAD THE HIGHEST ATTENTION, THE ATTENTION  
12 AT THE HIGHEST LEVELS OF GOVERNMENT IN THE CITY, AND  
13 THAT --

14 MR. FIELD: YOUR HONOR, HEARSAY.

15 THE COURT: OVERRULED.

16 MS. BARCLAY: THIS IS AN ADMISSIBLE PARTY  
17 ADMISSION.

18 THE WITNESS: AND AN INDICATION THAT CATHOLIC  
19 SOCIAL SERVICES SHOULD BE FOLLOWING THE TEACHINGS OF POPE  
20 FRANCIS RATHER THAN THE ARCHDIOCESE -- RATHER THAN THE  
21 ARCHBISHOP OR THE ARCHDIOCESE.

22 BY MS. BARCLAY:

23 Q. DID THE CITY SAY ANYTHING ABOUT TIMES CHANGING?

24 A. YES, WHERE THEY INDICATED WHEN I --

25 MR. FIELD: OBJECTION. LEADING, YOUR HONOR.

1 THE COURT: OVERRULED.

2 THE WITNESS: WHEN I INDICATED THAT THE  
3 MISSION COMMITMENT EXPRESSED IN OVER 100 YEARS OF SERVICES,  
4 I WAS ADVISED THAT TIMES HAVE CHANGED, ATTITUDES HAVE  
5 CHANGED, SCIENCE HAS CHANGED. IT'S TIME FOR -- THE IMPLICIT  
6 MESSAGE WAS IT'S TIME FOR THE CATHOLIC CHURCH -- CATHOLIC  
7 SOCIAL SERVICES TO CHANGE.

8 BY MS. BARCLAY:

9 Q. AND JUST TO CONFIRM, I APOLOGIZE YOU WERE  
10 INTERRUPTED BEFORE. WHAT DID THEY SAY ABOUT THE TOP  
11 CITY OFFICIALS?

12 A. WITHOUT NAMING NAMES, THEY INDICATED THAT IT HAD  
13 THE ATTENTION OF TOP LEVELS OF GOVERNMENT, WHICH I WOULD  
14 ASSUME WOULD BE MAYOR KENNEY AND CITY COUNCIL.

15 MR. FIELD: OBJECTION, CALLS FOR SPECULATION.

16 THE COURT: SUSTAINED.

17 MS. BARCLAY: THAT'S FINE, YOUR HONOR.

18 BY MS. BARCLAY:

19 Q. THE SUBSTANCE OF THAT MEETING, WAS THAT  
20 INQUIRING ABOUT ANYTHING ELSE RELEVANT TO CATHOLIC  
21 SOCIAL SERVICES?

22 A. NO. IT WAS STRICTLY AROUND THE MATTER THAT WE  
23 JUST DISCUSSED.

24 Q. DID THEY ASK ABOUT -- DID THEY TELL YOU IN THAT  
25 MEETING THAT THERE WOULD BE A REFERRAL FREEZE?

1 A. SURPRISINGLY, NO. AND IT WAS KIND OF ODD TO GET  
2 A CALL FIVE MINUTES LATER WHEN WE WERE WALKING BACK TO  
3 THE ARCHDIOCESE FROM DEPUTY COMMISSIONER ALI, TELLING US  
4 THAT WE FORGOT TO MENTION SOMETHING, YOUR REFERRALS  
5 WOULD BE FROZEN.

6 Q. SO THAT WAS TEN MINUTES AFTER THE IN-PERSON  
7 MEETING?

8 A. CORRECT, YES.

9 Q. SO I WILL GO BACK TO THAT. YOU MENTIONED THERE  
10 WAS SOME DISCUSSION OF THE POPE FROM DHS AT THAT  
11 MEETING. DO YOU REMEMBER EXACTLY WHAT THEY SAID ABOUT  
12 THE POPE?

13 THE COURT: WHO SAID?

14 BY MS. BARCLAY:

15 Q. IT WAS COMMISSIONER FIGUEROA, CORRECT?

16 A. IT WAS.

17 Q. WHAT DID COMMISSIONER FIGUEROA SAY ABOUT THE  
18 POPE?

19 A. THAT WE SHOULD BE LISTENING MORE TO POPE FRANCIS  
20 THAN THE ARCHBISHOP AND THE ARCHDIOCESE'S POSITION ON  
21 THIS.

22 Q. SO MOVING FORWARD AGAIN TO WHEN YOU RECEIVED  
23 THAT FOLLOW-UP PHONE CALL ABOUT THE REFERRAL FREEZE, WHO  
24 WAS ON THE PHONE 10 MINUTES LATER FOR THAT FOLLOW-UP  
25 PHONE CALL?

1 A. DEPUTY COMMISSIONER ALI.

2 Q. JUST COMMISSIONER ALI?

3 A. YES.

4 Q. AND DID SHE EXPLAIN WHY THERE WAS GOING TO BE A  
5 REFERRAL FREEZE?

6 A. NO. IT WAS PRETTY SHORT AND TO THE POINT, AND  
7 IT WAS BASED ON THE MEETING. WE FORGET TO MENTION THAT,  
8 SO WE ARE MENTIONING IT TO YOU NOW.

9 Q. DID THEY INDICATE THAT THERE WOULD BE ANY SORT  
10 OF EXCEPTION FOR THE BEST INTERESTS OF CHILDREN TO THIS  
11 REFERRAL FREEZE AT THIS TIME?

12 A. NO. IT WAS ABSOLUTE, NO REFERRALS AND NO TALK  
13 OF ANY EXCEPTIONS.

14 Q. SO IS YOUR -- WHAT IS YOUR UNDERSTANDING AS FAR  
15 AS THE SOLE REASON FOR THIS REFERRAL FREEZE?

16 A. THAT CATHOLIC SOCIAL SERVICES IN ITS STATEMENTS  
17 HAD SAID THEY WOULD NOT GO FORWARD WITH THE HOME  
18 STUDIES, COMPLETING HOME STUDIES FOR SAME-SEX  
19 INDIVIDUALS AND COUPLES.

20 Q. BEFORE THIS LAWSUIT HAVE YOU EVER HEARD TO --  
21 SERVICES PROVIDING A HOME STUDY DESCRIBED AS A PUBLIC  
22 ACCOMMODATION?

23 A. NEVER HEARD OF THAT BEFORE.

24 Q. HAD YOU EVER HEARD OF FOSTER-CARE GENERALLY  
25 BEING DESCRIBED AS A PUBLIC ACCOMMODATION?

1 A. NO.

2 Q. WHEN WAS THE FIRST TIME YOU HEARD OF FOSTER-CARE  
3 BEING DESCRIBED IN THAT WAY?

4 A. WHEN I WENT TO THAT MEETING WITH THE  
5 COMMISSIONER. SHE WAS QUOTING THAT FROM THE CONTRACT.

6 Q. WHAT DID THE COMMISSIONER SAY ABOUT PUBLIC  
7 ACCOMMODATIONS IN THAT MEETING?

8 A. BASICALLY A PUBLIC ACCOMMODATION IS ANYTHING  
9 THAT GETS PUBLIC FUNDING. SO IF YOU GET PUBLIC FUNDING,  
10 YOU HAVE TO FOLLOW THROUGH WITH THAT EXPECTATION.

11 Q. IT WAS THEIR POSITION THAT YOU WERE NOT  
12 COMPLYING WITH THE PUBLIC ACCOMMODATION REQUIREMENTS?

13 A. THAT WAS THEIR POSITION.

14 Q. AND WAS THEIR POSITION THAT YOU NEEDED TO DO  
15 HOME STUDY FOR ANYONE THAT APPLIED?

16 A. YES.

17 Q. COMMISSIONER FIGUEROA'S DECLARATION CLAIMS THAT  
18 YOU TOLD HER CSS, QUOTE, "COULD NOT COMPLY WITH ITS  
19 CONTRACT," END QUOTE. SHE USES THAT PHRASING TWICE.  
20 DID YOU SAY THAT TO HER?

21 A. NOT TO MY KNOWLEDGE OR RECOLLECTION.

22 Q. WHAT DID YOU SAY?

23 A. I SAID THAT CATHOLIC SOCIAL SERVICES, DUE TO ITS  
24 RELIGIOUS TEACHINGS, WOULD NOT MOVE FORWARD WITH A HOME  
25 STUDY FOR A SAME-SEX COUPLE, BUT WOULD IMMEDIATELY REFER

1 A SINGLE INDIVIDUAL?

2 A. A SEXUAL ORIENTATION OF THE INDIVIDUAL IS NOT  
3 THE PART AND PARCEL OF WHAT THE HOME STUDY PROCESS IS  
4 ABOUT.

5 Q. SO AN INDIVIDUAL SINGLE GAY PERSON COULD BE A  
6 FOSTER PARENT WITH CATHOLIC SOCIAL SERVICES?

7 A. YES.

8 Q. IS THE OBJECTION ONLY WHEN CATHOLIC SOCIAL  
9 SERVICES IS BEING REQUIRED TO EVALUATE AND PROVIDE  
10 WRITTEN ENDORSEMENTS OF A SAME-SEX RELATIONSHIP?

11 A. YES, IT IS.

12 THE COURT: WRITTEN ENDORSEMENTS?

13 BY MS. BARCLAY:

14 Q. DO YOU VIEW THE HOME STUDY AND WHAT CULMINATES  
15 AT THE END OF THE HOME STUDY AS A WRITTEN ENDORSEMENT AS  
16 A RELATIONSHIP TO THE GOVERNMENT?

17 A. I THINK SO, YES.

18 Q. WHY DID YOU FILE THIS LAWSUIT? WAS THIS YOUR  
19 FIRST PREFERENCE?

20 A. NO. OUR FIRST PREFERENCE WAS TO WORK OUT A  
21 REASONABLE ACCOMMODATION WITH THE CITY. BUT UPON  
22 HEARING THAT SUBPOENAS WERE SOON TO BE ISSUED, AN  
23 INQUIRY COMING FROM THE PHILADELPHIA COMMISSION FOR  
24 HUMAN RELATIONS, IT SEEMED LIKE OUR ONLY RECOURSE WAS TO  
25 GO THIS ROUTE.

1 MR. FIELD: YOUR HONOR, IF I CAN ASK THAT THE  
2 MEDICAL DETAILS BE STRICKEN.

3 THE COURT: YES, THEY WILL BE STRICKEN.

4 THE WITNESS: THEN IT -- ABSENT THAT, IT WAS  
5 THE FACT THAT HE WAS IN A RESPITE FOR TWO DAYS, FOR A  
6 WEEKEND, AND HE WAS GOING TO GET MOVED TO ANOTHER RESPITE  
7 HOME. AND DURING THAT SAME TIME, IT WAS CLEAR TO MANY  
8 INDIVIDUALS THAT HIS CSS FOSTER MOTHER WELCOMED HIM BACK.  
9 AND LATER ON IN THE WEEK, WE FOUND OUT HAD ALSO SPOKEN TO  
10 HER FAMILY AND HAD BEEN -- IT WAS DEVELOPED THAT HAD BEEN  
11 FAVORABLE TO ENACTING AN ADOPTION PLAN FOR --

12 BY MS. BARCLAY:

13 Q. WAS THERE ANYTHING IN PARTICULAR THAT YOU  
14 THOUGHT WAS EXCEPTIONAL ON MAY 25TH ABOUT THE OPTIONS  
15 THAT WERE AVAILABLE AT THAT TIME AND THE DENIAL OF THAT  
16 FOSTER MOTHER?

17 A. I THOUGHT IT WAS PARTICULARLY RELEVANT IN THESE  
18 SITUATIONS. THE OPTIONS, GRIMLY, ARE NOT MUCH, AND IT  
19 WOULD HAVE BEEN AN OVERNIGHT IN THE DHS CHILDCARE ROOM,  
20 AN EMERGENCY SHELTER, OR WHAT WE HAD OFFERED WITH THE  
21 CSS FOSTER HOME. SO THAT OPTION WAS JUST A FAR BETTER  
22 OPTION.

23 Q. AND IN YOUR NORMAL EXPERIENCE WITH PLACEMENT,  
24 WOULD A FORMER FOSTER MOTHER EVER BE DENIED IN THE BEST  
25 INTEREST OF A CHILD?

1 A. NEVER, PARTICULARLY WHEN THE FOSTER MOTHER IS IN  
2 SUCH GOOD STANDING AS THIS FOSTER MOTHER IS.

3 Q. DO YOU RECALL WHEN YOUR ATTORNEYS FIRST  
4 COMMUNICATED WITH DHS ABOUT THOSE ADDITIONAL FACTS?

5 A. I BELIEVE EARLY IN THE FOLLOWING WEEK OUR  
6 ATTORNEYS COMMUNICATED WITH DHS, INDICATING CLEARLY THE  
7 POSITION OF OUR FOSTER MOTHER AND THE WELCOME NEWS OF  
8 HER INTENT AND INTEREST IN ADOPTING DOE 2.

9 MS. BARCLAY: PERMISSION TO APPROACH THE  
10 WITNESS, YOUR HONOR.

11 THE COURT: YES.

12 BY MS. BARCLAY:

13 Q. MR. AMATO, I AM APPROACHING YOU WITH WHAT HAS  
14 BEEN MARKED AS PLAINTIFF'S EXHIBIT NUMBER 12. THIS IS  
15 AN E-MAIL FROM LORI WINDHAM TO MR. FIELD. AND SHE SAYS:  
16 BEN, THANKS FOR YOUR E-MAIL. WE WILL TAKE A LOOK AT THE  
17 SOURCES YOU PROVIDED -- PROPOSED REDACTIONS. IN THE  
18 MEANTIME, THOUGH, WE STILL HAVE A CHILD STUCK IN RESPITE  
19 CARE AND KEPT FROM A PRE-ADOPTIVE HOME. I STATED ON  
20 MONDAY I WOULD FACILITATE THE NECESSARY CONVERSATIONS  
21 WITH MY CLIENTS, AND I RECEIVED NO OUTREACH REGARDING  
22 THAT. WHEN WILL THE CITY BE ACTING ON THIS MATTER?

23 SO MY QUESTION TO YOU IS PRIOR TO  
24 RECEIVING -- PRIOR TO SENDING THIS E-MAIL, WERE YOU  
25 AWARE OF THE CITY TRYING TO MAKE OUTREACH TO COMMUNICATE

1 THE COURT: I DON'T THINK WE HAVE TO GO ANY  
2 FURTHER.

3 MS. BARCLAY: THIS IS THE END OF MY LINE OF  
4 QUESTIONING ON THAT.

5 BY MS. BARCLAY:

6 Q. MR. AMATO, I WOULD LIKE TO SPEAK TO YOU ABOUT  
7 THE VIABILITY OF THE CATHOLIC SOCIAL SERVICES FOSTER  
8 PROGRAM MOVING FORWARD. DO YOU REGULARLY OR DO YOUR  
9 STAFF REGULARLY REPORT FOSTER-CARE VACANCIES TO DHS?

10 A. YES.

11 Q. AND IS THAT A CONTRACT REQUIREMENT, AS FAR AS  
12 YOU ARE AWARE?

13 A. I THINK IT'S A PERFORMANCE EXPECTATION. I DON'T  
14 THINK IT'S A CONTRACT REQUIREMENT.

15 Q. BEFORE THE REFERRAL FREEZE, ON AVERAGE HOW MANY  
16 VACANCIES WOULD CATHOLIC SOCIAL SERVICES HAVE AT ANY  
17 GIVEN PERIOD OF TIME ACROSS ALL OF THEIR PROGRAMS?

18 A. FOUR OR FIVE.

19 Q. HOW MANY VACANCIES DO YOU ANTICIPATE THAT YOU  
20 WILL HAVE BY THE END OF JUNE?

21 A. 35.

22 Q. IF YOU CONTINUE TO NOT RECEIVE REFERRALS, WHEN  
23 WILL YOU HAVE TO START LAYING OFF EMPLOYEES?

24 A. IN MID JULY WE WILL BEGIN A VERY SAD PROCESS OF  
25 STAFF REDUCTION.

1 Q. AND THAT'S IF YOU DO NOT CONTINUE TO RECEIVE  
2 REFERRALS?

3 A. CORRECT.

4 Q. AND ON AVERAGE, HOW MANY REFERRALS WILL CATHOLIC  
5 SOCIAL SERVICES RECEIVE A MONTH FROM DHS FOR FOSTER  
6 CHILDREN?

