

IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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Docket No. 18-2574

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SHARONELL FULTON, et al., Appellants,

v.

THE CITY OF PHILADELPHIA, et al., Appellees.

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APPELLEES' MEMORANDUM IN OPPOSITION TO APPELLANTS' EMER-  
GENCY MOTION FOR INJUNCTION PENDING APPEAL

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**APPELLEES' MEMORANDUM IN OPPOSITION TO APPELLANTS' EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL**

Appellant Catholic Social Services (“CSS”) and its three foster parent plaintiffs seek an injunction pending their appeal of the district court’s denial of their motion for a temporary restraining order and preliminary injunction. The requested injunction would force the City of Philadelphia (the “City”) and its Department of Human Services (“DHS”) to enter into a contract with CSS on terms unilaterally imposed by CSS, and would force the City to permit CSS to violate Philadelphia’s Fair Practices Ordinance (the “FPO”) by discriminating against prospective foster parents who are in same sex marriages.

CSS’ claim that DHS is selectively “punishing” it for violating “supposed policies” which CSS asserts have never been “announced, much less applied” to secular foster care agencies could not be more inaccurate. This case is about whether agencies which contract with the City to perform government services and are paid with public funds must comply with City anti-discrimination laws and policies, and which the City’s Home Rule Charter itself requires be part of all City contracts.

CSS has brought its motion on an ‘emergency’ basis asserting that it will have to lay off employees and wind down this particular aspect of its foster care work “within months.” Appellants’ Emergency Motion for Injunction Pending Appeal (“Mot.”) at 1-2. But the emergency is illusory and belied by CSS’ actions and arguments. Intake closure began in mid-March, yet CSS waited two months to

initiate this case and almost three more weeks to file its motion for a temporary restraining order or preliminary injunction. *See* Appx.2-3, 8. And CSS' attorney informed the district court that CSS has retained two employees whose positions within the foster care program were no longer supported. *See* Appx.80.<sup>1</sup> CSS also has the power to mitigate this alleged emergency: DHS has repeatedly expressed its willingness to negotiate an interim contract with CSS to protect children CSS currently serves in foster care and to minimize the impact on CSS' business operations.

The District Court held hearings over three days before denying an injunction in a 64-page opinion. CSS now asks this Court to impose, pending its appeal of that decision, the same injunction based on the same record and law.<sup>2</sup> CSS provides no basis for an injunction pending appeal and Appellants' Motion must be denied.

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<sup>1</sup> CSS' included post-hearing submissions in its Appendix. The City's responses are at CityAppx.901-05. Documents cited in the City's Appendix were either admitted as evidence or filed on the docket following the hearing.

<sup>2</sup> CSS filed this "Emergency" motion stating that seeking relief from the district court was "impracticable" despite having filed a motion with the District Court. Today the City opposed the latter motion, on an expedited basis.

## STATEMENT OF FACTS

### **I. DHS Contracts with Private Agencies including CSS To Provide Foster Care.**

DHS has custodial responsibility for 6,000 foster children in Philadelphia and contracts with 30 private foster care agencies, including CSS, to provide family foster care services. Under the contract at issue, CSS has cared for approximately 100 of the 6,000 children. CityAppx.339-340.

Consistent with the City's non-discrimination law and policy, multiple provisions of the contract also specifically prohibit an agency from discriminating on the basis of sexual orientation in its provision of services. CityAppx.796, 839-40. The Scope of Services of the contract obligated CSS to recruit, screen, train, and provide certified resource care homes. CityAppx.757-59; 803-04, 806-07, 813. Prospective foster parents have the right to choose the agency with which they want to work. CityAppx.122-23. An agency can provide information that another agency might be a better fit, such as when a foster parent wants to care for a child with specific medical needs which the agency is not qualified to supervise, but ultimately the choice remains the prospective parents.' CityAppx.129. No record evidence exists that the City has ever authorized agencies to refuse prospective parents because of their race or religion, let alone their sexual orientation.

CSS' contract with the City terminated on June 20, 2018.<sup>3</sup> CityAppx.744. The City has offered two foster care agency contracts to CSS: a full contract requiring CSS to follow the non-discrimination provisions or an interim contract to

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<sup>3</sup> By law, unless specifically approved by City Council, City contracts are limited to one year. Phila. Home Rule Charter § 2-309. The Charter was also amended by

provide for ongoing care of children currently placed through CSS. CityAppx.287-289,866-67, 869.<sup>4</sup>

## **II. CSS’ Refusal to Consider Same Sex Couples as Prospective Foster Parents.**

On March 9, 2018, DHS learned from the *Philadelphia Inquirer* that two of DHS’ private foster care agencies – CSS and Bethany Christian Services (“Bethany”) – had policies refusing services to same sex couples.<sup>5</sup> CityAppx.349, 399. DHS Commissioner Figueroa confirmed the report with both agencies. CityAppx.349-350, 499. DHS was concerned about CSS’ ability to perform its contractual obligations, and potential violations of laws such as the FPO. CityAppx.400-402. Commissioner Figueroa “decided that it was in the best interest [of children] to close intake.”<sup>6</sup> *Id.* Under the Contract, the City is not required to make any placement referrals to CSS. CityAppx.813-16.

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the electorate on 2010 to require that contracts “contain a provision that . . . the contractor will not discriminate . . . against any person because of . . . sexual orientation.” *Id.* § 8-200(d).

<sup>4</sup> CSS’ other foster care service contracts with the City such as for “congregate” care in group homes and case-management services as a Community Umbrella Agency (CUA) are not affected by this lawsuit. CityAppx.200-21, 346.

<sup>5</sup> Contrary to CSS’ unsupported assertion, there was no prior “live and live” arrangement. DHS did not know about CSS’ outright refusal to work with same sex couples (despite legal and contractual non-discrimination requirements) until reporters called DHS about this story. CityAppx.893.

