

No. 18-2574

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

SHARONELL FULTON, ET AL.,

Plaintiffs-Appellants,

v.

CITY OF PHILADELPHIA, ET AL.,

Defendants-Appellees.

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.)

**Response to Proposed Intervenors'
Motion for a Limited Remand**

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INTRODUCTION

The City of Philadelphia is currently preventing Appellants from exercising their religious beliefs. This harm—to both Catholic Social Services and the individual foster mothers—is ongoing and irreparable. Indeed, recognizing the urgency of this situation, this Court has agreed to consider Appellants’ case on an expedited schedule. The motion from Proposed intervenors (collectively, “Advocates”) should be denied because they have not come close to meeting the requirements for intervention. In any case, the Court should not delay its resolution of this pressing matter due to Advocates’ filings.

ARGUMENT

I. Limited remand is inappropriate.

Advocates request that the Court partially remand this case to permit the District Court to consider their motion to intervene, which is currently stayed along with the remainder of the case pending resolution of this appeal. Such unusual relief is both unnecessary and a waste of judicial resources. This is so for two reasons. First, intervention is not warranted. Second, intervention would have no impact on the current proceedings. Thus, this Court should refuse to unnecessarily complicate and potentially delay matters and instead order that Advocates’

intervention motion should be considered by the District Court when the case is remanded in full after this appeal has concluded.

A. Intervention is not warranted.

Intervention is not warranted for all the reasons Appellants previously articulated in their response to Advocates' Emergency Motion to Intervene. *See* Mem. of Law in Opp'n to Emergency Mot. to Intervene (June 29, 2018), ECF 48.

Advocates have no interest in this litigation. They can identify no same-sex couple—much less a same-sex couple affiliated with their organizations—who has ever been negatively impacted by Catholic Social Services' ("Catholic's") foster care program. Advocates will continue their own work uninterrupted no matter how this Court rules. Advocates warn that preserving the status quo and allowing Catholic to serve the community in accordance with its beliefs will have harmful consequences, but Advocates have not articulated a single harm caused by maintaining the same agreement that has been in place for over 50 years. Indeed, when pressed under oath, Advocates' executive director acknowledged that he could offer no proof of any harm.¹

¹ CityAppx.576, 586.

Even *if* Advocates had an interest in this litigation, that interest would be adequately represented by the City of Philadelphia. In fact, the positions taken by Advocates and the City are so perfectly aligned that the City selected the executive director of Support Center for Child Advocates as its sole expert witness called to articulate the City’s theory of harm in this case.² Thus, to the extent Advocates have even a conceivable interest in this case, they cannot demonstrate any meaningful way in which this interest is distinguishable from that of the City.

Advocates should also be denied permissive intervention under Federal Rule of Civil Procedure 24(b), because they have no claim or defense in this matter at all, and certainly none that “shares . . . a common question of law or fact” with the City. Fed. R. Civ. P. 24(b).

² *Id.* Indeed, the City’s position and Advocates’ position are so perfectly aligned that both wish Catholic would change its religious beliefs. *See* CityAppx.501-02 (Commissioner Figueroa accused Catholic of improperly interpreting Pope Francis); CityAppx.584 (“Q: do you think Catholic Social Services needs to change its beliefs on sexuality and marriage? A: I would love for them to.”).

B. Intervention will not affect this appeal.

Advocates' participation in this appeal will not aid in the Court's deliberations. Advocates have already presented their views both in oral argument to the District Court and through the expert testimony of Support Circle's executive director, which is part of the record available to this Court on appeal. Further, Advocates are permitted to file an *amicus* brief on appeal laying out their public policy arguments and their position on the issues raised in this case. Appellants have no objection to the filing of such a brief. There is thus no need for them to intervene at this time.

Instead, the more appropriate approach would be to maintain the current stay (entered by the District Court at the request of the City) on all matters pending before the District Court until the conclusion of this appeal. At that time, the parties and the District Court will also be better able to assess the merits of intervention.

II. Regardless, this appeal should not be delayed.

The City's decision to close Catholic's foster care intake is currently preventing foster mothers like Appellant Mrs. Cecilia Paul (a former foster parent of the year) from taking in children who are currently in desperate need of a loving home. This harms not only Mrs. Paul, but also

those children who could be placed in her home; the City has admitted to an urgent need for more foster parents, and that its goal is to move children out of group homes and into the most family-like setting possible. Further, within a matter of months, Catholic's foster care program will be forced to close its doors entirely. This will result in the loss of loving homes for even more children in need, the loss of dedicated staff with decades of institutional knowledge, and possibly even the involuntary removal of children from the homes of parents currently certified by Catholic.

This Court already recognized the urgency of the situation when it granted Appellants' motion for an expedited appeal. And even if intervention were permitted, Advocates would have until late September to file a brief, which is more than adequate time to prepare a brief on a record with which Advocates are very familiar.

Accordingly, regardless of how this Court rules on Advocates' motion for a partial remand, Appellants request that this Court maintain the current briefing schedule and not permit Advocates' policy interest to delay these important proceedings.

CONCLUSION

For the reasons stated above, Advocates' motion should be denied.

Date: August 8, 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 response to the counsel of record for the parties. I further certify that all parties to this case are represented by counsel of record who are CM/ECF participants.

Executed this 8th day of August, 2018.

/s/ Mark L. Rienzi
Mark L. Rienzi