7 A. NINE.

8 Q. IS IT YOUR EXPERIENCE THAT AFTER A CONTRACT  
9 EXPIRED WITH DHS THAT FOSTER AGENCIES ARE ABLE TO  
10 CONTINUE OPERATING UNDER THE PRIOR CONTRACT?

11 A. CAN YOU REPEAT THAT QUESTION, PLEASE.

12 Q. LET'S TALK, FOR EXAMPLE, IF THERE WAS NO  
13 REFERRAL FREEZE GOING ON AND THIS CONTRACT WITH CATHOLIC  
14 SOCIAL SERVICES HAS A TERM ENDING JUNE 30TH. IN A  
15 TYPICAL SENSE, DOES THAT MEAN THAT RIGHT AT JUNE 30TH  
16 YOU HAVE TO ENTER INTO ANOTHER CONTRACT, OR IS IT  
17 TYPICAL FOR AN AGENCY TO OPERATE UNDER AN EXISTING  
18 CONTRACT?

19 A. IT'S TYPICAL --

20 MR. FIELD: OBJECTION. SPECULATION, YOUR  
21 HONOR.

22 THE COURT: OVERRULED.

23 BY MS. BARCLAY:

24 Q. YOU CAN ANSWER THE QUESTION.

25 A. IT'S TYPICAL THAT WE OPERATE UNDER AN EXISTING

1 CONTRACT. MANY OF OUR -- MANY YEARS OF CONTRACT WITH  
2 THE CITY ARE NOT CONFORMED UNTIL WELL INTO THE FALL.

3 Q. SO FOR AN AMOUNT OF MONTHS YOU CAN JUST KEEP  
4 OPERATING UNDER THE PREVIOUS CONTRACT?

5 A. YES.

6 Q. HOW MANY TOTAL STAFF RIGHT NOW WORK FOR THIS  
7 PROGRAM?

8 A. 15.

9 Q. IF REFERRALS DO NOT CONTINUE, APPROXIMATELY HOW  
10 LONG WILL IT BE UNTIL THE PROGRAM IS COMPLETELY CLOSED  
11 DOWN?

12 A. IN A MATTER OF MONTHS.

13 Q. IF YOU CLOSE THE PROGRAM, HOW EASY WOULD IT BE  
14 TO LATER COME BACK AND RECRUIT THE SAME TYPE OF STAFF?

15 A. IMPOSSIBLE.

16 MR. FIELD: CALLS FOR SPECULATION.

17 THE COURT: YES, SUSTAINED.

18 BY MS. BARCLAY:

19 Q. IS ONE OF THE HALLMARKS OF OUR PROGRAM THE  
20 CONTINUITY OF THE EXISTING STAFF?

21 MR. FIELD: ASKED AND ANSWERED, YOUR HONOR.

22 THE COURT: SUSTAINED.

23 BY MS. BARCLAY:

24 Q. WOULD ONE OF THE HALLMARKS OF YOUR CURRENT  
25 PROGRAM BE GONE IF YOU LATER REBUILD THAT WITHOUT YOUR

1 GREAT STAFF?

2 MR. FIELD: OBJECTION, CALLS FOR SPECULATION,  
3 YOUR HONOR.

4 MS. BARCLAY: THAT'S NOT SPECULATIVE, YOUR  
5 HONOR. IF THE CURRENT STAFF WERE GONE, WOULD THAT BE  
6 RELEVANT TO WHETHER OR NOT THAT STRENGTH OF CATHOLIC SOCIAL  
7 SERVICES WOULD BE AVAILABLE. AND THAT'S RELEVANT TO THE  
8 HARM INQUIRY FOR A PRELIMINARY INJUNCTION --

9 THE COURT: OVERRULED.

10 MS. BARCLAY: -- RESTRAINING ORDER.

11 BY MS. BARCLAY:

12 Q. WOULD THAT HALLMARK OF YOUR PROGRAM BE GONE,  
13 CONTINUITY OF THE STAFF?

14 A. ABSOLUTELY.

15 Q. IF YOU CLOSED YOUR PROGRAM, HOW EASY DO YOU  
16 THINK IT WOULD BE TO REBUILD NETWORKS WITH FAMILY AND  
17 THE RELATIONSHIP OF TRUST THAT YOU HAVE RIGHT NOW?

18 A. IT WOULD TAKE YEARS.

19 MS. BARCLAY: NO FURTHER QUESTIONS, MR.  
20 AMATO.

21 YOUR HONOR, I WOULD LIKE TO MAKE SURE THAT I  
22 FORMALLY MOVE ALL EXHIBITS INTO EVIDENCE THAT WE HAVE  
23 DISCUSSED DURING THIS TESTIMONY.

24 THE COURT: VERY WELL.

25 MS. BARCLAY: THANK YOU.

1 FROM THE COMMISSIONER THAT INDICATED THAT THE 290  
2 CONTRACT WOULD BE MOVING FORWARD, BUT EXPLICITLY NOTED  
3 THAT WOULD BE A TRANSITION FOR CSS FOSTER-CARE.

4 Q. DID THE CITY OFFER -- ISN'T IT TRUE THAT THE  
5 CITY OFFERED YOU A FULL CONTRACT FOR FOSTER-CARE IF  
6 CATHOLIC SOCIAL SERVICES WOULD COMPLY WITH ALL OF ITS  
7 OBLIGATIONS UNDER THAT CONTRACT?

8 MS. BARCLAY: OBJECTION, YOUR HONOR.

9 THE COURT: OVERRULED.

10 THE WITNESS: I DON'T RECALL EVER BEING MADE  
11 THAT OFFER.

12 MR. FIELD: PERMISSION TO APPROACH THE  
13 WITNESS, YOUR HONOR.

14 THE COURT: YES.

15 BY MR. FIELD:

16 Q. MR. AMATO, I HAVE JUST GIVEN YOU A DOCUMENT  
17 MARKED DEFENDANT'S EXHIBIT 2.

18 A. RIGHT.

19 Q. THIS IS AN E-MAIL FROM JONATHAN JANISZEWSKI WHO  
20 I'LL REPRESENT IS AN ATTORNEY WITH THE CITY OF  
21 PHILADELPHIA TO LORI WINDHAM FROM BECKET FUND, HERE  
22 TODAY, DATED JUNE 5TH AND REQUEST THAT MS. WINDHAM  
23 FORWARD THE MESSAGE TO YOU. CAN YOU TAKE A LOOK AT THE  
24 PART THAT BEGINS, DEAR MR. AMATO?

25 A. OKAY.

1 Q. HAVE YOU SEEN THIS DOCUMENT BEFORE?

2 A. I HAVE.

3 Q. DOES THIS REFRESH YOUR RECOLLECTION ABOUT  
4 WHETHER OR NOT THE CITY EVER OFFERED YOU A FULL CONTRACT  
5 FOR FOSTER-CARE SERVICES FOR THE COMING YEAR?

6 MS. BARCLAY: I OBJECT, YOUR HONOR. THE FULL  
7 CONTRACT IS VAGUE. IT'S NOT CLEAR EXACTLY WHAT IS BEING  
8 ASKED OF THE WITNESS.

9 THE COURT: OFFERED A CONTRACT.

10 MS. BARCLAY: THERE ARE MULTIPLE CONTRACTS  
11 BEING OFFERED.

12 THE COURT: HE SAID FOSTER-CARE.

13 MS. BARCLAY: THERE HAVE BEEN MULTIPLE OFFERS  
14 -- TWO DIFFERENT TYPES OF --

15 THE COURT: THIS SHOULD BE NO PROBLEM WITH  
16 THIS EXHIBIT.

17 THE WITNESS: GIVE THAT TO ME AGAIN, PLEASE.

18 BY MR. FIELD:

19 Q. DOES THIS REFRESH YOUR RECOLLECTION ABOUT  
20 CONTRACT DISCUSSIONS WITH THE CITY?

21 A. IT REFRESHES MY MEMORY ABOUT THIS LETTER.

22 Q. CAN YOU READ THE LAST PARAGRAPH -- FULL  
23 PARAGRAPH THAT STARTS "PLEASE"?

24 A. PLEASE KNOW THAT DHS VALUES ITS HISTORIC  
25 RELATIONSHIP WITH CSS AND IF CSS IS ABLE TO FIND A WAY

1 TO APPROVE SAME-SEX FOSTER AND ADOPTIVE PARENTS  
2 CONSISTENT WITH CURRENT LAW AND CITY POLICY, DHS WILL  
3 OFFER CSS A NEW CONTRACT THAT ALLOWS CSS TO CONTINUE TO  
4 SELECT AND RECRUIT NOW FOSTER PARENTS AND CONTINUE TO  
5 RECEIVE NEW REFERRALS. HOWEVER, IF CSS IS UNABLE TO DO  
6 SO, DHS STILL SENDS YOU -- INTENDS TO SEND YOU AN  
7 OFFICIAL AWARD LETTER TO PREPARE FOR A NEW CONTRACT  
8 UNDER THE TERMS DESCRIBED ABOVE. YOU SHOULD ANTICIPATE  
9 RECEIVING DHS OFFICIAL AWARD LETTER LATER THIS WEEK.  
10 PLEASE CONTACT ME IF YOU WISH TO DISCUSS THE MATTER.

11 Q. WILL CSS ENTER INTO A CONTRACT WITH THE CITY  
12 CONSISTENT WITH CURRENT LAW AND POLICY ARTICULATED IN  
13 THAT PARAGRAPH?

14 MS. BARCLAY: OBJECTION, YOUR HONOR.

15 MR. FIELD: FOR FOSTER-CARE SERVICES.

16 MS. BARCLAY: HE IS ASKING FOR THE LEGAL --

17 THE COURT: OVERRULED.

18 THE WITNESS: THE CSS WILL ENTER A CONTRACT  
19 WITH THE CITY UNDER THE 290 CONTRACT WITH THE IDEA THAT OUR  
20 -- THAT OUR WITHDRAWAL FROM THE CONTRACT AND THE OVERALL --  
21 AND THE CONTRACT COULD BE WITHIN JUST A MATTER OF MONTHS.  
22 BY MR. FIELD:

23 Q. CAN YOU EXPLAIN THAT?

24 A. YOU CAN'T SUSTAIN A CONTACT WITHOUT REFERRALS.  
25 SO THAT ULTIMATELY WE ARE GOING TO HAVE TO PHASE OUT THE

1 A. THIS LETTER IS TO PROVIDE YOU WITH INFORMATION  
2 ON THE CITY OF PHILADELPHIA DHS HEREIN AND AFTER DHS  
3 DEPARTMENT CONTRACT PROCESS FOR FISCAL YEAR 2019  
4 BEGINNING ON JULY 1ST, 2018. THE FUNDING LEVELS  
5 REFERENCED ABOVE REFLECT THE BUDGET RESTRAINTS AND  
6 PRIORITIES.

7 Q. AND THE NEXT PARAGRAPH ARTICULATES THE CITY'S  
8 POLICY OF NONDISCRIMINATION, CORRECT?

9 A. CORRECT.

10 Q. AND AM I READING THE SENTENCE THERE RIGHT THAT  
11 SAYS THAT DHS WILL CONTINUE TO MAKE PAYMENTS TO CSS FOR  
12 THE ADMINISTRATION AND MAINTENANCE OF EXISTING FOSTER  
13 HOMES WHERE CHILDREN IN DHS'S CARE RESIDE?

14 A. YES.

15 MS. BARCLAY: OBJECTION, YOUR HONOR. THAT  
16 CALLS FOR SPECULATION; ALSO FORM OF THE QUESTION.

17 THE COURT: OVERRULED.

18 BY MR. FIELD:

19 Q. CAN YOU READ THE THIRD AND FOURTH PARAGRAPHS  
20 THERE FOR ME, PLEASE.

21 A. ADDITIONALLY, THE FY 19 CONTRACT WILL ALLOW FOR  
22 REFERRALS OF NEW JOB FOSTER-CARE PLACEMENTS ONLY IN  
23 LIMITED AUTHORIZED CIRCUMSTANCES WHERE CSS PLACEMENT IS  
24 IN THE BEST INTERESTS OF THE CHILD. SINCE A CHILD  
25 SHARES A PRIOR RELATIONSHIP WITH A FOSTER OR

1 PRE-ADOPTIVE PARENT OR WHERE SIBLINGS SHOULD BE PLACED  
2 TOGETHER. THE NEW CONTRACT ALSO PROVIDES TIME FOR THE  
3 ORDERLY TRANSITION OF SERVICES SHOULD THAT BECOME  
4 NECESSARY. THE CONTRACT AMOUNT HAS BEEN ADJUSTED TO  
5 REFLECT THE VOLUME OF SERVICES PROJECTED UNDER THE NEW  
6 SCOPE OF THE CONTRACT.

7 Q. WHEN YOU SAID CSS WOULD ENTER INTO A CONTRACT  
8 WITH THE CITY FOR CARE OF CHILDREN IN AN ORDERLY  
9 TRANSITION, IS THIS THE TYPE OF CONTRACT YOU ARE  
10 REFERRING TO?

11 MS. BARCLAY: OBJECTION, YOUR HONOR. MAY WE  
12 RECEIVE A PROFFER FOR THE RELEVANCE OF THIS LINE OF  
13 QUESTIONING. WE ARE NOT HAVING CONTRACT NEGOTIATIONS RIGHT  
14 NOW AS PART OF THE TESTIMONY. I DON'T UNDERSTAND WHY THIS  
15 IS RELEVANT TO THE MATTER AT HAND OR WITH THE SCOPE OF THE  
16 DIRECT. THIS IS NOT SOMETHING THAT MR. AMATO DISCUSSED.

17 MR. FIELD: CSS HAS REPRESENTED THEY HAVE TO  
18 START LAYING OFF PEOPLE IMMEDIATELY AND THAT THE HARM THE  
19 BUSINESS WILL SUFFER IS IMMEDIATE AND EXTREME, AND THEIR  
20 WILLINGNESS TO ENTER INTO A CONTRACT WITH THE CITY THAT WILL  
21 MITIGATE THAT HARM IS DIRECTLY RELEVANT TO THIS LITIGATION.

22 THE COURT: OVERRULED.

23 THE WITNESS: LAST QUESTION AGAIN.

24 BY MR. FIELD:

25 Q. PREVIOUSLY YOU HAD SAID THAT CSS WOULD ENTER

1 INTO A CONTRACT WITH THE CITY FOR ONGOING CARE THAT DID  
2 NOT REQUIRE CSS TO DO THE CERTIFICATIONS OF SAME-SEX  
3 COUPLES, CORRECT?

4 A. RIGHT.

5 Q. THE NOTICE OF AWARD YOU JUST READ, IS THAT  
6 GENERALLY THE TYPE OF CONTRACT YOU WERE TALKING ABOUT?

7 MS. BARCLAY: OBJECTION, YOUR HONOR, AS TO  
8 SPECULATION.

9 THE COURT: OVERRULED. CAN YOU ANSWER THAT  
10 QUESTION?

11 THE WITNESS: YES. THE WAY I WOULD ANSWER  
12 THAT QUESTION IS BASICALLY THIS WOULD BE THE TRANSITION YEAR  
13 AND WE WOULD BE -- MY PREDICTION, WE WOULD BE OUT OF THE  
14 FOSTER-CARE MISSION WITHIN SEVERAL MONTHS.

15 BY MR. FIELD:

16 Q. BUT YOU WOULD ENTER INTO THAT CONTRACT?

17 MS. BARCLAY: OBJECTION, YOUR HONOR.

18 THE COURT: HE'S ANSWERED.

19 THE WITNESS: OKAY.

20 MR. FIELD: THANK YOU, YOUR HONOR.

21 PERMISSION TO APPROACH THE WITNESS, YOUR  
22 HONOR?

23 THE COURT: YES.

24 BY MR. FIELD:

25 Q. MR. AMATO, JIM, I HAVE JUST HANDED YOU A LETTER

1 DATED JUNE 11TH, ADDRESSED TO YOU FROM CYNTHIA FIGUEROA?

2 A. UM-HUM.

3 Q. IT SAYS, FISCAL YEAR 2019 AWARD LETTER, TRIAL  
4 WELFARE OPERATIONS PLACEMENT SERVICES CONGREGATE CARE  
5 \$18,505,119. HAVE YOU SEEN THIS LETTER BEFORE?