<sup>6</sup> CSS points to unrelated quotes attributed to Mayor Kenney which substantially preceded this dispute (and his mayoralty) to suggest that the Mayor was involved in the decision to close intake. The district court credited Commissioner Figueroa’s testimony that the Mayor was not involved in her decision. CityAppx.504.

CSS cited religious grounds for its refusal.<sup>7</sup> CityAppx.399. Commissioner Figueroa called other foster care agencies to inquire as to their practices, focusing on religious agencies as she understood the issue to arise from religious belief, but also calling at least one agency not religiously affiliated. CityAppx.349-51, 399, 499. Bethany reversed its refusal, its intake was restored, and Bethany will sign a new full contract which will require, *as will all the City's new contracts with its foster care agencies*, service to all protected categories under the FPO. CityAppx.405, 408-09, 869, 902 n.2. CSS continues to refuse, will not sign a full contract, and its intake remains closed. CityAppx.275, 293.

### **III. The Impact of Intake Closures.**

DHS closes intake whenever a foster care agency may cease providing services, to minimize the number of placements that might need to be changed or transferred if the relationship ends. CityAppx.401-02. As of the hearing date, DHS had other intake closures. CityAppx.403. Despite this, the overall placement rates of children in the City have not changed. CityAppx.482-83. The district court credited Commissioner Figueroa's testimony on intake closures, concluding that "closure of CSS' intake of new referrals has had little or no effect on the operation of Philadelphia's foster care system." Appx.11, CityAppx.482-83.

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<sup>7</sup> CSS inaccurately describes the City's requirement as a "must certify" policy. We never have and never would suggest that CSS must certify any same sex couple that presents itself. We only required that CSS and other agencies not automatically turn away a same sex couple before even considering whether that couple meets state certification requirements.



#### **IV. The Impact of Intake Closures on CSS and Foster Parents.**

The number of children placed through CSS may decline from the intake closure, but the concrete impact on CSS' business depends on DHS and CSS' ongoing negotiation of an interim contract. CityAppx.406-07. According to CSS, six employees support family foster care contract services, and two have been re-assigned. Appx.80. CSS' other foster care activities, such as group home operations and CUA services, have not been affected. CityAppx.200-01, 287-289, 346, 897. While foster parents working with CSS could refuse to work with another agency, DHS hopes that they will continue as foster parents, and none of the foster parents who testified on CSS' behalf ruled that out. CityAppx.53, 63, 68.

### **ARGUMENT**

#### **I. Applicable Standard.**

The standard for obtaining an injunction pending appeal is essentially the same as that for a preliminary injunction. The “four . . . factors are interconnected” and the applicant must first meet the requirements of the first two prongs – likelihood of success on the merits and irreparable harm. *In re Revel AC, Inc.*, 802 F.3d 558, 571 (3d Cir. 2015). If it cannot, the request is denied. If it can, the Court “balance[s] the relative harms considering all four factors using a ‘sliding scale’ approach.” *Id.* The bar for an injunction pending appeal is particularly high. *Conestoga Wood Specialities Corp. v. Sec’y of U.S. Dep’t of Health & Human Servs.*, No. 13-1144, 2013 WL 1277419, at \*1 (3d Cir. Feb. 8, 2013). And although in First Amendment cases, the appellate court conducts an independent examination of the record, with a full evidentiary record it defers to the district court’s findings

concerning witnesses' credibility. *Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly*, 309 F.3d 144, 156–57 (3d Cir. 2002).

**II. CSS Is Unlikely to Succeed on the Merits Because It Has No Constitutional Right to Compel the City to Contract With a Provider That Cannot Comply With the City's Anti-Discrimination Requirements.**

CSS wants to make this case about a non-existent religious animus by the City because otherwise it has no legal entitlement to a compelled exemption from neutral anti-discrimination laws and policies. The City requires that businesses receiving funds from and providing government services for the City pursuant to contract treat same sex families equally while performing their contracts. Merely because the two providers who stated they could not comply are religious and cited religious grounds for their objection does not mean that the City acted with religious animus when it insisted upon contract compliance with its equal access law and policy.

**A. CSS Is Unlikely to Succeed on its Free Exercise Claim Because the Free Exercise Clause Does Not Compel the City to Contract with Religious Providers Who Are Unable to Comply the City's Generally Applicable Civil Rights Laws and Policies that Require All Contractors to Treat Prospective Foster Families Equally.**

As the district court correctly found, the City's insistence upon compliance with its anti-discrimination law and policy was permissible, even in the face of religious objection, because an "all comers" policy, i.e., a non-discrimination law or

policy, is a valid neutral law of general applicability as to which claims of impermissible religious conflict must fail. Appx.22-32 (citing *Emp't Div. v. Smith*, 494 U.S. 872, 878-82 (1990)).<sup>8</sup>

In light of *Smith's* holding that religious entities have no blanket right to exemption from neutral laws and policies, CSS is not entitled to have an exemption unilaterally written into a City contract when it asserts that certifying otherwise fully qualified same sex foster couples as foster parents will “violate its faith.”<sup>9</sup> Mot.15. CSS ignores the district court’s observation that “context matters” when it comes to burden. Appx.32. Below CSS invoked caselaw holding that religious individuals cannot be compelled to “choose” between free exercise of their religion and receiving a generally available benefit, such as unemployment benefits. *Sherbert v. Verner*, 374 U.S. 398 (1963); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S.Ct. 2012, 2025 (2017) (overturning state constitutional prohibition of grants to religious organizations for secular playground materials solely because

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<sup>8</sup> The district court did not need to reach, but cited approvingly, our argument that the Establishment and Equal Protection Clauses are additional valid, neutral laws of general applicability that do not permit CSS to claim an impermissible burden. Appx.31 & n.24. CSS’ reliance upon religious doctrine to determine whom it serves is impermissible in providing City-funded services. Further, in refusing to certify same sex married couples, CSS is treating same sex married couples differently from heterosexual couples. *See Obergefell v. Hodges*, 135 S. Ct. 2584, 2607-08 (2015) (same sex couples entitled to equal “rights and responsibilities” of marriage under Equal Protection Clause).