6 A. YES.

7 Q. IS THIS A NOTICE OF AWARD FOR A NEW CONTRACT  
8 RELATED TO THE -- WHAT WE TALKED ABOUT BEFORE, I  
9 BELIEVE, AS GROUP CARE CONGREGATE CARE?

10 A. WHAT STRUCK ME WHEN I SAW THIS LETTER --

11 Q. CAN YOU JUST PLEASE TELL ME WHETHER THIS IS A  
12 NOTICE OF AWARD FOR THE CONTRACTS OR WHAT YOU WERE  
13 TALKING ABOUT UNDER THE GROUP CARE?

14 A. YES, AS THE SHORT --

15 MS. BARCLAY: OBJECTION TO SPECULATION AND HE  
16 IS ASKING TO CHARACTERIZE A DIFFERENT TYPE OF DOCUMENT.

17 MR. FIELD: I AM ASKING THIS WITNESS WHAT HIS  
18 UNDERSTANDING OF THIS DOCUMENT IS.

19 THE COURT: OVERRULED.

20 THE WITNESS: MY UNDERSTANDING OF THE  
21 DOCUMENT, DHS HAS CONTINUED TO BE INTERESTED IN OUR DOING  
22 MISSION AS USUAL IN CONGREGATE CARE, BUT SEGREGATING  
23 FOSTER-CARE FROM THAT CONTRACT.

24 BY MR. FIELD:

25 Q. THIS IS A NOTICE OF AWARD FOR THE CONTRACT FOR

1 Q. IT SAYS: "PLEASE ALSO NOTE THAT CSS'S CURRENT  
2 NEW CONTRACT EXPIRES ON JUNE 30TH, 2018, AND THE CITY IS  
3 UNDER NO LEGAL OBLIGATION TO ENTER INTO A NEW CONTRACT  
4 FOR ANY PERIOD THEREAFTER. WE ARE HOPEFUL THAT WE CAN  
5 WORK OUT ANY DIFFERENCES BEFORE THEN, BUT PLEASE BE  
6 ADVISED THAT EXCEPT FOR IN THE BEST INTEREST OF THE  
7 CHILD ^DEMANDS OTHERWISE, THE CITY DOES NOT PLAN TO  
8 AGREE TO ANY FURTHER REFERRALS TO CSS, AND THE CITY  
9 INTENDS TO ASSIST WITH THE TRANSITION OF FOSTER FAMILIES  
10 TO OTHER AGENCIES ABSENT ASSURANCES THAT CSS IS PREPARED  
11 TO ADHERE TO CONTRACTUAL OBLIGATIONS, AND AN IMPLICATION  
12 OF CITY CONTRACT TO COMPLY WITH ALL APPLICABLE LAWS,  
13 INCLUDING THOSE RELATING TO NONDISCRIMINATION. WE  
14 BELIEVE OUR CURRENT CONTRACT WITH CSS IS QUITE CLEAR  
15 THAT THIS IS OUR RIGHT, BUT PLEASE BE ADVISED THAT ANY  
16 FURTHER CONTRACT WITH CSS WILL BE EXPLICIT IN THIS  
17 REGARD."

18 WHAT WAS YOUR UNDERSTANDING ABOUT THE  
19 MEANING OF THIS COMMUNICATION FROM THE CITY?

20 A. QUITE FRANKLY, THEY WERE ON A SHORT ROPE AND  
21 THAT REFERRALS -- THEY CARRY US OVER UNTIL THE PROGRAM  
22 BASICALLY DRIED UP IN A MATTER OF MONTHS, AND WE WOULD  
23 HAVE NO FOSTER-CARE PROGRAM.

24 Q. THIS LAST SENTENCE: "WE BELIEVE OUR CURRENT  
25 CONTRACT WITH CSS IS QUITE CLEAR THAT IS OUR RIGHT, BUT

1 PLEASE BE ADVISED THAT ANY FURTHER CONTRACT WITH CSS  
2 WILL BE EXPLICIT IN THIS REGARD."

3 DID THIS GIVE AN INDICATION THAT  
4 POTENTIALLY FUTURE FULL CONTRACTS, AS THE CITY  
5 CHARACTERIZES THEM, WOULD HAVE DIFFERENT CONTRACT TERMS  
6 THAN YOU HAVE SEEN IN THE PAST?

7 A. YES.

8 Q. AND WOULD YOU NEED TO REVIEW CONTRACT TERMS OF A  
9 NEW FULL CONTRACT TO ENSURE THAT YOU COULD CONTINUE TO  
10 PROVIDE FOSTER-CARE SERVICES CONSISTENT WITH YOUR  
11 RELIGIOUS BELIEFS, AS YOU HAVE DONE FOR THE LAST  
12 50 YEARS?

13 A. YES.

14 Q. IS IT YOUR POSITION, MR. AMATO, THAT THE PRODUCT  
15 OF A FINAL HOME STUDY INCLUDES A WRITTEN ENDORSEMENT OF  
16 ANY RELEVANT RELATIONSHIPS OF THE FOSTER PARENT?

17 A. IT IS.

18 Q. THAT'S YOUR SINCERE BELIEF, CORRECT?

19 A. IT IS.

20 Q. AND THE SINCERE BELIEF OF CATHOLIC SOCIAL  
21 SERVICES?

22 A. YES.

23 Q. NOW, IS IT YOUR UNDERSTANDING THAT EVALUATION OF  
24 THE RELATIONSHIPS OF THE PARENTS IS REQUIRED BY STATE  
25 LAW FOR A HOME STUDY?

1 Q. WHAT ASPECT OF CSS'S REFERRAL POLICIES THAT ARE  
2 AT ISSUE IN THIS LITIGATION FIRST CAME TO YOUR  
3 ATTENTION?

4 THE COURT: OVERRULED.

5 THE WITNESS: SO WHAT SPECIFICALLY CAME TO MY  
6 ATTENTION AS I GOT A CALL FROM -- WE GOT A -- DHS GOT A CALL  
7 FROM THE PHILADELPHIA INQUIRER REGARDING KNOWLEDGE THAT THEY  
8 HAD THAT TWO ORGANIZATIONS, CATHOLIC SOCIAL SERVICES AND  
9 BETHANY CHRISTIAN SERVICES, WERE DENYING TO SERVE SAME-SEX  
10 COUPLES.

11 MR. RIENZI: OBJECTION, AND MOVE TO STRIKE,  
12 YOUR HONOR. IT'S HEARSAY.

13 THE COURT: OVERRULED. THIS IS NOT FOR THE  
14 TRUTH OF THE MATTER.

15 BY MR. FIELD:

16 Q. AND WHAT DID YOU DO WHEN YOU LEARNED THAT?

17 A. UPON HEARING THAT, BOTH MYSELF AND FIRST DEPUTY  
18 COMMISSIONER JESSICA SHAPIRO ACTUALLY CALLED A NUMBER OF  
19 OUR FAITH-BASED INSTITUTIONS, AND WE STATED BY CALLING  
20 BETHANY CHRISTIAN SERVICES, AS WELL AS CATHOLIC SOCIAL  
21 SERVICES, TO ASK THEM THEIR POSITION REGARDING SERVING  
22 SAME-SEX COUPLES AND SERVING THEIR HOMES.

23 Q. WHAT DID YOU LEARN FROM THE PHONE CALLS?

24 MR. RIENZI: OBJECTION, HEARSAY.

25 THE COURT: OVERRULED.

1 THE WITNESS: I WAS ON THE PHONE WITH JESSICA  
2 AND JAMES AMATO AND HE INDICATED THAT THEY WOULD NOT, BASED  
3 ON THE RELIGIOUS POSITION, CERTIFY SAME-SEX HOMES, OR DO  
4 HOMES FOR ADOPTION.

5 BY MR. FIELD:

6 Q. WHAT DID YOU LEARN FROM BETHANY?

7 A. THEY HAD A SIMILAR STATEMENT. THEY INDICATED  
8 THAT THEY ACTUALLY HAD SAME-SEX HOMES THAT WERE  
9 CERTIFIED, BUT THEIR STATEMENT SAID THAT THEY WERE --  
10 THEY WERE UNCLEAR ABOUT THEIR ABILITY TO SERVE SAME-SEX  
11 COUPLES.

12 Q. AND DID YOU -- YOU SAID YOU CONTACTED OTHER  
13 FOSTER-CARE AGENCIES AS WELL?

14 A. I DID. I CALLED A NUMBER OF FAITH-BASED  
15 INSTITUTIONS THAT SAME DAY, AND ASKED THEM WHAT THEIR  
16 POSITION WAS.

17 Q. WHAT DID YOU LEARN FROM ANY OF THEM?

18 MR. RIENZI: OBJECTION, HEARSAY.

19 MR. FIELD: SHE IS NOT OFFERING FOR THE --

20 THE COURT: SUSTAINED.

21 BY MR. FIELD:

22 Q. DID ANY OF THE OTHER AGENCIES TELL YOU THAT THEY  
23 WOULD NOT CERTIFY SAME-SEX COUPLES?

24 MR. RIENZI: OBJECTION, HEARSAY.

25 THE COURT: SUSTAINED.

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MR. FIELD: THANK YOU, YOUR HONOR.

(ALL RISE.)

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
KIMBERLY ALI	-	3	24	27
JAMES AMATO	3	80	113	123
CYNTHIA FIGUEROA	148			

EXHIBITS	PAGE
PLAINTIFF EXHIBITS 1 THROUGH 12	80

I CERTIFY THAT THE FOREGOING IS A CORRECT  
TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE  
ABOVE-ENTITLED MATTER.

DATE OFFICIAL COURT REPORTER  
LYNN MCCLOSKEY, RPR

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

- - -

SHARONELL FULTON, ET AL : CIVIL DOCKET FOR CASE  
: NO. 18-2075  
-VS- :  
:   
CITY OF PHILADELPHIA, ET AL :

- - -

PHILADELPHIA, PA.

JUNE 21, 2018

BEFORE HONORABLE JUDGE PETRESE B. TUCKER

TEMPORARY RESTRAINING ORDER

DAY 3

APPEARANCES:

FOR THE PLAINTIFF: BECKET FUND FOR RELIGIOUS LIBERTY  
BY: MARK L. RIENZI, ESQ.  
1200 NEW HAMPSHIRE AVE, N.W.  
SUITE 700  
WASHINGTON, DC 20036

FOR THE DEFENDANTS: CITY OF PHILADELPHIA LAW DEPARTMENT  
BY: ELEANOR N. EWING, ESQ.  
BENJAMIN H. FIELD, ESQ.  
SCHAUNDRA OLIVER, ESQ.  
DIANA P. CORTES, ESQ.  
1515 ARCH STREET, 16TH FLOOR  
PHILADELPHIA, PA 19102

ALSO PRESENT: LESLIE COOPER, ESQ. - ACLU  
MARY CATHERINE ROPER - ACLU

LYNN MCCLOSKEY, RPR  
OFFICIAL COURT REPORTER  
1234 US COURTHOUSE  
601 MARKET STREET  
PHILADELPHIA, PA 19106  
(856) 649-4774

1 Q. AND WHAT DID YOU UNDERSTAND THE NATURE OF THOSE  
2 TWO AGENCIES YOU REFERENCED, BETHANY AND CSS'S,  
3 OBJECTION TO BE?

4 A. I UNDERSTOOD THEIR OBJECTION TO BE TO NOT BE  
5 WILLING TO CERTIFY SAME-SEX COUPLES.

6 Q. WHAT WAS THE NATURE OF THAT OBJECTION? WAS IT  
7 SECULAR, WAS IT RELIGIOUS, WAS IT SOMETHING ELSE?

8 A. AS INDICATED BY JAMES AMATO, IT WAS BASED ON  
9 RELIGION.

10 Q. AND APPROXIMATELY WHEN, TO THE BEST OF YOUR  
11 RECOLLECTION, WAS THIS OUTREACH FROM A REPORTER?

12 A. IT WAS ON MARCH 9TH, AND I SUBSEQUENTLY SPOKE TO  
13 JAMES AMATO ON THE SAME DAY.

14 Q. SO SHORTLY AFTER THE CALL FROM THE REPORTER?

15 A. VERY SHORTLY AFTER THE CALL FROM THE REPORTER I  
16 CALLED JAMES AMATO AND THEN WE MADE A NUMBER OF CALLS  
17 THAT DAY.

18 Q. AND IS IT ON THAT CALL THAT JAMES AMATO TOLD YOU  
19 WHAT YOU JUST RELATED, THAT IT WAS A RELIGIOUS  
20 OBJECTION?

21 A. HE MADE IT CLEAR THAT BASED ON THEIR RELIGIOUS  
22 BELIEFS THAT THEY WOULD NOT DO THE CERTIFICATION PROCESS  
23 OF THE SAME-SEX COUPLE AND THEY WOULD NOT DO HOME  
24 STUDIES FOR ADOPTION FOR SAME-SEX COUPLES.

25 Q. AND ON WEDNESDAY YOU SAID THAT AFTER THAT CALL

1 A. AT THE POINT IN WHICH I CLOSED INTAKE, IT WASN'T  
2 CLEAR TO ME, BUT IT BECAME ABUNDANTLY CLEAR THEREAFTER,  
3 THAT THE ABILITY TO COMPLY WITH THE FULL ENTIRETY OF  
4 THEIR CONTRACT WAS UNCERTAIN. AND SO IF YOU ARE NOT  
5 ABLE TO COMPLY WITH YOUR CONTRACT, CERTAINLY IT PUTS --  
6 YOU KNOW, IT'S A CONCERN FOR THE CITY, IT WAS A CONCERN  
7 FOR ME TO NOT MAKE SURE THAT MORE CHILDREN COULD HAVE  
8 BEEN DISRUPTED IF WE CONTINUED TO SEND KIDS TO CATHOLIC  
9 SOCIAL SERVICES.

10 Q. AND JUST SO I FULLY UNDERSTAND, HOW COULD MORE  
11 -- HOW COULD CHILDREN BE DISRUPTED? WHAT ARE YOU  
12 LOOKING AT AND THINKING ABOUT WHEN YOU SAY THAT?

13 A. SO IF WE -- IF CATHOLIC SOCIAL SERVICES COULD  
14 NOT COMPLY AND THEY REFUSED TO ENTER INTO A FULL  
15 CONTRACT, WE WOULD HAVE TO MOVE ALL OF THE CHILDREN WHO  
16 ARE CURRENTLY SERVED BY CATHOLIC SOCIAL SERVICES TO  
17 ANOTHER PROVIDER. AND SO CERTAINLY A PLACEMENT  
18 DISRUPTION IS NOT AT ALL WHAT THE CITY WANTS TO OR  
19 INTENDS TO DO, AND CERTAINLY NOT A POSITION THAT WE  
20 WANTED TO FIND OURSELVES IN.

21 Q. SO YOU CLOSED INTAKE TO MAKE SURE FEWER CHILDREN  
22 -- NO ADDITIONAL CHILDREN WERE ADDED TO THAT MIX?

23 A. THAT'S CORRECT.

24 Q. YOU MENTIONED HAVING CLOSED INTAKE IN OTHER  
25 INSTANCES IN THE PAST.

1 A. YES.

2 Q. HOW HAS THAT BEEN HANDLED ADMINISTRATIVELY  
3 WITHIN DHS? WHAT DO YOU DO WHEN YOU CLOSE INTAKE?

4 A. GENERALLY, INFORMATION IS BROUGHT TO MY  
5 ATTENTION OR I AM MADE AWARE OF DIRECTLY. AND I DISCUSS  
6 THOSE MATTERS WITH MY EXECUTIVE TEAM AND MAKE A  
7 DETERMINATION THAT IT'S IN THE BEST INTEREST TO SHUT  
8 INTAKE. SO WE HAVE DONE THAT FOR ADMINISTRATIVE  
9 REASONS, AND WE HAVE DONE IT FOR PROGRAMMATIC REASONS.  
10 AND THE DURATION OF THE INTAKE CLOSURE IS REALLY IN  
11 PLACE UNTIL THE ISSUE IS REMEDIATED OR TAKEN CARE OF.

12 Q. DOES DHS PERMIT EXCEPTIONS WHEN IT CLOSSES  
13 INTAKE?

14 A. ABSOLUTELY. IN THE CASE OF CATHOLIC SOCIAL  
15 SERVICES WE HAVE MADE A NUMBER OF EXCEPTIONS.

16 Q. IN WHAT CONTEXT ARE EXCEPTIONS CONSIDERED?

17 A. SO EXCEPTIONS HAVE BEEN CONSIDERED AS IT RELATES  
18 TO KEEPING SIBLINGS TOGETHER, AS WELL AS IN CASES WHERE  
19 A CHILD HAD RECENTLY RESIDED WITH A FOSTER PARENT AND  
20 COULD RETURN BACK TO A HOME THAT THE CHILD WAS FAMILIAR  
21 WITH.

22 Q. AND IN THE PAST INSTANCES OF CLOSING INTAKE,  
23 HAVE SIMILAR EXCEPTIONS BEEN GRANTED?

24 A. ABSOLUTELY. WE JUST LAST WEEK HAD AN EXPERIENCE  
25 WHERE ANOTHER ORGANIZATION THAT HAS THEIR INTAKE

1 NEEDED THE STAFFING AND WE NEEDED THE ABILITY TO ASSURE  
2 QUALITY SERVICES AND THE SAFETY OF CHILDREN. AND SO WE  
3 NEGOTIATED THE STAFFING LEVELS AND THE CONTRACTED  
4 AMOUNTS. IN ONE PARTICULAR CASE WE HAD AN INDIVIDUAL,  
5 AND I KNOW THIS GETS VERY MUCH INTO JARGON AROUND OUR  
6 CONTRACTS, BUT WE PAY A LOT OF THE PLACEMENT SERVICES IN  
7 WHAT WE CALL A PER DIEM. SO THAT'S LIKE A SET AMOUNT OF  
8 MONEY PER CHILD PER DAY. AND THEN WE HAVE THE ABILITY  
9 TO DO WHAT IS CALLED A COST REIMBURSEMENT CONTRACT.

10 IN ONE INSTANCE WHEN WE KNEW WE WERE  
11 CLOSING THE PROGRAM, WE KNEW IT WAS NOT FINANCIALLY  
12 VIABLE OR IN THE BEST INTEREST OF THE KIDS FROM A  
13 PROGRAMMATIC STANDPOINT, THEY WERE NOT GOING TO BE ABLE  
14 TO KEEP STAFF, SO WE CHANGED IT FROM A PER DIEM CONTRACT  
15 TO A COST REIMBURSEMENT, AND WE GUARANTEED THEM THE  
16 ABILITY TO HAVE A SET AMOUNT OF STAFF.

17 IN ONE OTHER INSTANCE WE ACTUALLY OFFERED  
18 STAY BONUSES FOR STAFF TO MAKE SURE THAT WE HAD THE  
19 EXACT STAFFING PATTERN WE NEEDED UNTIL CLOSURE.

20 Q. AND DO YOU HAVE ANY REASON TO THINK YOU WOULD  
21 NOT ENGAGE IN NEGOTIATIONS OF THIS SORT WITH CATHOLIC  
22 SOCIAL SERVICES?

23 MR. RIENZI: OBJECTION, SPECULATION.

24 THE WITNESS: NO.

25 BY MR. FIELD:

1 Q. WOULD YOU ENGAGE IN NEGOTIATIONS OF THIS SORT  
2 WITH THE CATHOLIC SOCIAL SERVICES?

3 MR. RIENZI: OBJECTION, SPECULATION.

4 THE COURT: OVERRULED.

5 THE WITNESS: YES, THAT'S WITHIN MY  
6 PURVIEW AS THE COMMISSIONER, AND I WOULD NEGOTIATE THOSE  
7 TERMS.

8 BY MR. FIELD:

9 Q. REAL BRIEFLY, YOU MENTIONED WHEN YOU WERE FIRST  
10 CONTACTED BY A REPORTER TWO AGENCIES, CATHOLIC SOCIAL  
11 SERVICES AND BETHANY, I BELIEVE?

12 A. THAT IS CORRECT.

13 Q. WHAT DOES BETHANY DO FOR DHS?

14 A. FOSTER CARE SERVICES.

15 Q. SO IT'S A SIMILAR CONTRACT?

16 A. YES.

17 Q. AND DID YOU CLOSE INTAKE WITH REGARD TO BETHANY?

18 A. YES, I DID.

19 Q. DOES IT REMAIN CLOSED?

20 A. AS OF TODAY IT REMAINS CLOSED, YES.

21 Q. AND IS IT YOUR EXPECTATION THAT BETHANY WILL  
22 SIGN A FULL CONTRACT FOR THE COMING YEAR?

23 THE WITNESS: YES.

24 MR. RIENZI: OBJECTION, SPECULATION.

25 THE COURT: OVERRULED.

1 A. WELL, ACTUALLY BETHANY DOES BECAUSE THEY HAVE  
2 CERTIFIED A NUMBER OF SAME-SEX COUPLES, SO I WOULD JUST  
3 SAY CATHOLIC.

4 Q. SO TODAY 29 AGENCIES WILL DO HOME STUDIES FOR  
5 SAME-SEX COUPLES?

6 A. FROM MY KNOWLEDGE.

7 Q. IF CATHOLIC CLOSES THEIR PROGRAM, HOW MANY  
8 FOSTER AGENCIES IN THE CITY WILL PROVIDE HOME STUDIES TO  
9 SAME-SEX COUPLES?

10 A. THE SAME --

11 MR. FIELD: OBJECTION, CALLS FOR  
12 SPECULATION.

13 THE COURT: OVERRULED.

14 THE WITNESS: THE SAME NUMBER, I PRESUME.

15 BY MR. RIENZI:

16 Q. AND IF CATHOLIC IS ALLOWED TO RESUME ITS PAST  
17 PRACTICE, HOW MANY AGENCIES IN THE CITY WILL PROVIDE  
18 HOME STUDIES FOR SAME-SEX COUPLES?

19 MR. FIELD: OBJECTION, CALLS FOR  
20 SPECULATION.

21 THE COURT: OVERRULED.

22 THE WITNESS: 29.

23 BY MR. RIENZI:

24 Q. SO NO MATTER HAPPENS IN THIS CASE IT IS YOUR  
25 TESTIMONY THERE WILL BE 29 AGENCIES IN THE CITY THAT

1 PROVIDE HOME STUDIES FOR SAME-SEX COUPLES, CORRECT?

2 MR. FIELD: OBJECTION, CALLS FOR  
3 SPECULATION.

4 THE COURT: OVERRULED.

5 THE WITNESS: YES.

6 BY MR. RIENZI:

7 Q. TO YOUR KNOWLEDGE, DHS HAS RECEIVED NO  
8 COMPLAINTS AGAINST CATHOLIC FOR OPERATING ACCORDING TO  
9 ITS RELIGIOUS BELIEFS, CORRECT?

10 A. THAT IS CORRECT.

11 Q. TO YOUR KNOWLEDGE, YOU HAVE RECEIVED NO  
12 COMPLAINTS AGAINST CATHOLIC FOR PROVIDING FOSTER CARE  
13 SERVICES ACCORDING TO ITS RELIGIOUS BELIEFS, CORRECT?

14 A. NONE THAT I AM -- NONE THAT I CAN RECALL.

15 Q. TO YOUR KNOWLEDGE, YOU HAVE RECEIVED NO  
16 COMPLAINTS AGAINST CATHOLIC FOR FAILING TO PERFORM A  
17 HOME STUDY FOR SOMEONE WHO WANTED IT, CORRECT?

18 A. I CAN'T ANSWER THAT UNEQUIVOCALLY.

19 Q. BUT YOU ARE NOT AWARE OF ANY AS YOU SIT HERE  
20 TODAY?

21 A. I AM NOT AWARE OF ANY, NO.

22 Q. TO YOUR KNOWLEDGE, NOT A SINGLE PROSPECTIVE LGBT  
23 FOSTER PARENT WAS UNABLE TO BECOME A FOSTER PARENT  
24 BECAUSE OF CATHOLIC'S RELIGIOUS EXERCISE, CORRECT?

25 A. I CAN'T ANSWER THAT.

1 Q. YOU DON'T KNOW EITHER WAY?

2 A. I CAN'T ANSWER THAT.

3 Q. ARE YOU AWARE OF ANY WHO ARE UNABLE TO BECOME A  
4 FOSTER PARENT BECAUSE OF CATHOLIC?

5 A. I CAN'T ANSWER THAT.

6 Q. YOU CANNOT ANSWER BECAUSE YOU ARE NOT AWARE OF  
7 ANY, CORRECT?

8 A. I CAN'T ANSWER THAT BECAUSE I DON'T KNOW IF  
9 ANYBODY WAS TURNED AWAY.

10 Q. SO FAR AS DHS IS AWARE, THE NUMBER OF FOSTER  
11 PARENTS TURNED AWAY BY CATHOLIC WHO WANTED A HOME STUDY  
12 FOR AN LGBT COUPLE IS ZERO, CORRECT?

13 A. I CAN'T ANSWER THAT.

14 MR. FIELD: SHE JUST SAID SHE IS UNAWARE  
15 IF ANYBODY WAS TURNED AWAY, YOUR HONOR.

16 THE COURT: SHE ANSWERED SEVERAL TIMES.  
17 BY MR. RIENZI:

18 Q. YOU SAID YOU ARE RESPONSIBLE FOR ABOUT 1500  
19 EMPLOYEES?

20 A. THAT IS CORRECT.

21 Q. TO YOUR KNOWLEDGE, NOT ONE OF THEM HAS TOLD YOU  
22 ABOUT ANY COUPLE REJECTED BY CATHOLIC BECAUSE OF ITS  
23 RELIGIOUS EXERCISE?

24 A. NOT THAT I CAN RECALL.

25 Q. ON YOUR FOSTER CARE WEBSITE YOU TELL PROSPECTIVE

1 PARAGRAPH WE WERE JUST LOOKING AT, PLEASE?

2 A. OH, DIFFERENT REQUIREMENTS, SPECIALTIES AND  
3 TRAINING.

4 Q. IT SAYS: EACH AGENCY HAS SLIGHTLY DIFFERENT  
5 REQUIREMENTS, SPECIALTIES AND TRAINING PROGRAMS,  
6 CORRECT?

7 A. CORRECT.

8 Q. AGENCIES ARE ALLOWED TO HAVE DIFFERENT  
9 REQUIREMENTS, CORRECT?

10 A. THEY MAY ONLY HAVE SPECIAL REQUIREMENTS AS IT  
11 RELATES TO MEDICAL AND SPECIALIZED BEHAVIORAL HEALTH.

12 Q. IT DOESN'T SAY THAT ON YOUR WEBSITE, DOES IT?

13 A. THIS IS MEANT TO PROVIDE GENERAL INFORMATION AND  
14 DOES NOT GO INTO INDIVIDUAL REGS OF ALL OF THE  
15 SPECIALIZATIONS.

16 Q. IS THERE SOMEPLACE ELSE THAT TELLS AGENCIES THAT  
17 THOSE ARE THE ONLY DIFFERENT REQUIREMENTS THEY ARE  
18 ALLOWED TO HAVE?

19 A. NOT THAT I CAN RECALL RIGHT NOW.

20 Q. I BELIEVE YOU TESTIFIED YESTERDAY AND SOME THIS  
21 MORNING THAT YOU ARE FAMILIAR WITH DHS'S CONTRACTS?

22 A. I AM.

23 Q. AND YOU ARE FAMILIAR WITH THE CONTRACT UNDER  
24 WHICH CATHOLIC PROVIDES FOSTER CARE SERVICES?

25 A. I AM.

1 A. IS SERVICES, THE DEFINITION OF SERVICES.

2 Q. CAN YOU START WITH SERVICES AND TELL ME HOW, AS  
3 YOU UNDERSTAND IT, CATHOLIC WAS IN VIOLATION OF THE  
4 SERVICES PROVISION OF THE CONTRACT?

5 A. SO THE TOTALITY OF THE CONTRACT UNDER SERVICES  
6 REQUIRES THAT YOU TRAIN, RECRUIT AND CERTIFY FOSTER CARE  
7 HOMES. THE INABILITY TO DELIVER A PART OF THAT SERVICE  
8 WOULD NOT ALLOW YOU TO DO THE ENTIRETY OF YOUR CONTRACT.

9 Q. DOES THE SERVICES PROVISION SAY YOU MUST TRAIN,  
10 RECRUIT AND CERTIFY ALL FAMILIES?

11 MR. FIELD: OBJECTION, YOUR HONOR. THIS  
12 IS AN 80-PAGE CONTRACT AND HE IS ASKING ABOUT A  
13 PARTICULAR PROVISION WITHIN IT.

14 THE COURT: OVERRULED. SHE CAN ANSWER.

15 THE WITNESS: CAN YOU REPEAT YOUR  
16 QUESTION.

17 BY MR. RIENZI:

18 Q. SURE. DOES THE SERVICES PART OF THE CONTRACT  
19 REQUIRE -- STRIKE THAT.

20 DOES THE SERVICES PART OF THE CONTRACT  
21 TELL AGENCIES THAT THEY MUST RECRUIT AND CERTIFY ALL  
22 FAMILIES?

23 A. I DON'T HAVE IT IN FRONT OF ME. I COULD NOT  
24 WITHOUT --

25 Q. SURE. THAT'S UNDERSTANDABLE. I AGREE IT'S

1 ABILITY TO COMPLY WITH THE ENTIRETY OF THEIR CONTRACT.

2 Q. AND FOR MY NEXT QUESTION, I WANT YOU TO LEAVE  
3 THAT DISCUSSION ASIDE BECAUSE I AM NOT ASKING ABOUT THAT  
4 DISCUSSION. I AM ASKING YOU ABOUT YOUR JOB AS THE  
5 PERSON IN CHARGE OF DHS, AND I AM ASKING ABOUT YOUR JOB  
6 PARTICULARLY AS SOMEBODY WHO HAS TESTIFIED THAT IT IS  
7 YOUR RESPONSIBILITY TO ENSURE THAT YOUR AGENCY COMPLIES  
8 WITH STATE, FEDERAL AND CITY LAW.

9 A. THAT IS CORRECT.

10 Q. IS IT YOUR OPINION THAT DHS IS GOVERNED BY THE  
11 FAIR PRACTICES ORDINANCE WHEN DOING FOSTER CARE WORK?

12 A. COULD YOU RESTATE YOUR QUESTION.

13 Q. IS IT YOUR OPINION THAT DHS, THE AGENCY YOU RUN,  
14 IS COVERED BY THE FAIR PRACTICES ORDINANCE WHEN DOING  
15 FOSTER CARE WORK?

16 MR. FIELD: OBJECTION TO THE EXTENT IT  
17 CALLS FOR A LEGAL CONCLUSION OR INFORMATION LEARNED FROM  
18 COUNSEL.

19 THE COURT: OVERRULED. IF YOU CAN  
20 ANSWER.

21 THE WITNESS: I DON'T FEEL I HAVE LEGAL  
22 TRAINING TO ANSWER THAT QUESTION.

23 BY MR. RIENZI:

24 Q. HAVE YOU EVER TRAINED YOUR STAFF ON COMPLIANCE  
25 WITH THE FAIR PRACTICES ORDINANCE?

1 A. AS A COMMISSIONER?

2 Q. YES.

3 A. NO, I HAVE NOT.

4 Q. IN YOUR PRIOR TERM AT DHS HAVE YOU EVER TRAINED  
5 YOUR STAFF ON COMPLIANCE WITH THE FAIR PRACTICES  
6 ORDINANCE?

7 A. AS A DEPUTY COMMISSIONER, NO.

8 Q. IN ANY CONTEXT AT DHS HAVE YOU EVER TRAINED  
9 STAFF ON THAT ISSUE?

10 MR. FIELD: YOU MEAN -- YOUR HONOR, CAN  
11 WE JUST FIND OUT WHETHER HE MEANS HER PERSONALLY OR HER  
12 DEPARTMENT?

13 THE COURT: HER PERSONALLY.

14 BY MR. RIENZI:

15 Q. I WILL START WITH YOU PERSONALLY.

16 A. I'M SORRY. I AM CONFUSED. CAN YOU START OVER  
17 AGAIN.

18 Q. SURE. AND I WILL BACK UP. I APOLOGIZE.

19 WHAT I AM TRYING TO GET A SENSE OF IS  
20 WHETHER WHILE YOU ARE AT DHS YOU ALL ARE ACTING LIKE YOU  
21 ARE COVERED BY THE FAIR PRACTICES ORDINANCE. SO MY  
22 QUESTION IS -- I WILL START WITH NOW AS COMMISSIONER.  
23 AS COMMISSIONER, HAVE YOU DONE ANYTHING TO MAKE SURE  
24 THAT PEOPLE AT DHS FOLLOW THE FAIR PRACTICES ORDINANCE  
25 WHEN DOING FOSTER CARE WORK?