<sup>9</sup> CSS questions the district court’s reliance on *Christian Legal Society v. Martinez*, 561 U.S. 661, 697 n.27 (2010). Contrary to CSS’ assertion, *Martinez* rejected a free exercise claim under *Smith*. Where a student group that excluded gay persons sought exemption from a school’s across-the-board all-comers policy, the Court rejected the group’s claim of entitlement to a compelled exemption because in doing so, the group sought “preferential, not equal, treatment.” *Id.*

of religious nature). But as the district court recognized, that line of cases “does not stand for the proposition that the State can be required under the Free Exercise Clause to contract with a religious organization,” *Teen Ranch v. Udow*, 389 F. Supp. 2d 827, 838 (E.D. Mich. 2005), *aff’d*, 479 F.3d 403 (6th Cir. 2007), and the court here found that voluntary participation in a government contract is not a public benefit, Appx.25-27, 32.<sup>10</sup>

The district court was correct. This case does not concern a grant program to subsidize private activity, but a contract delegating the City’s duty to place children in its custody with foster parents satisfying state qualifications. CSS is not entitled to insist that it be permitted to impose its religious beliefs upon or discriminate against those foster parents, who are compensated by the government and who take care of children in the government’s legal custody. CSS has no response to the district court’s distinction of the public benefits cases other than to claim, incorrectly, that *Teen Ranch* did not really address a free exercise claim. Mot.18.

While CSS correctly observes that the City cannot mandate churches to perform same sex weddings, the very passage from *Masterpiece Cakeshop* CSS quotes to make this point undermines its argument. The full quote continues that if this exception were “not confined, then a long list of persons who provide goods and services for marriages and weddings might refuse to do so for gay persons,

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<sup>10</sup> CSS now cites *Holt v. Hobbs*, 135 S.Ct. 853, 862-63 (2015), but in *Holt*, a Muslim inmate was required to shave his beard upon pain of disciplinary action. There is no such compulsion where CSS voluntarily contracts to provide government services.

thus resulting in a community-wide stigma inconsistent with the history and dynamics of civil rights laws that ensure equal access to goods, services, and public accommodations.” *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719, 1727 (2018). Thus, *Masterpiece Cake* supports, rather than undermines, the district court’s conclusion that there is no absolute religious right to exemption from neutral civil rights laws, and that unlimited exemptions would cause unacceptable stigma for LGBTQ citizens who seek to participate fully and equally in public life, including serving as foster parents.

**B. While *Smith* Does Not Apply if Religious Animus Motivates Enforcement of a Neutral Law, No Such Inference Can Be Drawn Here**

CSS tries to dodge *Smith* with various assertions that the City’s neutral anti-discrimination law and its commitment to equal treatment and access for LGBTQ citizens and visitors – which predates this dispute by many years – is not the real reason why DHS closed CSS’ intake. CSS asserts that the City was actually motivated by religious animus, and therefore, our refusal to contract with it on CSS’ terms is impermissible and subject to strict scrutiny. The district court properly rejected these assertions.

**1. Where Only Religious Providers Announced They Could Not Serve Same Sex Couples, the City Did Not Engage in Improper Targeting.**

CSS struggles to cobble together a selective enforcement argument because the only two agencies that announced they were unable to comply with the City’s requirement of equal treatment were religious entities. The City did not permit any

secular provider to refuse service to prospective foster parents on the basis of membership in a protected category. Thus, while the City opened an investigation into the two groups which indicated they could not comply, and insisted that they comply if they were to receive new contracts, CSS provided no evidence that any secular provider should have been investigated.

Although CSS appears to intimate, incorrectly, that only CSS and Bethany were required to comply, the same contractual equal treatment obligations apply in all the foster care contracts. CityAppx.408-09. Further, while DHS did not ask every provider, CSS and Bethany indicated their inability to serve same sex couples was based upon religious doctrine. Therefore, the Commissioner saw no reason to assume that secular providers were not compliant. CityAppx.347, 399. Finally, the City has restored intake and offered to Bethany a new full contract because Bethany now has agreed to certify otherwise qualified same sex couples. CityAppx.408-409.

In sum, where only two providers announced that they were not willing to work with same sex foster parents, and those providers happened to be religious; where DHS had no indication that any secular providers had this same religiously-based objection; and where DHS resumed its relationship with Bethany as soon as Bethany agreed to comply with the City's neutral laws and policy, it is impossible to draw an inference that the City's insistence upon compliance was motivated by religious animus, as opposed to its longstanding deep commitment to equal rights in public life for LGBTQ citizens. The FPO was enacted in 1963 and amended in 1982 to protect Philadelphians on the basis of sexual orientation. Insistence that

entities who contract with us comply with our civil rights laws does not constitute religious hostility. *See Keeton v. Anderson-Wiley*, 664 F.3d 865, 872 (11th Cir. 2011) (university did not impose remediation plan on student in retaliation for religious views, but because counseling degree candidate stated she would impose those views about LGBTQ individuals upon future patients).

**2. The District Court Properly Found That *Masterpiece*'s Narrow Holding Does Not Apply.**

Contrary to CSS' interpretation, *Masterpiece Cakeshop* does not hold that, the City cannot object or enforce its civil rights laws against individuals who object on religious grounds without engaging in impermissible religious hostility. CSS points to statements by City Council and the Commissioner that express nothing more than disagreement with CSS' refusal to serve same sex married couples, and the observation that the refusal to serve those families on equal terms as other couples constitutes discrimination under the City's laws and policies.<sup>11</sup>

The district court properly rejected CSS' overreading of *Masterpiece Cakeshop*. *See Appx.33*. As it observed, *Masterpiece Cakeshop* is a narrow decision based upon the strongly disparaging statements of adjudicators during a supposedly neutral adjudicatory proceeding, together with evidence of different and preferential treatment of similarly situated secular bakers who refused to put anti-

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<sup>11</sup> City Council had nothing to do with the decision made by the executive branch and accordingly, its comments should not even be considered. Similarly, the bare fact that the PHRC opened an investigation after reading published reports suggesting violations of the City's FPO connotes no hostility.

gay messages on their cakes. 138 S.Ct. at 1729-30 (describing statement that religious justification was “one of the most despicable pieces of rhetoric that people can use” to justify “hurting others”) (invoking Holocaust and slavery as comparable examples where religious freedom had been invoked).