1 A. NOT TO MY RECOLLECTION.

2 Q. AND IN ALL OF YOUR TIME AT DHS, NOW OVER THE  
3 COUPLE OF DIFFERENT STINTS THAT YOU HAVE HAD, DO YOU  
4 RECALL ANY DISCUSSIONS WITH ANYBODY ABOUT WHETHER DHS  
5 WAS COVERED BY THE FAIR PRACTICES ORDINANCE WHEN DOING  
6 FOSTER CARE WORK?

7 A. I ANSWERED THAT IT WAS WITH OUR LEGAL COUNSEL.

8 Q. YES. I WANT YOU TO LEAVE ASIDE THAT DISCUSSION.  
9 OTHER THAN THAT, ARE YOU AWARE OF ANY OTHER DISCUSSION  
10 ABOUT WHETHER DHS IS COVERED BY THE FAIR PRACTICES  
11 ORDINANCE WHEN DOING FOSTER CARE WORK?

12 A. I HAVE NOT HAD A REASON TO.

13 Q. DHS SOMETIMES CONSIDERS RACE WHEN MAKING A  
14 FOSTER CARE PLACEMENT?

15 A. NO.

16 Q. DHS NEVER CONSIDERS A REQUEST FROM A PARENT TO  
17 FOSTER A CHILD OF A PARTICULAR RACE WHEN PLACING  
18 CHILDREN?

19 A. THAT WOULD BE THE PARENT'S CHOICE AND  
20 PERSPECTIVE TO GIVE THAT REQUEST.

21 Q. AND WHEN DHS IS MEETING THAT PARENT'S CHOICE, IT  
22 DOES CONSIDER RACE WHEN MAKING FOSTER CHILD PLACEMENTS?

23 A. WE CAN'T ALWAYS OFFER THE ABILITY TO PROVIDE THE  
24 CONSIDERATION THAT HAS BEEN PRESENTED BY THE PARENT.

25 Q. UNDERSTOOD, BUT SOMETIMES YOU DO, CORRECT?

1 A. NO, I CAN'T ANSWER THAT.

2 Q. YOU CAN'T ANSWER IT OR YOU DON'T DO IT?

3 I WILL BREAK IT APART. ARE YOU SAYING  
4 THAT DHS NEVER CONSIDERS THE RACE OF A CHILD WHEN MAKING  
5 A PLACEMENT?

6 A. I AM SAYING THAT WE CONSIDER THE REQUEST OF THE  
7 RESOURCE PARENT AND THAT THE OTHER FACTOR THAT WE HAVE  
8 TO CONSIDER IS THE BEST INTEREST OF THE CHILD. WHETHER  
9 THE BEHAVIOR IS -- COINCIDES WITH THE ENVIRONMENT IN THE  
10 HOUSEHOLD, WHETHER OR NOT THERE CAN BE NO OTHER CHILD IN  
11 THE HOME, WHETHER OR NOT THE CHILD IS MEDICALLY FRAGILE.  
12 SO THERE ARE A LOT OF CONSIDERATIONS AND THEY ARE ALL  
13 DRIVEN BY SAFETY.

14 Q. I AM TRYING TO GET YOU TO FOCUS ON RACE.

15 A. RIGHT. AND I AM TELLING YOU THE PRIORITY OF THE  
16 DEPARTMENT --

17 Q. I UNDERSTAND THAT. I AM ASKING --

18 A. -- IS CHILDREN'S SAFETY.

19 Q. I UNDERSTAND THAT. BUT I AM ASKING YOU A  
20 QUESTION ABOUT WHETHER THE DEPARTMENT EVER CONSIDERS  
21 RACE WHEN MAKING A PLACEMENT.

22 THE COURT: WHEN YOU SAY "CONSIDER," DO  
23 YOU MEAN THAT'S ONE OF THE FACTORS OR ONE OF MANY  
24 FACTORS?

25 BY MR. RIENZI:

1 Q. YES, JUST CONSIDER IT AS ONE OF THE FACTORS. SO  
2 YOU CONSIDER RACE WHEN MAKING PLACEMENTS SOMETIMES?

3 A. THERE'S NO FORMALIZED WAY FOR US TO DO THAT.

4 Q. DO YOU DO IT?

5 A. I DON'T KNOW THAT I CAN ANSWER THAT.

6 Q. YOU DON'T KNOW WHETHER YOUR DEPARTMENT EVER  
7 CONSIDERS RACE IN MAKING A FOSTER CHILD PLACEMENT? IS  
8 THAT YOUR TESTIMONY?

9 MR. FIELD: ASKED AND ANSWERED, YOUR  
10 HONOR.

11 MR. RIENZI: YOUR HONOR, WITH ALL DUE  
12 RESPECT, IT'S NOT ACTUALLY BEEN ANSWERED. I AM TRYING  
13 TO GET TO THE ANSWER.

14 THE COURT: OVERRULED.

15 THE WITNESS: CAN YOU REPEAT IT.

16 BY MR. RIENZI:

17 Q. SURE. IS IT YOUR TESTIMONY THAT THE DEPARTMENT  
18 OF HUMAN SERVICES NEVER CONSIDERS RACE WHEN MAKING A  
19 CHILD PLACEMENT?

20 A. I'M SORRY. IT SOUNDS LIKE YOU'RE USING A DOUBLE  
21 NEGATIVE. CAN YOU ASK IT MORE DIRECTLY.

22 Q. SURE. DOES THE DEPARTMENT OF HUMAN SERVICES  
23 EVER CONSIDER RACE WHEN MAKING A FOSTER CARE PLACEMENT?

24 A. I THINK WHAT I HAVE ANSWERED BEFORE, AS ONE OF  
25 THE MANY FACTORS THAT, YES.

1 Q. SO YES, IT DOES, BUT THERE ARE OTHER FACTORS  
2 ALSO CONSIDERED?

3 A. THAT'S CORRECT.

4 Q. HAVE YOU EVER HAD ANY DISCUSSIONS WITH ANYBODY  
5 AS TO WHETHER YOU ARE VIOLATING FAIR PRACTICES ORDINANCE  
6 TO CONSIDER RACE IN A PUBLIC ACCOMMODATION?

7 A. IT HAS NOT COME TO MY ATTENTION.

8 MR. FIELD: ASSUMES FACTS NOT IN THE  
9 RECORD, YOUR HONOR.

10 BY MR. RIENZI:

11 Q. DOES DHS SOMETIMES CONSIDER DISABILITY WHEN  
12 MAKING CHILD PLACEMENTS IN FOSTER CARE?

13 A. ABSOLUTELY.

14 Q. HAVE YOU EVER CONSIDERED WHETHER YOU ARE  
15 VIOLATING THE FAIR PRACTICES ORDINANCE IF FOSTER CARE IS  
16 A PUBLIC ACCOMMODATION?

17 A. WE ACTUALLY HAVE SPECIALIZED PROVIDERS --

18 MR. FIELD: OBJECTION.

19 THE WITNESS: -- THAT ONLY WORK WITH THE  
20 POPULATION YOU HAVE ADDRESSED.

21 THE COURT: OVERRULED.

22 BY MR. RIENZI:

23 Q. AND THAT WOULD BE A VIOLATION OF THE FAIR  
24 PRACTICES ORDINANCE IF FOSTER CARE WERE A PUBLIC  
25 ACCOMMODATION, WOULDN'T IT?

1 MR. FIELD: OBJECTION, CALLS FOR A LEGAL  
2 CONCLUSION, YOUR HONOR.

3 THE COURT: SUSTAINED.

4 BY MR. RIENZI:

5 Q. YOU KNOW THAT SOMETIMES FOSTER AGENCIES  
6 THEMSELVES CONSIDER RACE WHEN MAKING FOSTER CARE  
7 PLACEMENTS?

8 A. I CAN'T ANSWER THAT. I DON'T KNOW.

9 Q. YOU DON'T KNOW WHETHER ANY AGENCIES CONSIDER  
10 RACE WHEN MAKING PLACEMENTS?

11 A. I HAVE NEVER HAD THAT DISCUSSION --

12 MR. FIELD: ASSUMES FACTS NOT IN THE  
13 RECORD REGARDING PLACEMENTS, YOUR HONOR.

14 MR. RIENZI: IT'S A QUESTION ABOUT  
15 WHETHER IT HAPPENS.

16 MR. FIELD: THE WITNESS HAS NOT TESTIFIED  
17 AS TO WHETHER FOSTER CARE AGENCIES PROVIDE PLACEMENTS.

18 THE COURT: SHE ANSWERED.

19 BY MR. RIENZI:

20 Q. WHO AT DHS WOULD KNOW THAT?

21 THE COURT: WHO?

22 BY MR. RIENZI:

23 Q. WHO IN DHS WOULD KNOW WHETHER FOSTER AGENCIES  
24 CONSIDER RACE IN MAKING PLACEMENTS?

25 THE COURT: WHAT DOES THAT HAVE TO DO

1 WITH THIS CASE?

2 MR. RIENZI: PLENTY, YOUR HONOR. THE  
3 CLAIM IS THAT FOSTER CARE IS A PUBLIC ACCOMMODATION  
4 SUBJECT TO THE FAIR PRACTICES ORDINANCE. THE  
5 COMMISSIONER HAS JUST TOLD ME THAT THE DEPARTMENT  
6 SOMETIMES CONSIDERS RACE WHEN MAKING PLACEMENTS.

7 THE COURT: AS ONE OF MANY OTHER FACTORS.

8 MR. RIENZI: WHICH WOULD BE A VIOLATION  
9 OF THE FAIR PRACTICES ORDINANCE IF THEY ACTUALLY  
10 BELIEVED IT.

11 THE COURT: THAT IS YOUR OPINION.

12 MR. RIENZI: CORRECT. AND IT'S ACTUALLY  
13 ALSO THE FAIR PRACTICES ORDINANCE, YOUR HONOR. I AM  
14 SIMPLY TRYING TO GET A SENSE OF HOW THEY RUN THEIR  
15 FOSTER CARE PROGRAM AND WHETHER THEY ALLOW OTHER  
16 CONSIDERATIONS THAT ARE NOT CONSISTENT WITH THIS  
17 APPARENTLY NEW VIEW THAT FOSTER CARE IS A PUBLIC  
18 ACCOMMODATION. SO I AM TRYING TO FIND OUT HOW THE  
19 DEPARTMENT HANDLES OTHER THINGS THAT IF THEIR STORY WERE  
20 ACTUALLY CORRECT WOULD BE VIOLATIONS OF THE FAIR  
21 PRACTICES ORDINANCE.

22 THE COURT: WELL, THAT IS NOT -- THE FACT  
23 THAT YOU CONSIDER A PUBLIC ACCOMMODATION AND WHAT IS  
24 REQUIRED BY THE FAIR PRACTICES ACT IS NOT WHAT THIS CASE  
25 IS BASED ON, THE ISSUE OF RACE.

1 MR. FIELD: OR OTHER CITY EMPLOYEES, YOUR  
2 HONOR.

3 THE COURT: I SUSTAINED THE OBJECTION.

4 BY MR. RIENZI:

5 Q. DID YOU TALK TO ANYBODY WHO DOES NOT WORK FOR  
6 THE CITY AND TELL THEM THAT YOU THOUGHT CATHOLIC HAD  
7 VIOLATED THE FAIR PRACTICES ORDINANCE?

8 A. NO.

9 Q. YOU DIDN'T TELL THAT TO CATHOLIC?

10 A. IN OUR -- ACTUALLY IT WAS OUR LEGAL COUNSEL THAT  
11 SPOKE TO THEIR LEGAL COUNSEL IN THE MEETING. THE DIRECT  
12 QUESTION CAME FROM CATHOLIC SOCIAL SERVICES COUNSEL AND  
13 OUR COUNSEL PRESENT RESPONDED.

14 Q. HAVE YOU EVER INSTRUCTED ANYBODY AT DHS TO  
15 FREEZE REFERRALS AT ANY AGENCY OVER A VIOLATION OF THE  
16 FAIR PRACTICES ORDINANCE?

17 A. CATHOLIC SOCIAL SERVICES.

18 Q. OTHER THAN CATHOLIC SOCIAL SERVICES?

19 A. NO.

20 Q. HAVE YOU EVER INFORMED THE 30 FOSTER CARE  
21 AGENCIES IN THE CITY THAT YOU BELIEVE THEIR PROVISION OF  
22 FOSTER CARE IS GOVERNED BY THE FAIR PRACTICES ORDINANCE?

23 A. IT'S IN THE CONTRACT.

24 Q. OTHER THAN THE LANGUAGE IN THE CONTRACT, HAVE  
25 YOU EVER INFORMED THE AGENCIES IN THE CITY THAT YOU

1 THINK THEY HAVE OBLIGATIONS UNDER THE FAIR PRACTICES  
2 ORDINANCE WHEN DOING FOSTER CARE WORK?

3 A. WE ALWAYS REMIND INDIVIDUALS TO MEET THE  
4 STANDARDS IN THEIR CONTRACTS.

5 Q. I AM SAYING OTHER THAN THE CONTRACT, HAVE YOU  
6 EVER TOLD AGENCIES TO DO THAT?

7 A. BASED ON THE NATURE OF THE CONTRACT DISCUSSIONS,  
8 THEN I WOULD SAY YES BECAUSE THEY ALL SIGN THEIR  
9 CONTRACTS AS I DID.

10 Q. I AM JUST ASKING YOU, OTHER THAN THE CONTRACT,  
11 DO YOU EVER TELL THEM THEY MUST FOLLOW THE FAIR  
12 PRACTICES ORDINANCE?

13 A. NOT THAT I RECALL.

14 Q. YOU ARE NOT AWARE OF ANY TRAININGS THAT YOUR  
15 AGENCY HAS DONE TO TELL PEOPLE THAT?

16 A. NOT THAT I AM AWARE OF.

17 Q. SO IN ALL OF YOUR TIME AT DHS THE FIRST TIME YOU  
18 EVER HEARD ANYBODY SAY FOSTER CARE WAS A PUBLIC  
19 ACCOMMODATION UNDER THE FAIR PRACTICES ORDINANCE WAS IN  
20 THIS PARTICULAR DISPUTE, CORRECT?

21 A. AGAIN, THAT WAS IN CONVERSATION WITH MY COUNSEL.

22 Q. AND I AM ASKING YOU SINCE I KNOW YOU ALSO  
23 OBSERVED NONPRIVILEGED CONVERSATIONS BETWEEN YOUR  
24 COUNSEL AND CATHOLIC. SO I AM NOT ASKING YOU TO TELL ME  
25 ANYTHING ABOUT WHAT YOUR LAWYER TOLD YOU. PRIOR TO

1 A. WELL, IN MY CURRENT CAPACITY?

2 Q. TOTAL.

3 A. ALMOST FOUR YEARS.

4 Q. PRIOR TO 2018 YOU HAD NEVER HEARD ANYBODY AT DHS  
5 SAY THAT FOSTER CARE WORK WAS A PUBLIC ACCOMMODATION,  
6 CORRECT?

7 A. I BELIEVE I ANSWERED THIS.

8 Q. I AM ASKING FOR A YES OR NO ANSWER. PRIOR TO  
9 2018, YOU HAD NEVER HEARD ANYBODY CALL FOSTER CARE A  
10 PUBLIC ACCOMMODATION, CORRECT?