As noted above, CSS has not asserted that the City permitted any secular provider to refuse to work with a prospective foster couple because of their membership in a protected category. Further, none of the cited statements here are similarly disrespectful. Indeed, DHS expressed that it was “genuinely appreciative of the invaluable services that CSS provides on the City’s behalf” and expressed regret that the parties could not reach consensus. Appx.103. Nothing in *Masterpiece Cakeshop* suggests that, in order to be permitted to apply an otherwise neutral, generally applicable anti-discrimination law, the City could not observe that a refusal to serve same sex couples on equal terms, even when religiously motivated, violates that law. Further *Masterpiece Cakeshop* found persuasive that the problematic statements were made by adjudicators in a neutral adjudicatory proceeding.<sup>12</sup> The statements cited by CSS were made by parties to a contract, who certainly are permitted to advocate for their respective positions.

In sum, the mere fact that we expressed to CSS that its refusal to serve same sex couples violates our anti-discrimination law and policy falls far short of the

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<sup>12</sup> *See id.* at 1730 (noting disagreement as to whether decisionmaker’s comments are relevant, but “[i]n this case, however, the remarks were made in a very different context—by an adjudicatory body deciding a particular case.”).



mark that *Masterpiece Cake* sets for establishing hostility so great that it overcomes application of an otherwise neutral, generally applicable anti-discrimination law.

**3. Because the City Has Not Granted Any Secular Exemptions to Its Civil Rights Law and Policies to Secular Providers, CSS Has Not Proven Any Inference of Religious Hostility.**

CSS properly observes that if the government grants secular exemptions to a neutral law or policy, but refuses to grant similar religious exemptions, its conduct is constitutionally suspect. *Blackhawk v. Pennsylvania*, 381 F.3d 202, 209 (3d Cir. 2004); *see also Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359, 366 (3d Cir. 1999).

The problem for CSS is that none of its alleged exemptions identifies any situation in which the City exempted a foster care provider from anti-discrimination requirements.

The district court agreed that for this very reason, CSS' argument fails. Appx.38-39. CSS alleges only that DHS permits agencies to "refer" foster parents to other agencies to improve proximity to the family, or to provide expertise in addressing specialized medical needs.<sup>13</sup> However, as the district court properly noted, these secular reasons for "referral" are not exemptions from anti-discrimination requirements, and the testimony was clear that the decision of which agency to

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<sup>13</sup> CSS' argument is contrary to the Record, which reflects that foster parents have the right to choose the agency with which they want to work and that while agencies may provide *information* about other agencies, the choice remains the foster parents'. CityAppx.126, 129-131.

work remained the applicant's. Appx.39. The type of "referral" that CSS is seeking is actually a *refusal* of service on the basis of the couple's membership in a protected category, something DHS has never permitted. Appx.39. Therefore, cases like *Blackhawk* and *Newark* are inapplicable.

Puzzlingly, CSS asserts that civil rights laws like the FPO cannot apply to foster care because under certain circumstances, factors like disability and race can be considered. Mot.23. This assertion is deeply flawed. Of course agencies must consider whether an individual's mental disability poses a health and safety threat such that they should not be certified to care for a child. Such consideration of disability is not discriminatory, and yet HHS still considers foster parents to be protected under Title II of the ADA.<sup>14</sup> In addition, while the Multiethnic Placement Act of 1994, Pub. L. 103-82 (1994), generally prohibits consideration of race and national origin in placement decisions, HHS has noted that agencies may sometimes consider them as one factor in a placement decision.<sup>15</sup> Thus, the mere fact that protected factors can sometimes be considered in complex child welfare decisions does not foreclose civil rights protections in this area. Consideration of race and disability to serve the best interests of a child has nothing to do with what CSS

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<sup>14</sup> HHS Technical Assistance, available at [https://www.ada.gov/doj\\_hhs\\_ta/child\\_welfare\\_ta.pdf](https://www.ada.gov/doj_hhs_ta/child_welfare_ta.pdf) (last visited July 23, 2018).

<sup>15</sup> Ensuring the Best Interest of Children at 17, available at <https://www.hhs.gov/sites/default/files/ocr/civilrights/resources/specialtopics/adoption/mepatraingppt.pdf> (last visited July 23, 2018).

seeks here – permission to refuse to even consider whether gay and lesbian couples meet certification criteria solely because of their sexual orientation.

**4. If Strict Scrutiny Were to Apply, It Is Satisfied.**

Finally, even if for any reason strict scrutiny did apply, CSS’ free exercise claim still fails because the City’s actions are justified by a compelling interest and are the least restrictive means of achieving that interest.

Respecting and following the City’s anti-discrimination law is a compelling interest. *See, e.g., Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1986). CSS’ attempts to impugn our interest in anti-discrimination lack any merit.

And insisting upon compliance is the least restrictive means of addressing the anti-discrimination mandate of the FPO. *See, e.g., EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560, 588 (6th Cir. 2018) (compliance with anti-discrimination law was least restrictive means to further compelling government interest in fighting discrimination).

This Court should reject CSS’ claim that the “least restrictive means” would require the City to permit CSS to send prospective foster parents that it refuses to serve to some other agency. Mot.26-27. A religious entity cannot elect an accommodation that will harm third parties. *See Estate of Calder v. Thornton*, 472 U.S. 703, 707-08 (1985). Refusing to serve someone based on a protected category under the FPO – a woman, a non-Christian, or a same-sex couple – whether or not one suggests an alternative, is still contrary to the FPO and contrary to the City’s compelling interest in remedying discrimination. As the Supreme Court observed in *Masterpiece Cakeshop*, should exemptions be freely granted to those who feel

they cannot serve LGBTQ individuals, harmful “community-wide stigma” that is “inconsistent with the history and dynamics of civil rights laws that ensure equal access to goods, services, and public accommodations” would result. 138 S.Ct. at 1727.