11 MR. FIELD: I OBJECT TO THE EXTENT IT  
12 CALLS FOR A PRIVILEGED COMMUNICATION, YOUR HONOR.

13 THE COURT: OVERRULED. YOU MAY ANSWER.

14 THE WITNESS: I BELIEVE I ANSWERED THAT  
15 PRIOR TO THIS INCIDENT IT HAD NOT AROSE.

16 BY MR. RIENZI:

17 Q. SO NO, YOU HAD NEVER HEARD THAT?

18 A. NO.

19 Q. OKAY. THANK YOU.

20 I BELIEVE YOU TESTIFIED ON TUESDAY THAT  
21 YOU HAD HEARD AND AGREED WITH MS. ALI'S TESTIMONY, IS  
22 THAT CORRECT?

23 A. THAT IS CORRECT.

24 Q. AND YOU KNOW THAT MS. ALI STATED A -- WHAT SHE  
25 SAID WAS A RULE THAT IF A QUALIFIED PROSPECTIVE FOSTER

1 WOULD LIKE TO WORK WITH.

2 Q. AND THAT AN AGENCY MUST PROVIDE THE HOME STUDY  
3 IF A FAMILY WANTS THE AGENCY TO PROVIDE THE HOME STUDY,  
4 CORRECT?

5 A. YES.

6 Q. YOU HAVE NEVER DONE ANY TRAINING FOR AGENCIES  
7 ABOUT THAT POLICY, HAVE YOU?

8 A. IN ALL SINCERITY, IT IS A HUGE DEPARTMENT AND A  
9 LOT OF THE CHILD WELFARE OPERATIONS ARE UNDER MS. ALI,  
10 SO I WOULD NOT BE ABLE TO ANSWER THE QUESTION.

11 Q. YOU ARE NOT AWARE OF ANY TRAINING PROVIDED TO  
12 THE AGENCIES ABOUT THAT POLICY, CORRECT?

13 A. I JUST ANSWERED THAT, AGAIN, I OVERSEE A VERY  
14 LARGE DEPARTMENT, AND THOSE DUTIES AND RESPONSIBILITIES,  
15 I RELY ON THE SUPPORT OF DEPUTY COMMISSIONER ALI. SO  
16 I'M NOT IN A POSITION TO BE ABLE TO ANSWER THAT.

17 Q. YOU CERTAINLY NEVER INSTRUCTED HER TO MAKE SURE  
18 AGENCIES ARE TRAINED ON THAT POLICY, CORRECT?

19 A. WHAT POLICY?

20 Q. THE POLICY THAT FOSTER AGENCIES MUST PROVIDE  
21 HOME STUDIES TO FAMILIES WHO WANT THEM. YOU HAVE NOT  
22 INSTRUCTED HER TO MAKE SURE THAT AGENCIES ARE TRAINED ON  
23 THAT POLICY, CORRECT?

24 A. THAT'S CORRECT.

25 Q. AND YOU HAVE DONE NOTHING TO TRAIN YOUR OWN

1 STAFF ON THAT POLICY, CORRECT?

2 A. ARE WE REFERRING TO THE POLICY OF THE HOME  
3 STUDY?

4 Q. THE POLICY THAT AN AGENCY MUST PROVIDE A HOME  
5 STUDY. YOU HAVE NEVER DONE ANYTHING TO TRAIN YOUR OWN  
6 STAFF ON THAT POLICY, CORRECT?

7 A. NO, BECAUSE IT IS REFLECTED IN THE CONTRACT.

8 Q. OTHER THAN YOUR CLAIM THAT IT IS IN THAT  
9 CONTRACT, HAVE YOU EVER SEEN THIS POLICY WRITTEN DOWN  
10 ANYPLACE?

11 A. I'M SURE IT EXISTS IN A LOT OF DIFFERENT PLACES.  
12 I DON'T KNOW THAT I CAN SAY -- YOU KNOW, THERE'S  
13 REFERENCE TO THE WEBSITE, ET CETERA. SO I DON'T KNOW  
14 THAT I COULD NAME OTHER PLACES IN WHICH THAT WOULD  
15 APPEAR.

16 Q. OKAY. DO YOU KNOW THAT IT APPEARS IN OTHER  
17 PLACES OR ARE YOU JUST SAYING IT MIGHT AND YOU DON'T  
18 KNOW?

19 A. IT MIGHT AND I DON'T KNOW.

20 MR. RIENZI: PERMISSION TO APPROACH, YOUR  
21 HONOR.

22 THE COURT: YES.

23 BY MR. RIENZI:

24 Q. I AM HANDING THE WITNESS A COPY OF A DOCUMENT  
25 LABELED PLAINTIFF'S EXHIBIT 16. AND I ASK YOU IF YOU

1 A. I DON'T KNOW WHAT ELSE THAT -- RIGHT NOW OFF THE  
2 TOP OF MY HEAD IN THE 74-PAGE DOCUMENT THAT MIGHT BE  
3 FOUND BESIDES PAGE 2. CAN YOU REPEAT THE STATEMENT YOU  
4 ARE ASKING ME TO CONFIRM?

5 Q. THE "HOW DO I BECOME A FOSTER PARENT" SECTION  
6 DOES NOT SAY THAT YOU HAVE A RIGHT TO GET A HOME STUDY  
7 FROM WHATEVER AGENCY YOU WANT, DOES IT?

8 A. IN THIS GUIDE, IT DOES NOT.

9 Q. OKAY. IT SAYS: DHS DOES NOT LICENSE OR APPROVE  
10 FOSTER PARENTS. WHO DOES?

11 A. THE PENNSYLVANIA DEPARTMENT OF HUMAN SERVICES.

12 Q. SO PENNSYLVANIA DHS IS THE ONE WHO LICENSES AND  
13 APPROVES FOSTER PARENTS?

14 A. THAT'S CORRECT.

15 Q. DO AGENCIES PLAY A ROLE IN THAT?

16 A. BASED ON THE INFORMATION THAT THEY PROVIDE IS  
17 HOW A PARENT BECOMES LICENSED AND APPROVED.

18 Q. WHO DO THEY PROVIDE THAT INFORMATION TO?

19 A. YOU ARE GETTING INTO THE REAL TECHNICAL  
20 OPERATIONAL PART, SO I WOULD HAVE TO RELY ON MY DEPUTY  
21 COMMISSIONER TO ANSWER THAT.

22 Q. THEY DON'T PROVIDE IT TO YOU, DO THEY?

23 A. NO. THEY HAVE TO GO THROUGH THE STATE PROCESS.

24 YEP.

25 Q. AND YOU HAVE NOTHING TO DO WITH THAT PROCESS, DO

1 YOU?

2 A. NO.

3 Q. YOUR OFFICE DOES NOT REVIEW HOME STUDIES?

4 A. I CAN'T ANSWER THAT.

5 Q. I'M SORRY. YOU SAID YOU CAN'T ANSWER THAT?

6 A. I DON'T KNOW.

7 Q. WHEN AGENCIES DO HOME STUDIES, THEY ARE NOT  
8 ACTING ON BEHALF OF THE CITY, ARE THEY?

9 MR. FIELD: OBJECTION, CALLS FOR A LEGAL  
10 CONCLUSION.

11 THE COURT: OVERRULED.

12 THE WITNESS: THE CITY PAYS FOR THE  
13 CONTRACT FOR THEM TO DELIVER THE SERVICE. THE LICENSING  
14 COMPONENT IS HELD BY THE STATE. THEY CAN'T DO THE WORK  
15 UNLESS THEY HAVE A CONTRACT WITH THE CITY OF  
16 PHILADELPHIA.

17 BY MR. RIENZI:

18 Q. WHEN AGENCIES DO HOME STUDIES, THEY ARE NOT  
19 ACTING ON BEHALF OF THE CITY, ARE THEY?

20 THE COURT: SHE ANSWERED THAT QUESTION.  
21 WHEN YOU SAY ON BEHALF OF, IT'S NECESSARY FOR THEM TO  
22 GET A LICENSE, BUT THEY CAN'T --

23 MR. RIENZI: I AM SIMPLY TRYING TO FIGURE  
24 OUT IF THIS IS THE CITY'S WORK THAT THE AGENCIES ARE  
25 DOING OR IF IT'S SOMEBODY ELSE'S WORK.

1 REGULATIONS IN THEIR ENTIRETY.

2 BY MR. RIENZI:

3 Q. AND IT'S YOUR UNDERSTANDING OF THE WAY THE  
4 FOSTER CARE SYSTEM WORKS THAT FOSTER CARE AGENCIES ARE  
5 ALLOWED TO VARY THEIR POLICIES FOR APPROVAL OF RESOURCE  
6 PARENTS, ISN'T IT?

7 MR. FIELD: OBJECTION TO THE AMBIGUITY IN  
8 "AGENCIES" THERE, YOUR HONOR.

9 THE COURT: YES. SUSTAINED.

10 BY MR. RIENZI:

11 Q. IT IS YOUR UNDERSTANDING THAT FOSTER CARE  
12 AGENCIES THAT WORK WITH THE CITY OF PHILADELPHIA ARE  
13 PERMITTED BY STATE LAW TO VARY THEIR POLICIES FOR  
14 APPROVAL OF FOSTER FAMILIES, CORRECT?

15 MR. FIELD: OBJECTION TO THE EXTENT IT  
16 CALLS FOR A LEGAL CONCLUSION.

17 THE COURT: OVERRULED. CAN YOU ANSWER  
18 THAT QUESTION?

19 THE WITNESS: I AM NOT SURE BECAUSE  
20 IRREGARDLESS WE HAVE OUR EXISTING CONTRACT THAT  
21 IDENTIFIES WHAT THEY ARE REQUIRED TO MEET.

22 BY MR. RIENZI:

23 Q. SO IS IT YOUR POSITION THAT FOSTER CARE AGENCIES  
24 THAT WORK WITH THE CITY OF PHILADELPHIA ARE NOT ALLOWED  
25 TO VARY THEIR REQUIREMENTS FOR BECOMING A FOSTER PARENT?

1 THAT POINT.

2 OTHER THAN THE CONTRACT, HAVE YOU EVER  
3 SEEN THIS POLICY WRITTEN ANYPLACE ELSE?

4 A. JUST CLARIFY, WHAT DO YOU MEAN POLICY AS A  
5 SPECIFIC POLICY OF WHO?

6 Q. YOUR CLAIMED POLICY THAT A FOSTER AGENCY MUST  
7 PROVIDE THE HOME STUDY FOR ANY PROSPECTIVE FAMILY THAT  
8 WANTS IT?

9 A. ONLY AS IT IS REQUIRED THROUGH THE CONTRACT.

10 Q. SO NO, YOU HAVE NOT SEEN IT WRITTEN ANYPLACE BUT  
11 THE CONTRACT, CORRECT?

12 A. I DON'T KNOW.

13 Q. THERE IS NO PLACE THAT YOU CAN NAME FOR ME TODAY  
14 THAT THAT IS WRITTEN OTHER THAN THE CONTRACT, CORRECT?

15 A. I CAN'T ANSWER SO I WOULD HAVE TO SAY I DON'T  
16 KNOW.

17 Q. OKAY. YOU DON'T DOUBT THE SINCERITY OF  
18 CATHOLIC'S RELIGIOUS BELIEFS, DO YOU?

19 A. NO, I DO NOT.

20 Q. AND I BELIEVE YOU SAID EARLIER YOU DON'T DOUBT  
21 THAT THEY ARE IN FACT RELIGIOUS, DO YOU?

22 A. NO, I DON'T DOUBT THAT AT ALL.

23 Q. AND YOU UNDERSTAND, I BELIEVE YOU TESTIFIED  
24 YESTERDAY, THAT CATHOLIC'S POSITION ABOUT HOME STUDIES  
25 IS A RELIGIOUS DECISION, CORRECT?

1 A. YES, IN THEIR VIEW, YES.

2 Q. AND YOU TOLD CATHOLIC THAT YOU WOULD NOT MAKE AN  
3 EXCEPTION TO ALLOW CATHOLIC TO CHOOSE NOT TO DO CERTAIN  
4 HOME STUDIES, CORRECT?

5 A. MY POSITION WAS THAT IF YOU REMOVE THAT  
6 INDIVIDUAL COMMUNITY AND INSERTED AFRICAN AMERICAN OR  
7 LATINO, IT WOULD NOT BE EVEN A QUESTION. SO TO ME IT  
8 WAS CLEARLY DISCRIMINATORY IN NATURE.

9 Q. BECAUSE TO YOU IT'S AKIN TO RACISM?

10 A. IT'S DISCRIMINATING AGAINST A PARTICULAR  
11 COMMUNITY.

12 Q. I BELIEVE YOU SAID BEFORE THAT YOU HAVE NO  
13 EVIDENCE THAT ANY ACTUAL GAY COUPLE EVER ASKED CATHOLIC  
14 TO PERFORM THE SERVICE, IS THAT CORRECT?

15 A. COULD YOU REPHRASE THAT.

16 Q. YOU ARE NOT AWARE OF ANY ACTUAL GAY COUPLE THAT  
17 EVER ASKED CATHOLIC TO PERFORM A HOME STUDY, CORRECT?

18 A. I AM NOT AWARE.

19 MR. FIELD: YOUR HONOR, I BELIEVE THAT  
20 MISCHARACTERIZES THE WITNESS'S TESTIMONY.

21 THE COURT: NO, I BELIEVE SHE TESTIFIED  
22 TO THAT ALREADY.

23 BY MR. RIENZI:

24 Q. BUT YOU STILL WON'T MAKE ANY EXCEPTION FOR  
25 CATHOLIC?

1 CATHOLIC TO PROTECT THE BEST INTEREST OF CHILDREN,  
2 CORRECT?

3 A. THAT'S CORRECT.

4 Q. AND THE REASON -- YOUR REASON FOR DOING THAT WAS  
5 THAT YOU DIDN'T WANT TO PLACE CHILDREN AT CATHOLIC WHO  
6 MIGHT LATER HAVE TO BE MOVED, CORRECT?

7 A. THAT IS CORRECT, OR ADD ADDITIONAL CHILDREN THAT  
8 WOULD HAVE TO POSSIBLY BE MOVED.

9 Q. BECAUSE MOVING CHILDREN FROM CATHOLIC COULD BE  
10 TRAUMATIC FOR THEM, CORRECT?

11 A. AS I STATED EARLIER, IT'S NOT A YES OR NO  
12 ANSWER.

13 Q. WELL THEN, I DON'T UNDERSTAND YOUR REASON. I  
14 THOUGHT YOUR ARGUMENT WAS I DON'T WANT TO PUT MORE KIDS  
15 THERE, RIGHT? YOU SAID YOU DIDN'T WANT TO PUT MORE KIDS  
16 AT CATHOLIC, CORRECT?

17 A. I THINK WHAT I DIDN'T HAVE A CHANCE TO SAY IS  
18 THAT EACH CASE IS AN INDIVIDUAL SITUATION. IN  
19 GENERALIZATION, MOVING KIDS IS NOT SOMETHING THAT THE  
20 CITY WANTS TO HAVE TO DO AS IT RELATES TO A DISRUPTION  
21 FOR A CHILD.

22 Q. AND THE GENERAL REASON FOR THAT GENERAL VIEW  
23 THAT YOU DON'T WANT TO MOVE KIDS IS WHAT?

24 A. IS THAT WE WANT TO MAKE SURE THAT WE MAINTAIN  
25 THE BEST INTEREST OF THE CHILD.

1 THAT YOU UNDERSTAND TO BE ANY PROBLEM FOR CATHOLIC IS  
2 YOUR INSISTENCE THAT CATHOLIC MUST PROVIDE A HOME STUDY  
3 FOR ANY COUPLE WHO ASKS, CORRECT?

4 A. CAN YOU CLARIFY MY INSISTENCE?

5 Q. SURE. SO WHAT I AM TRYING TO GET AT IS THERE IS  
6 A DISPUTE BETWEEN YOU AND CATHOLIC ABOUT WHAT THE  
7 CONTRACT MEANS, RIGHT?

8 A. I THINK THERE'S A DISPUTE THAT IS BEYOND JUST ME  
9 AS AN INDIVIDUAL PERSON.

10 Q. JUST TO BE CLEAR, BETWEEN DHS AND CATHOLIC. I  
11 DON'T AT ALL MEAN TO PERSONALIZE IT AND SAY IT'S JUST  
12 YOU. OTHER THAN THE ISSUE OF DOING HOME STUDIES FOR  
13 EVERY SINGLE COUPLE WHO ASKS, YOU ARE NOT AWARE OF ANY  
14 OTHER REASON THAT CATHOLIC WOULD NOT ENTER INTO A NEW  
15 CONTRACT WITH YOU, ARE YOU?

16 MR. FIELD: OBJECTION, YOUR HONOR. HE IS  
17 ASKING ABOUT CATHOLIC'S REASONS FOR DOING SOMETHING,  
18 WHICH THE COMMISSIONER WOULD NOT KNOW.