**C. The CSS Foster Parent Plaintiffs Have No Cause of Action Based Upon Alleged Violation of CSS’ Free Exercise Rights.**

Despite CSS’ assertions, the CSS foster parents have no cognizable claim. “A litigant may only assert his own constitutional rights or immunities,” and “one cannot sue for the deprivation of another’s civil rights.” *O’Malley v. Brierley*, 477 F.2d 785, 789 (3d Cir. 1973) (even though suspension of cleric visiting privileges might violate inmates’ free exercise rights, clerics stated no claim themselves). Thus, the foster parents cannot assert deprivation of a right to serve as foster parents piggybacked upon an alleged violation of CSS’ free exercise rights.

**D. CSS’ “Compelled Speech” Claim Also Fails.**

CSS’ compelled speech claim fails because the selection and certification of foster parents is made pursuant to contractual duties that CSS voluntarily assumed. CityAppx.757-59; 803-04, 806-07, 813. If a party objects to a contractual condition on its speech, “its recourse is to decline the funds.” *See Agency for Int’l Dev. v. Alliance for Open Soc’y Int’l, Inc.* (“AOSI”), 570 U.S. 205, 214 (2013); *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 631-32 (1943) (distinguishing “compelled” speech from speech of persons who voluntarily enroll in a program, because “those who take advantage of . . . opportunities may not on grounds of conscience refuse compliance with such conditions”).

The district court rejected the argument CSS makes here that its certification activities are not part of its contract with the City, and therefore, the City cannot require it to complete certifications of prospective same sex foster parents through home studies. Appx.19-20, 49-53. Multiple provisions of the Contract belie CSS' assertion. CityAppx.796, 839-40. CSS cannot now walk away and claim that it should be free to refuse to prepare the home study required for certification because a couple is gay. Preparation of that study is integral to certification, and is therefore integral to the contract.

Two cases cited by CSS do not even concern contractual speech, and the others are distinguishable. In *Legal Services Corp. v. Velasquez*, 531 U.S. 533 (2001), the government was not permitted to compel attorneys who received subsidies to represent indigent clients to refrain from challenging welfare laws because the government essentially was subsidizing private speech through attorney client relationships. *See* 531 U.S. at 543-44. The City foster care services contracts create no such private speech forum. *See* Appx.49-53.

*AOSI* is similarly distinguishable. There, the government sought to compel agencies who accepted HIV/AIDS prevention funds to adopt a policy against prostitution. Our contract seeks no policy statement from CSS on same sex marriage. It simply asks CSS to certify as foster parents any applicants who are qualified under the governing state law criteria.

**III. CSS Has Failed to Demonstrate Irreparable Harm or That the Balance of the Equities and the Public Interest Weigh in Its Favor.**

**A. CSS Cannot Satisfy Irreparable Harm.**

CSS argues in cursory fashion that it will be irreparably harmed absent an injunction, citing only *Elrod v. Burns*, 427 U.S. 347 (1976). Mot.30. But CSS is not likely to succeed on the merits so the alleged First Amendment harm is not present.<sup>16</sup> CSS' claim that "Catholic will likely close before litigation is complete", Mot.30, is not supported by the record as CSS has other foster care related contracts with DHS and contracts with two other counties. CityAppx.272–274. The claimed harm also is financial and not irreparable. *See Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 802 (3d Cir. 1989) (being forced to shut down a business not irreparable harm).

**B. CSS' Proposed Injunction Is Against the Public Interest and the Balance of the Equities Strongly Favors the City.**

CSS argues that an injunction would be in the public interest because it would ensure that "empty foster homes are filled and at-risk children are placed with loving foster parents in accordance with state law." Mot.31. But the intake closure has not impacted the overall placement rates of children in Philadelphia. *Supra* at 5. Moreover, DHS' intake closure reflects its best interest determination based on concerns about placement disruptions if CSS is unable to contract with DHS. CityAppx.351-52. Forcing DHS to act against its determination of the best

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<sup>16</sup> Because intake is closed, CSS will not be compelled pending appeal to violate its religious belief regarding same sex couples (or make compelled speech), and because CSS continues to engage in foster care, any burden to the religious mission it identified would be limited even if CSS could succeed on the merits. Such harm is insufficient under *Revel's* sliding scale approach. 802 F.3d at 571.

interest of children cannot be in the public interest. Permitting CSS to discriminate in a manner that would suppress the diversity of the overall foster parent pool and send harmful messages to LGBTQ children in DHS' care as well as all of Philadelphia's residents is also not in the public interest. CityAppx.400-01, 573-74, 576-77.

CSS is also wrong that the City's harms are hypothetical. The City has many legitimate interests at stake in ensuring agencies adhere to contracts, do not discriminate, that a broad pool of foster parents is available, and that LGBTQ children do not see their custodial agency – DHS – permitting CSS to discriminate against same sex foster parents. Appx.63. The requested injunction would require the City to contract with CSS on terms that permit CSS to violate these policies and interests. The fact that CSS does not believe a same sex couple will ask it to certify them is immaterial to the harm such an injunction would cause the City.

### **CONCLUSION**

For all the reasons set forth above, Appellees respectfully request that this Court deny the Appellants' Emergency Motion for an Injunction Pending Appeal.

Respectfully submitted,

CITY OF PHILADELPHIA  
LAW DEPARTMENT  
Marcel Pratt, City Solicitor

Date: July 23, 2018

By: /s/ Eleanor N. Ewing

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**CERTIFICATION OF COMPLIANCE.**

This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 27(d) and 32(a)(7)(B) because this brief contains 5176 words, excluding the parts of the brief exempted by Federal R. App. Proc. 32(f).

1. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.
2. Pursuant to the Third Circuit Local Appellate Rule 31.1(c), I hereby certify that the text of the electronic brief is identical to the text in the hard, paper copies of the brief.
3. Pursuant to the Third Circuit Local Appellate Rule 31.1(c), I hereby certify that a virus detection program was performed on this electronic brief/file using McAfee LiveSafe, and that no virus was detected.

/s/ Eleanor N. Ewing

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**CERTIFICATE OF SERVICE**

I, Eleanor Ewing, hereby certify that I electronically filed the attached document on July 23, 2018 on the Court's electronic filing system, where it is available for printing and viewing.

/s/ Eleanor N. Ewing

Chief Deputy City Solicitor

City of Philadelphia Law Department

Attorney for Appellees

IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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Docket No. 18-2574

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SHARONELL FULTON, et al., Appellants,

v.

THE CITY OF PHILADELPHIA, et al., Appellees.

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CITY'S APPENDIX TO  
APPELLEES' MEMORANDUM IN OPPOSITION TO APPELLANTS'  
EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL

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Dated: July 23, 2018

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF PENNSYLVANIA

3 - - -

4 SHARONELL FULTON, ET AL : CIVIL DOCKET FOR CASE  
5 : NO. 18-2075

6 -VS-

7 CITY OF PHILADELPHIA, ET AL :  
8

9 - - -

10 PHILADELPHIA, PA.

11 JUNE 18, 2018

12 BEFORE HONORABLE JUDGE PETRESE B. TUCKER

13 TEMPORARY RESTRAINING ORDER

14 DAY 1

15 APPEARANCES:

16 FOR THE PLAINTIFF: BECKET FUND FOR RELIGIOUS LIBERTY  
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**FOR THE DEFENDANTS: MARSHALL DENNEHEY WARNER COLEMAN &  
GOGGIN  
BY: DIANA P. CORTES, ESQ.  
2000 MARKET STREET, SUITE 2300  
PHILADELPHIA, PA 19103**

1 THE COURT: GOOD AFTERNOON.

2 ALL COUNSEL: GOOD AFTERNOON, YOUR HONOR.

3 THE COURT: YOU MAY BE SEATED. THIS  
4 MATTER IS HERE FOR ARGUMENT ON A TEMPORARY RESTRAINING  
5 ORDER FILED BY CATHOLIC SERVICES AMONG OTHER PLAINTIFFS  
6 AGAINST THE CITY OF PHILADELPHIA. THERE IS A PETITION  
7 TO INTERVENE THAT WAS FILED. HAVE THERE BEEN ANY  
8 DISCUSSIONS BETWEEN THE PARTIES ON THAT MOTION AND THE  
9 PARTIES IN THE RESTRAINING ORDER AS TO WHETHER THERE IS  
10 AN AGREEMENT, NOT AN AGREEMENT, AS TO THE MOTION TO  
11 INTERVENE?

12 MS. WINDHAM: YOUR HONOR, WE HAVE NOT HAD  
13 ANY DISCUSSIONS REGARDING THE MOTION TO INTERVENE.

14 THE COURT: WOULD DISCUSSIONS BE  
15 FRUITFUL?

16 MS. WINDHAM: YOUR HONOR, WE WOULD BE  
17 PREPARED TO FILE A BRIEF. WE JUST RECEIVED THEIR  
18 INTERVENTION MOTION, THEIR BRIEF ON INTERVENTION MOTION  
19 LAST FRIDAY. PLAINTIFFS WOULD BE HAPPY TO FILE A  
20 RESPONSE TO THAT IN THE REGULAR TIME THAT IS ALLOTTED.  
21 I CAN ADDRESS THAT VERY BRIEFLY TODAY, BUT I BELIEVE  
22 THAT IT WOULD PROBABLY BE MOST FRUITFUL TO JUST PERMIT  
23 THE NORMAL BRIEFING ON THE MOTION TO INTERVENE.

24 THE COURT: OKAY. ANY ADDITION TO ADD TO  
25 THAT?

1 MS. CORTES: NO, YOUR HONOR. THE ONLY  
2 THING THAT I WOULD ADD IS THAT WE DO NOT HAVE ANY  
3 OBJECTION TO THE MOTION TO INTERVENE.

4 THE COURT: OKAY. AT THIS POINT THE  
5 COURT WILL ACCEPT THE BRIEFING AS AN AMICUS SO THAT WE  
6 CAN PROCEED WITH THE ISSUE AT HAND.

7 IF THE PARTIES WOULD LIKE TO MAKE AN  
8 OPENING STATEMENT, I WILL FIRST HEAR FROM COUNSEL FOR  
9 CATHOLIC SERVICES.

10 MS. WINDHAM: THANK YOU, YOUR HONOR.  
11 LORI WINDHAM FOR PLAINTIFFS. IF I MAY, I DON'T KNOW IF  
12 YOUR HONOR HAS A PARTICULAR SCHEDULE SET FOR THE HEARING  
13 THIS AFTERNOON. WE WOULD LIKE TO PROPOSE 15 MINUTES PER  
14 SIDE FOR OPENING STATEMENTS, AN HOUR FOR THE PLAINTIFFS'  
15 WITNESSES, AN HOUR FOR DEFENDANTS' WITNESSES IF THEY  
16 CHOOSE TO CALL ANY, AND THEN TEN MINUTES PER SIDE FOR  
17 CLOSING STATEMENTS.

18 THE COURT: WELL, WE WILL PLAY IT BY EAR.

19 MS. WINDHAM: CERTAINLY.

20 THE COURT: BUT WE WILL KEEP THOSE  
21 SUGGESTIONS IN MIND.

22 MS. WINDHAM: THANK YOU, YOUR HONOR.

23 THE COURT: YOU MAY PROCEED WITH OPENING  
24 STATEMENT.

25 MS. WINDHAM: THANK YOU.

1 FOR OVER HALF A CENTURY, CATHOLIC SOCIAL  
2 SERVICES HAS SERVED AT-RISK CHILDREN IN PHILADELPHIA  
3 THROUGH ITS FOSTER CARE WORK, FINDING THEM LOVING HOMES  
4 WHEN THEY HAVE NO PLACE ELSE TO GO. BUT NOW THE CITY IS  
5 SEEKING TO END THAT HALF CENTURY OF SERVICE, AND TO DO  
6 SO FOR REASONS THAT VIOLATE BOTH PENNSYLVANIA LAW AND  
7 THE FIRST AMENDMENT. WE ARE HERE ON A MOTION FOR A  
8 TEMPORARY RESTRAINING ORDER OR A PRELIMINARY INJUNCTION  
9 BECAUSE THE CITY'S UNLAWFUL ACTIONS ARE CAUSING SERIOUS,  
10 URGENT AND ONGOING HARMS.

11 SEVERAL PROBLEMS REQUIRE URGENT RELIEF,  
12 AND I WILL NAME TWO JUST TO START. FIRST, THERE ARE  
13 CHILDREN IN THE SYSTEM WHO NEED HOMES TODAY. CATHOLIC  
14 HAS PLACES AVAILABLE RIGHT NOW, 26 OF THEM. WE BELIEVE  
15 THERE WILL BE 35 OPENINGS BY THE END OF JUNE. BUT THE  
16 CITY IS REFUSING TO PLACE CHILDREN THOSE HOMES JUST  
17 BECAUSE THOSE FAMILIES WORK WITH CATHOLIC. THOSE  
18 CHILDREN COULD LIVE WITH LOVING FOSTER PARENTS LIKE MRS.  
19 PAUL, WHOM YOU WILL HEAR FROM TODAY, BUT THE CITY WON'T  
20 LET THAT HAPPEN.

21 SECOND, THE CITY HAS SAID THAT IT WILL  
22 MAKE LIMITED EXCEPTIONS TO ITS REFERRAL STOPPAGE,  
23 ESSENTIALLY WHEN A REALLY DIFFICULT SITUATION ARISES AND  
24 THE RIGHT INFORMATION GETS TO THE RIGHT PEOPLE AT THE  
25 RIGHT TIME. BUT EVEN THAT CAN END UP TAKING WEEKS,



1 WHICH WE HAVE SEEN IN THE CASE OF DOE FOSTER CHILD  
2 NUMBER ONE. PLACEMENT TOOK WEEKS THAT NORMALLY COULD  
3 HAVE HAPPENED WITHIN A MATTER OF HOURS. SO REAL  
4 CHILDREN AND REAL FOSTER PARENTS ARE BEING HURT BY THE  
5 CITY'S ACTIONS EVERY DAY THAT THOSE ACTIONS CONTINUE.

6 THE CITY HAS IMPOSED THESE PENALTIES ON  
7 FOSTER FAMILIES AND ON CATHOLIC BECAUSE IT CLAIMS THAT  
8 IT CAN, INDEED THAT IT MUST, PENALIZE THE PLAINTIFFS  
9 BECAUSE CATHOLIC CANNOT MAKE WRITTEN CERTIFICATIONS THAT  
10 CONTRADICT ITS RELIGIOUS BELIEFS. BUT THE SUPREME  
11 COURT, THE 3RD CIRCUIT AND THIS COURT HAVE BEEN CLEAR  
12 THAT EVEN WHEN GOVERNMENTS ARE EXERCISING DISCRETION,  
13 GOVERNMENTS MUST NOT DO SO IN A WAY THAT BURDENS  
14 RELIGIOUS EXERCISE, TARGETS, RETALIATES OR COMPELS  
15 SPEECH. AND THAT'S ESPECIALLY TRUE WHERE THE CITY DOES  
16 NOT HAVE A COMPELLING INTEREST BEHIND ITS ACTIONS. AND  
17 IT DOES NOT HAVE ONE HERE, SINCE IN THAT HALF CENTURY OF  
18 SERVICE, NOT ONE PERSON HAS COMPLAINED AGAINST CATHOLIC  
19 FOR PROVIDING FOSTER CARE SERVICES CONSISTENTLY WITH ITS  
20 RELIGIOUS BELIEFS.

21 IN ITS RESPONSE, THE CITY IS ASKING THIS  
22 COURT TO PRESUME THAT TWO THINGS ARE TRUE, TWO THINGS  
23 THAT IT HAS NOT EVEN ARGUED MUCH LESS DEMONSTRATED.  
24 FIRST, IT'S ASKING THIS COURT TO PRESUME THAT CATHOLIC'S  
25 WRITTEN CERTIFICATIONS FOR HOME STUDIES ARE A PUBLIC

1 ACCOMMODATION. THAT'S SOMETHING THEY HAVE NEVER BEEN  
2 UNDERSTOOD TO BE, THAT'S SOMETHING THAT THE CITY HAS NOT  
3 EVEN ATTEMPTED TO ESTABLISH THAT THEY ARE.

4 NUMBER TWO, THE CITY IS ALSO ASKING THIS  
5 COURT TO RULE THAT ACTIONS BY PRIVATE RELIGIOUS  
6 CHARITIES ARE REALLY CITY ACTIONS. THAT'S CONTRARY TO  
7 BOTH LAW AND TO THE PLAIN TERMS WRITTEN INTO THE CITY'S  
8 CONTRACT. THUS THE CITY'S DEFENSES FALL APART, AND WHAT  
9 IS LEFT IS A GOVERNMENT TARGETING, RETALIATING AND  
10 BURDENING RELIGIOUS EXERCISE IN VIOLATION OF THE LAW.  
11 WITHOUT URGENT ACTION BY THIS COURT, CATHOLIC WILL SOON  
12 BE UNABLE TO CONTINUE ITS DECADES-LONG RELIGIOUS  
13 EXERCISE OF SERVING FOSTER CHILDREN CONSISTENTLY WITH  
14 ITS FAITH. WITHOUT URGENT ACTION FROM THIS COURT,  
15 FOSTER PARENTS LIKE MS. FULTON AND MS. SIMMS-BUSCH WILL  
16 LOSE THE CRITICAL SUPPORT SERVICES THAT THEY RELY ON TO  
17 SERVE THEIR FOSTER CHILDREN. WITHOUT URGENT ACTION FROM  
18 THIS COURT, LOVING FOSTER HOMES LIKE MRS. PAUL'S WILL  
19 CONTINUE TO SIT EMPTY DURING A FOSTER CARE CRISIS.