19 THE COURT: SUSTAINED.

20 BY MR. RIENZI:

21 Q. HAS CATHOLIC STATED ANY REASON TO YOU THAT IT  
22 WOULD BE UNABLE TO ENTER INTO A NEW CONTRACT OTHER THAN  
23 DHS'S INSISTENCE THAT IT MUST DO HOME STUDIES FOR  
24 EVERYONE WHO ASKS?

25 A. THEY HAVE INDICATED THEY WOULD NOT COMPLY

1 BECAUSE THEY WOULD NOT CERTIFY SAME-SEX COUPLES, WHICH  
2 IS A PORTION OF THE SERVICE THAT IS REQUIRED TO DELIVER.

3 Q. I UNDERSTAND THAT'S YOUR UNDERSTANDING OF THE  
4 CONTRACT. AND I AM ASKING, HAS CATHOLIC TOLD YOU THERE  
5 IS ANYTHING ELSE THAT WOULD STOP THEM FROM ENTERING INTO  
6 A NEW CONTRACT?

7 A. OTHER THAN COMPLYING? NO.

8 Q. OTHER THAN THAT ONE ISSUE?

9 A. OTHER THAN COMPLYING, NO.

10 Q. NO. I WANT -- I DON'T WANT THE BROAD WORD  
11 "COMPLY." I AM ASKING YOU A SPECIFIC QUESTION. HAVE  
12 THEY --

13 A. WELL, IF YOU CAN'T DELIVER AN ELEMENT OF YOUR  
14 CONTRACT THEN --

15 Q. I UNDERSTAND YOUR ARGUMENT. I AM ASKING YOU --  
16 YOU HAVE IDENTIFIED ONE SPECIFIC PROBLEM CATHOLIC HAS,  
17 THE HOME STUDIES FOR SAME-SEX COUPLES?

18 A. IT'S A PRETTY BIG PROBLEM.

19 Q. I AM ASKING YOU TO TELL ME IF THERE ARE ANY  
20 OTHER PROBLEMS THAT CATHOLIC HAS STATED THAT WOULD STOP  
21 THEM FROM ENTERING INTO THE CONTRACT WITH YOU?

22 MR. FIELD: YOUR HONOR, HE IS ASKING  
23 ABOUT WHETHER OR NOT THINGS WOULD STOP CATHOLIC FROM  
24 ENTERING INTO A CONTRACT.

25 MR. RIENZI: YOUR HONOR, I AM ASKING

1 IN THE BOX.

2 A. IN PHILADELPHIA ABOUT 700 CHILDREN ARE IN GROUP  
3 HOME PLACEMENTS. OF THOSE FIGUEROA SAID ABOUT 250 COULD  
4 BE LIVING WITH FAMILIES WHILE 450 MORE NEED TO STAY IN  
5 STAFFED FACILITIES DUE TO PHYSICAL OR EMOTIONAL NEEDS.

6 Q. DO YOU RECALL TALKING TO THAT REPORTER?

7 A. I DO.

8 Q. AND YOU DIDN'T HAVE ANY REASON TO BE UNTRUTHFUL  
9 TO THAT REPORTER, DID YOU?

10 A. NO.

11 Q. IS THAT AN ACCURATE DISCUSSION -- DESCRIPTION OF  
12 WHAT YOU SAID TO THE REPORTER?

13 A. CORRECT, YEAH.

14 Q. SO YOU WOULD SAY THAT OF THE APPROXIMATELY 700  
15 CHILDREN IN GROUP HOMES APPROXIMATELY 250 COULD BE  
16 LIVING WITH FAMILIES, CORRECT?

17 A. I THINK THAT THE OPERATIVE IS "COULD," AS IT  
18 REQUIRES A COURT PROCESS.

19 Q. I BELIEVE YOU SAID YOU HAVE DONE SOME RECRUITING  
20 RECENTLY, IS THAT RIGHT?

21 A. YES, WE HAVE.

22 Q. AND YOU'VE GOT ABOUT 75 NEW FAMILIES SIGN UP?

23 A. ACTUALLY, I JUST RAN THE DATA AND IT'S WELL OVER  
24 200.

25 Q. TERRIFIC. AND ARE SOME OF THOSE FAMILIES

1 ALREADY TAKING CARE OF KIDS?

2 A. NO.

3 Q. WHY NOT?

4 A. BECAUSE THEY ARE NEW RECRUITS, THEY'VE JUST BEEN  
5 NEWLY CERTIFIED.

6 Q. SO NONE OF THOSE FAMILIES ARE TAKING CARE OF  
7 KIDS, CORRECT?

8 A. I DON'T KNOW EXACTLY RIGHT NOW THAT NUMBER, BUT  
9 THOSE ARE -- AS OF TODAY WE HAD WELL OVER 200 NEW  
10 RECRUITED FAMILIES.

11 Q. TERRIFIC. BUT THEY ARE NEW. AND SO IT TAKES A  
12 LITTLE WHILE BEFORE THEY CAN START TAKING CARE OF KIDS?

13 A. NO. ONCE THEY ARE CERTIFIED AND THEY'VE  
14 COMPLETED THE PROCESS AND HAVE BEEN LICENSED, THEY ARE  
15 PREPARED TO TAKE HOME.

16 Q. DO YOU KNOW HOW MANY OF THEM HAVE BEEN LICENSED?

17 A. I DON'T KNOW. I CAN'T ANSWER THAT RIGHT NOW,  
18 AND I WOULD HIGHLIGHT THOUGH, AVAILABILITY DOES NOT  
19 NECESSARILY MEAN APPROPRIATE PLACEMENT.

20 Q. HOW MANY OF THOSE 250 KIDS HAVE MOVED OUT OF  
21 CONGREGATE CARE?

22 A. I DON'T UNDERSTAND YOUR QUESTION.

23 Q. YOU SAID YOU TOLD THE REPORTER THAT ABOUT 250  
24 COULD BE LIVING WITH FAMILIES, CORRECT?

25 A. THAT IS CORRECT.

1 Q. I AM ASKING HOW MANY OF THEM ARE STILL IN  
2 CONGREGATE CARE?

3 A. I ALSO EXPLAINED THAT IT'S A COURT PROCESS.

4 Q. I HEARD THAT PART. I'M ASKING HOW MANY ARE  
5 STILL LIVING IN CONGREGATE CARE?

6 A. I SAID I DON'T HAVE THE EXACT NUMBER OFF THE TOP  
7 OF MY HEAD TODAY.

8 Q. DO YOU HAVE A ROUGH NUMBER?

9 A. I BELIEVE I GAVE IT TO YOU.

10 Q. WHAT IS THE NUMBER YOU GAVE?

11 A. I SAID SOMEWHERE AROUND 700, 715.

12 Q. THAT'S THE SAME NUMBER ACTUALLY THAT YOU TOLD  
13 THE JOURNALIST IN MARCH, ISN'T IT?

14 A. THAT IS CORRECT.

15 Q. SO THE NUMBER HAS NOT CHANGED?

16 A. THE NUMBERS HAVE NOT CHANGED.

17 Q. AND YOU ARE AWARE THAT THERE ARE AT LEAST A  
18 COUPLE OF DOZEN PLACES AVAILABLE WITH FAMILIES THROUGH  
19 CATHOLIC SOCIAL SERVICES RIGHT NOW?

20 A. ACCORDING TO THEIR TESTIMONY, YES.

21 Q. DO YOU HAVE ANY REASON TO THINK THAT NUMBER IS  
22 WRONG?

23 A. I MEAN, I HAVE NOT VERIFIED THE NUMBERS, SO I  
24 WOULD HOPE THAT WHAT THEY ARE SAYING IS ACCURATE.

25 Q. SO IF INTAKE WAS NOT CLOSED, SOME OF THOSE 250

1 KIDS COULD HAVE BEEN PLACED AT CATHOLIC, CORRECT?

2 MR. FIELD: OBJECTION, CALLS FOR  
3 SPECULATION, YOUR HONOR.

4 THE COURT: SUSTAINED.

5 BY MR. RIENZI:

6 Q. THE REASON YOU RECRUITED MORE FOSTER FAMILIES IS  
7 THAT YOU WANTED TO REDUCE THE NUMBER OF KIDS IN  
8 CONGREGATE CARE, CORRECT?

9 A. I STATED THAT TO REDUCE THE OLDER POPULATION OF  
10 -- OLDER YOUTH POPULATION AS WELL AS YOUTH WHO IDENTIFY  
11 AS LGBTQ WHO WANTED TO BE IN AFFIRMING HOMES. SO WE  
12 WERE TARGETING PARTICULAR AREAS.

13 Q. ONE OF THE PARTICULAR AREAS YOU TARGETED IS  
14 REDUCING THE NUMBER OF KIDS IN CONGREGATE HOMES, ISN'T  
15 IT?

16 A. THAT'S OLDER YOUTH, YES.

17 Q. I JUST WANT A CLEAR ANSWER IF I CAN.

18 THE COURT: SHE SAID YES.

19 MR. RIENZI: YES. OKAY. THANK YOU.

20 BY MR. RIENZI:

21 Q. BUT THE NUMBER OF KIDS IN CONGREGATE CARE  
22 ACTUALLY HAS NOT CHANGED SINCE MARCH, CORRECT?

23 A. I WOULD JUST HIGHLIGHT THAT WE RUN A VERY  
24 COMPLICATED SYSTEM, AND SO IT'S NOT WIDGETS. IT'S NOT  
25 ONE FOR ONE. KIDS ARE ABUSED EVERY DAY. THEY ARE

1 INQUIRER REPORTER. DO YOU REMEMBER THAT?

2 A. I DO.

3 Q. WHEN YOU DID THAT INVESTIGATION, YOU ONLY  
4 CONTACTED FAITH-BASED FOSTER CARE AGENCIES, CORRECT?

5 A. THAT'S CORRECT.

6 Q. YOU DID NOT CONTACT ANY NONRELIGIOUS FOSTER CARE  
7 AGENCIES, CORRECT?

8 A. ACTUALLY, I DID SPEAK WITH ONE OTHER NONFAITH  
9 BASED FOSTER CARE AGENCY.

10 Q. WHICH ONE WAS THAT?

11 A. NORTHEAST TREATMENT CENTER.

12 Q. WHY DID YOU CONTACT NORTHEAST TREATMENT CENTER?

13 A. I HAVE A GOOD RELATIONSHIP WITH THE CEO AND  
14 WANTED TO ASK ABOUT THEIR PRACTICES.

15 Q. DID YOU TALK ABOUT CATHOLIC'S PRACTICES?

16 A. NO.

17 Q. AS TO ALL OF THE OTHER NONRELIGIOUS FOSTER CARE  
18 AGENCIES IN THE CITY, YOU DID NOT CALL THEM TO ASK THEM  
19 THEIR POLICY ABOUT LGBT COUPLE APPLICANTS, CORRECT?

20 A. NO.

21 Q. HAVE YOU EVER CALLED NONRELIGIOUS AGENCIES TO  
22 ASK THEM WHETHER THEY PERFORM HOME STUDIES FOR EVERYONE  
23 WHO ASKED THEM?

24 A. ASIDE FROM NORTHEAST TREATMENT CENTER, NO.

25 Q. HAVE YOU EVER CALLED NONRELIGIOUS AGENCIES TO

1 TELL THEM THEY MUST IMPORTANT PERFORM HOME STUDIES FOR  
2 EVERYONE WHO ASKS THEM?

3 A. NO.

4 Q. HAVE YOU EVER CALLED NONRELIGIOUS AGENCIES TO  
5 ASK IF THEY EVER REFER HOME STUDIES TO ANOTHER AGENCY?

6 A. NO.

7 Q. YOU HAD A MEETING WITH JAMES AMATO IN OR AROUND  
8 MARCH 15TH, CORRECT?

9 A. THAT'S CORRECT.

10 Q. WHERE DID THAT MEETING TAKE PLACE?

11 A. IN DEPUTY COMMISSIONER ALI'S CONFERENCE ROOM.

12 Q. THAT'S A GOVERNMENT OFFICE?

13 A. IT IS.

14 Q. AND WHO ATTENDED FOR THE CITY AT THAT MEETING?

15 A. IT WAS MYSELF, DEPUTY COMMISSIONER ALI, OUR  
16 ATTORNEY WAS PRESENT, AND JIM BLACK, JAMES AMATO, AS  
17 WELL AS COUNSEL FOR THE ARCHDIOCESE ATTENDED.

18 Q. DID YOU TAKE NOTES?

19 A. I DON'T RECALL.

20 Q. DO YOU RECALL IF ANYONE ELSE DID?

21 A. I BELIEVE OUR LEGAL COUNSEL DID.

22 Q. AT THAT MEETING YOU TOLD CATHOLIC THAT TIMES  
23 HAVE CHANGED, DIDN'T YOU?

24 A. I DID.

25 Q. AND YOU TOLD THEM THAT IT'S NOT 100 YEARS AGO

1 ANYMORE, DIDN'T YOU?

2 A. CATHOLIC SOCIAL SERVICES INDICATED THAT THEY HAD  
3 BEEN DOING THIS SERVICE FOR 100 YEARS. AND I EXPLAINED  
4 THAT WOMEN DIDN'T HAVE THE RIGHTS AND AFRICAN AMERICANS  
5 DIDN'T HAVE THE RIGHTS, AND I PROBABLY WOULD NOT BE  
6 SITTING IN THE ROOM IF IT WAS 100 YEARS AGO.

7 Q. YOU EXPLAINED TO THEM THAT IT WAS NOT 100 YEARS  
8 AGO ANYMORE, CORRECT?

9 MR. FIELD: ASKED AND ANSWERED.

10 THE WITNESS: I INDICATED, YES, THINGS  
11 HAVE CHANGED SINCE 100 YEARS AGO.

12 BY MR. RIENZI:

13 Q. YOU TOLD CATHOLIC THAT THEY SHOULD LISTEN TO  
14 POPE FRANCIS, DID YOU NOT?

15 A. I SAID IT WOULD BE GREAT IF WE FOLLOWED THE  
16 TEACHINGS OF POPE FRANCIS, THE VOICE OF THE CATHOLIC  
17 CHURCH.

18 Q. YOU TOLD CATHOLIC THAT THEY SHOULD NOT LISTEN TO  
19 ARCHBISHOP CHAPUT ON THIS ISSUE, CORRECT?

20 A. I DON'T BELIEVE THOSE WERE MY WORDS.

21 Q. SO ON ONE HAND YOU SAID IT WOULD BE GREAT IF WE  
22 WOULD LISTEN TO POPE FRANCIS, CORRECT?

23 A. UM-HUM.

24 Q. WAS THERE ANYONE ON THE OTHER SIDE YOU WERE  
25 SAYING THEY SHOULD LISTEN TO POPE FRANCIS INSTEAD OF?

1 A. I STATED THE FIRST PART OF THAT, THAT, YOU KNOW,  
2 IT WOULD BE GREAT IF WE LISTENED TO THE TEACHINGS AND  
3 THE WORDS OF OUR CURRENT POPE FRANCIS.

4 Q. AND YOU SAID THAT THEY SHOULD NOT LISTEN TO THE  
5 ARCHDIOCESE ON THIS ISSUE, CORRECT?

6 A. I ANSWERED THIS. I DON'T RECALL WHAT I SAID  
7 SPECIFICALLY.

8 Q. OKAY. SO YOU KNOW YOU SAID WE SHOULD LISTEN TO  
9 POPE FRANCIS, BUT YOU DON'T RECALL SAYING ANYTHING ABOUT  
10 WHO WOULD BE LISTENING TO POPE FRANCIS --

11 MR. FIELD: ASKED AND ANSWERED.

12 THE WITNESS: I DON'T RECALL SAYING THE  
13 ARCHBISHOP.

14 BY MR. RIENZI:

15 Q. DO YOU RECALL SAYING THE ARCHDIOCESE?

16 THE COURT: OVERRULED.

17 THE WITNESS: NO.

18 BY MR. RIENZI:

19 Q. DO YOU RECALL SAYING ANYONE ELSE IN DISTINCTION  
20 WITH POPE FRANCIS?

21 A. NO.

22 Q. YOU TOLD THEM THAT THE HOME STUDY ISSUE WAS  
23 GETTING ATTENTION AT THE HIGHEST LEVELS OF CITY  
24 GOVERNMENT, DIDN'T YOU?

25 A. I DID.

1 Q. OKAY. AND YOU WERE REFERRING IN PART TO THE  
2 MAYOR WHEN YOU SAID THAT, CORRECT?

3 A. AND MY CHAIN OF COMMAND, YES.

4 Q. SO WHEN YOU SAID THAT, YOU WERE REFERRING TO  
5 YOURSELF AS THE HIGHEST LEVELS OF CITY GOVERNMENT?

6 A. CERTAINLY THE MANAGING DIRECTOR'S OFFICE. SO IN  
7 THE CITY CHARTER I REPORT IN TO THE MANAGING DIRECTOR'S  
8 OFFICE AND SUBSEQUENTLY THE MAYOR.

9 Q. YOU HAD DISCUSSED THIS ISSUE WITH THE MAYOR  
10 BEFORE YOUR MEETING WITH CATHOLIC, CORRECT?

11 A. BRIEFLY.

12 Q. WHAT DID YOU SAY?

13 A. I SAID THAT I AM WORKING TO ADDRESS THE ISSUES.  
14 THERE IS A NUMBER OF CHILDREN, AND THAT WE WILL BRIEF  
15 HIM ONCE WE HAVE MADE DECISIONS ABOUT MOVING FORWARD.

16 Q. WHAT DID THE MAYOR SAY?

17 MR. FIELD: OBJECTION, ASSUMES FACTS NOT  
18 IN THE RECORD.

19 THE COURT: SUSTAINED.

20 BY MR. RIENZI:

21 Q. DID THE MAYOR ANSWER YOU?

22 MR. FIELD: OBJECTION, ASSUMES FACTS NOT  
23 IN RECORD.

24 MR. RIENZI: IT'S SIMPLY A QUESTION, YOUR  
25 HONOR. SHE SAID WHAT SHE TOLD THE MAYOR. I AM ASKING

1 WHAT THE MAYOR SAID BACK.

2 MR. FIELD: OBJECTION, HEARSAY.

3 THE COURT: SUSTAINED.

4 MR. RIENZI: THE CITY IS A DEFENDANT,  
5 YOUR HONOR. THE MAYOR IS THE MAYOR OF THE CITY. IT'S  
6 AN ADMISSION, YOUR HONOR.

7 THE COURT: SUSTAINED.

8 MR. FIELD: OBJECTION AS WELL TO THE  
9 EXTENT THERE WAS COUNSEL PRESENT.

10 BY MR. RIENZI:

11 Q. DID YOU KNOW THE MAYOR'S VIEWS BY THE TIME YOU  
12 SAT DOWN TO MEET WITH CATHOLIC?

13 A. NO.

14 MR. FIELD: OBJECTION, CALLS FOR  
15 SPECULATION.

16 THE COURT: SHE HAS ANSWERED.

17 BY MR. RIENZI:

18 Q. DID YOU DISCUSS CUTTING OFF INTAKE WITH THE  
19 MAYOR'S OFFICE?

20 A. NO.

21 Q. THE MAYOR IS YOUR BOSS?

22 A. HE IS THE HEAD OF THE CITY. MY DIRECT BOSS IS  
23 EVA GLADSTEIN.

24 Q. WHO IS EVA GLADSTEIN'S BOSS?

25 A. MIKE DIBERADINIS.

1 Q. WHO IS HIS BOSS?

2 A. THE MAYOR.

3 Q. WHO APPOINTED YOU?

4 A. THE MAYOR.

5 Q. DO YOU CONSIDER YOURSELF PART OF THE MAYOR'S  
6 ADMINISTRATION?

7 A. I DO.

8 Q. YOU KNOW THE MAYOR'S VIEWS ABOUT THE  
9 ARCHDIOCESE?

10 A. I DO NOW.

11 Q. WHEN DID YOU LEARN THE MAYOR'S VIEWS ABOUT THE  
12 ARCHDIOCESE?

13 A. THROUGH THIS LITIGATION.

14 Q. YOU KNOW THAT HE DOES NOT LIKE THE ARCHDIOCESE  
15 VERY MUCH, CORRECT?

16 A. I UNDERSTAND WHAT HAS BEEN PRESENTED, YES.

17 Q. DO YOU DOUBT THE TRUTHFULNESS OF WHAT HAS BEEN  
18 PRESENTED?

19 THE COURT: IN REGARD TO --

20 MR. RIENZI: THE MAYOR'S VIEWS ON THE  
21 ARCHDIOCESE.

22 THE WITNESS: I'M SORRY. CAN YOU REPEAT  
23 WHAT YOU ARE ASKING ME.

24 BY MR. RIENZI:

25 Q. WHEN YOU SAID YOU KNOW WHAT HAS BEEN PRESENTED.

1 AND I GUESS I AM ASKING, DO YOU DOUBT THE TRUTHFULNESS  
2 OF WHAT HAS BEEN PRESENTED? IT'S A LITTLE DIFFICULT  
3 BECAUSE YOU'RE SAYING YOU KNOW WHAT'S BEEN PRESENTED --  
4 I WILL ASK YOU THIS. WHEN YOU SAY I KNOW WHAT'S BEEN  
5 PRESENTED, WHAT ARE YOU REFERRING TO?

6 A. I'M REFERRING TO THE EXHIBITS THAT YOU GUYS  
7 PROVIDED IN THIS SUBMISSION.

8 Q. OKAY.

9 MR. RIENZI: PERMISSION TO APPROACH, YOUR  
10 HONOR.

11 THE COURT: YES.

12 THE WITNESS: THE DATE OF MY WEDDING  
13 ANNIVERSARY.

14 MR. FIELD: MULTIPLE POINTS, BUT I WOULD  
15 LIKE TO START WITH AN OFFER OF PROOF ON THIS.

16 MR. RIENZI: SURE. SHE'S APPOINTED BY  
17 THE MAYOR. SHE IS A MEMBER OF THE MAYOR'S  
18 ADMINISTRATION. I THINK HER BOSS'S VIEWS ON THE  
19 RELIGIOUS ENTITY THAT IS AT ISSUE HERE ARE HIGHLY  
20 RELEVANT TO THE RELIGIOUS DISCRIMINATION CLAIM.

21 MR. FIELD: YOUR HONOR --

22 MR. RIENZI: I'D LIKE TO FINISH, PLEASE.

23 MR. FIELD: YES.

24 MR. RIENZI: SHE FOLLOWS MAYOR KENNEY ON  
25 TWITTER AND I AM SHOWING SOME OF HIS PUBLIC STATEMENTS

1 Q. HOW DOES THAT PROCESS WORK?

2 A. PRACTICE OR PROCESS -- PRACTICE?

3 Q. HOW DOES YOUR WAIVER OR EXCEPTIONS PRACTICE  
4 WORK?

5 A. WE RIGHT NOW ARE GENERALLY NOTIFIED DIRECTLY BY  
6 THE -- EITHER THE ON-CALL DIRECTOR IF IT'S DURING THE  
7 DAY. IF IT'S A STAFF MEMBER THE CRU ELEVATES IT THROUGH  
8 -- TO MY E-MAIL AS WELL AS TO COMMISSIONER ALI.

9 Q. BUT YOU DON'T HAVE ANY WRITTEN POLICY THAT  
10 GOVERNS HOW YOU DECIDE WHETHER TO MAKE AN EXCEPTION?

11 A. THERE ARE A NUMBER OF THINGS THAT WE DO IN  
12 PRACTICE THAT WE DON'T HAVE A SPECIFIC POLICY FOR.

13 Q. AND THIS IS ONE OF THEM. YOU DO NOT HAVE A  
14 WRITTEN POLICY ON THIS.

15 A. THAT'S CORRECT, YES.

16 Q. YOU JUST MAKE INDIVIDUALIZED ASSESSMENTS OF WHAT  
17 IS THE RIGHT THING TO DO IN A PARTICULAR CIRCUMSTANCE.  
18 IS THAT FAIR?

19 A. IT'S FAIR TO SAY THAT WE TREAT EACH CHILD  
20 INDIVIDUALLY, YES.

21 Q. AND FOR THIS EXCEPTIONS PROCESS YOU MAKE  
22 INDIVIDUALIZED ASSESSMENTS, CORRECT?

23 A. THAT'S CORRECT.

24 Q. YOU HAVE NEVER COMMUNICATED YOUR WAIVER POLICY  
25 TO -- STRIKE THAT.

1                   YOU HAVE NEVER COMMUNICATED YOUR WAIVER  
2 POLICY IN WRITING TO THE VARIOUS CUA'S, CORRECT?

3           A.           THERE WAS AN E-MAIL SENT BY MS. ALI INFORMING  
4 THEM REGARDING THE INSURANCE THAT CRU HAD TO DO ALL OF  
5 THE PLACEMENTS.

6           Q.           AND -- I'M SORRY. IS YOUR TESTIMONY THAT THAT  
7 E-MAIL INFORMED THEM -- AND I DON'T MEAN TO MAKE YOU  
8 GUESS. WOULD YOU LIKE ME TO GET THE E-MAIL?

9           A.           NO. YOU GUYS ENTERED IT INTO EVIDENCE YESTERDAY  
10 WITH THE E-MAIL THAT WAS SENT FROM STACY BOYD FOR THE  
11 DIRECTION OF MS. ALI TO THE CUA LEADERSHIP.

12          Q.           RIGHT. WE ARE TALKING ABOUT THE SAME E-MAIL.  
13 AT A CERTAIN POINT IF YOU NEED TO SEE IT, LET ME KNOW.  
14 I DON'T WANT TO -- IT'S NOT QUIZZING YOUR MEMORY.

15          A.           SURE.

16          Q.           THAT E-MAIL SAID NOTHING ABOUT AN EXCEPTIONS  
17 POLICY, CORRECT?

18          A.           I THINK -- ACTUALLY, IF WE ARE GOING TO TALK  
19 SPECIFICALLY ABOUT THE E-MAIL, I WOULD LIKE A COPY.

20          Q.           SURE. THIS HAS BEEN PREVIOUSLY MARKED AS AN  
21 EXHIBIT. I DON'T KNOW THE NUMBER.

22                   MR. FIELD: IT'S EXHIBIT 3.

23 BY MR. RIENZI:

24          Q.           AND MS. FIGUEROA, IS THIS THE E-MAIL THAT YOU  
25 AND I WERE TALKING ABOUT A MOMENT AGO?

1 A. THIS IS, YES.

2 Q. THIS E-MAIL DOES NOT INFORM CUA LEADERSHIP ABOUT  
3 THE AVAILABILITY OF EXCEPTIONS, CORRECT?

4 A. IT SAYS IF YOU HAVE QUESTIONS ABOUT A CASE,  
5 PLEASE CONTACT ME BY PHONE OR E-MAIL.

6 Q. IT DOESN'T SAY ANY EXCEPTIONS WILL BE GRANTED,  
7 CORRECT?

8 A. IT SAYS IF YOU HAVE A QUESTION --

9 Q. I AGREE.

10 A. -- ABOUT A CASE.

11 Q. IT DOES NOT SAY EXCEPTIONS WILL BE GRANTED,  
12 CORRECT?

13 A. NO, IT DOES NOT SAY THAT.

14 Q. IT DOES NOT INFORM THEM ON WHAT BASIS YOU MIGHT  
15 MAKE AN EXCEPTION, CORRECT?

16 A. NO, IT DOES NOT.

17 Q. AND YOU HAVE NO WAY OF KNOWING WHETHER YOUR  
18 OFFICE IS ACTUALLY BEING NOTIFIED OF ALL THE SITUATIONS  
19 IN WHICH, FOR EXAMPLE, THERE COULD BE A SIBLING  
20 PLACEMENT, CORRECT?

21 A. I AM NOT SURE IF THAT'S ACCURATE. THERE'S A LOT  
22 OF COMMUNICATION THAT HAPPENS VERBALLY WITH OUR CUA'S  
23 THROUGH BOTH THE DIRECTOR AND SUPERVISORY MEETINGS. SO  
24 WE TALK ABOUT PLACEMENT DISRUPTIONS PRETTY SIGNIFICANTLY  
25 WITH OUR CUA'S.

1 Q. AS YOU SIT HERE UNDER OATH, YOU DON'T KNOW  
2 EITHER WAY WHETHER YOUR OFFICE GETS TOLD ABOUT ALL OF  
3 THE POSSIBLE SIBLING PLACEMENTS, CORRECT? YOU JUST  
4 DON'T KNOW?

5 A. TRUE.

6 Q. AND YOU DON'T KNOW IF YOU FIND OUT ABOUT ALL OF  
7 THE SITUATIONS WHERE THERE IS A PRIOR FOSTER CARE PARENT  
8 AS WITH DOE CHILD NUMBER 1, CORRECT?

9 MR. FIELD: OBJECTION, TO THE EXTENT THAT  
10 IT CHARACTERIZES DOE CHILD NUMBER 1 PLACEMENT.

11 THE COURT: I AM GOING TO SUSTAIN THE  
12 OBJECTION.

13 BY MR. RIENZI:

14 Q. YOU SAID EARLIER THAT YOU HAD OFFERED CATHOLIC  
15 THE ABILITY TO ENTER INTO THE SAME FULL CONTRACT. IS  
16 THAT WHAT YOU SAID?

17 A. I SAID WE OFFER THEM OPPORTUNITY TO ENTER INTO A  
18 FULL CONTRACT.

19 Q. IT'S NOT THE SAME FULL CONTRACT THAT THEY HAVE  
20 PREVIOUSLY ENTERED INTO?

21 A. FOR THE SAME SERVICES?

22 Q. YES. IN OTHER WORDS, YOU WOULD BE CHANGING --

23 A. IT IS FOR THE SAME SERVICES.

24 Q. I AM GOING TO HAND YOU A DOCUMENT WHICH HAS  
25 PREVIOUSLY BEEN MARKED AS PLAINTIFF'S EXHIBIT 13. AND

1 SERVICES, IT WOULD BE EXPLICIT IN REGARD, IN TERMS TO  
2 WHAT IS REQUIRED.

3 Q. THE CURRENT CONTRACT IS NOT EXPLICIT, CORRECT?

4 A. I BELIEVE RIGHT, IT MEANS PROVIDING FURTHER  
5 CLARITY.

6 Q. IN THE PAST YOU HAVE FREQUENTLY LET AGENCIES  
7 CONTINUE FOR MONTHS AFTER THE EXPIRATION OF A CONTRACT,  
8 IS THAT CORRECT?

9 A. WHEN THERE IS A RENEWAL EXPECTED AND IT'S BEEN  
10 CLEARED BY BOTH THE PROVIDER AND THE CITY THAT THE  
11 EXPECTATION IS TO MOVE FORWARD IN COMPLIANCE WITH THAT  
12 CONTRACT, YES.

13 Q. AND IN THOSE SITUATIONS SOMETIMES YOU OPERATE  
14 FOR MONTHS UNDER THE OLD CONTRACT?

15 A. THAT IS CORRECT.

16 MR. FIELD: THAT CALLS FOR A LEGAL  
17 CONCLUSION, YOUR HONOR.

18 THE COURT: OVERRULED.

19 BY MR. RIENZI:

20 Q. YOU TALKED EARLIER ABOUT POSSIBLY CHANGING  
21 CONTRACT TERMS TO SHIFT FROM PER DIEM TO COST  
22 REIMBURSEMENT. DO YOU RECALL THAT TESTIMONY?

23 A. THAT WAS AN EXAMPLE WHAT WE DID WITH A PROVIDER  
24 THAT WAS CLOSING, YES.

25 Q. IN THAT CIRCUMSTANCE YOU ARE NOT DOING ANY NEW

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I N D E X

WITNESS DIRECT CROSS REDIRECT RECROSS

CYNTHIA FIGUEROA

BY MR. FIELD 2 141

BY MR. RIENZI 14 145

FRANK CERVONE

BY MS. CORTES 151, 165

BY MR. RIENZI 174, 181

CLOSING STATEMENTS PAGE

BY MR. RIENZI 197, 256

BY MS. EWING 220

BY MS. COOPER 238

I CERTIFY THAT THE FOREGOING IS A CORRECT  
TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE  
ABOVE-ENTITLED MATTER.

DATE OFFICIAL COURT REPORTER

LYNN MCCLOSKEY, RPR