20 THE PLAINTIFFS MEET THE CRITERIA FOR  
21 EMERGENCY AND INJUNCTIVE RELIEF. FIRST, THE PLAINTIFFS  
22 HAVE DEMONSTRATED A REASONABLE PROBABILITY OF SUCCESS ON  
23 THE MERITS. UNLESS THE COURT HAS A PARTICULAR CLAIM  
24 THAT IT WOULD LIKE ME TO TURN TO FIRST, I WILL ADDRESS  
25 EACH ONE IN TURN.

1 FIRST, PLAINTIFFS ARE LIKELY TO PREVAIL  
2 ON THEIR CLAIM UNDER THE PENNSYLVANIA RELIGIOUS FREEDOM  
3 PROTECTION ACT OR RESPITE. UNDER RESPITE, A PLAINTIFF  
4 NEEDS TO SHOW THAT THEY ARE ENGAGED IN RELIGIOUS  
5 EXERCISE AND THAT RELIGIOUS EXERCISE IS SUBSTANTIALLY  
6 BURDENED. ONCE A PLAINTIFF HAS MADE THAT SHOWING, AND  
7 PLAINTIFFS HAVE HERE, THEN THE BURDEN SHIFTS TO THE  
8 DEFENDANTS TO SHOW THAT THEY HAVE A COMPELLING INTEREST  
9 IN THEIR ACTIONS, AND THAT THEY HAVE USED THE LEAST  
10 RESTRICTIVE MEANS AVAILABLE TO FURTHER THAT INTEREST.

11 WE HAVE EXPLAINED THESE CLAIMS AT LENGTH  
12 IN THE BRIEFING, AND SO I WANT TO TOUCH BRIEFLY ON THE  
13 CITY'S COUNTER ARGUMENTS. FIRST, THE CITY CLAIMS THAT  
14 THE PLAINTIFFS ARE NOT ENGAGED IN RELIGIOUS EXERCISE  
15 HERE. I THINK THE BEST PROOF THAT THEY ARE IS THEIR  
16 LONG HISTORY. THE ARCHDIOCESE OF PHILADELPHIA HAS BEEN  
17 PROVIDING SERVICES FOR AT-RISK CHILDREN FOR OVER A  
18 CENTURY. CATHOLIC SOCIAL SERVICES HAS BEEN INVOLVED IN  
19 THIS PARTICULAR FORM OF SERVICE TO CHILDREN, FOSTER CARE  
20 SERVICE AND PLACEMENTS, FOR A HALF CENTURY.

21 THE DECLARATION OF BISHOP MCINTYRE  
22 DETAILS THE IMPORTANCE OF THIS FUNDAMENTAL RELIGIOUS  
23 EXERCISE TO CATHOLIC SOCIAL SERVICES AND TO ITS CATHOLIC  
24 FAITH. THIS COURT ALSO RECOGNIZED IN THE CASE OF CHOSEN  
25 300 MINISTRIES IN THE CITY OF PHILADELPHIA THAT ACTS OF

1 CHARITY ARE OFTEN CENTRAL TO CHRISTIAN WORSHIP. IN THAT  
2 CASE, THIS COURT RULED IN FAVOR OF A RELIGIOUS MINISTRY  
3 DEDICATED TO FEEDING THE HOMELESS, AND NOT JUST FEEDING  
4 THE HOMELESS GENERALLY, BUT DOING IT IN A VERY  
5 PARTICULAR WAY, FEEDING THEM DOWNTOWN ON THE PARKWAY AT  
6 THE PLACE WHERE THEY ARE. CATHOLIC SOCIAL SERVICES HAS  
7 A FUNDAMENTAL RELIGIOUS EXERCISE OF SERVING FOSTER  
8 CHILDREN IN A MATTER CONSISTENT WITH CATHOLIC FAITH.  
9 THE SAME IS ALSO TRUE FOR THE INDIVIDUAL FOSTER  
10 FAMILIES, AND YOU WILL HEAR A LITTLE BIT MORE ABOUT THAT  
11 FROM THEM TODAY.

12 SECOND, THERE ARE FOUR DIFFERENT  
13 STATUTORY CRITERIA FOR WHAT CONSTITUTES A SUBSTANTIAL  
14 BURDEN UNDER RESPITE. THE PLAINTIFFS HAVE MET ALL FOUR  
15 OF THOSE. IT'S ONLY NECESSARY TO MEET ONE IN ORDER TO  
16 PROVE A SUBSTANTIAL BURDEN, BUT ALL FOUR ARE MET HERE.

17 THE CITY'S RESPONSE IS TWOFOLD. FIRST,  
18 THE CITY SAYS THAT NO SUBSTANTIAL BURDEN EXISTS BECAUSE  
19 CATHOLIC ENTERED INTO A CONTRACT WITH THE CITY AND  
20 THEREFORE CANNOT HAVE A SUBSTANTIAL BURDEN. THIS  
21 ARGUMENT RESTS ON THE FALLACY THAT CATHOLIC IS A PUBLIC  
22 ACCOMMODATION UNDER THE TERMS OF THE CONTRACT. AND I  
23 WANT TO POINT THE COURT TO CONTRACT PROVISION 15.1.  
24 THIS IS THE NONDISCRIMINATION PROVISION. THAT IS AT ECF  
25 DOCUMENT 13-5 AT PAGE 18. THE CITY SAYS, AND IN

1 PERFORMING -- OR THE CONTRACT SAYS, AND IN PERFORMING  
2 THIS CONTRACT, PROVIDERS SHALL NOT DISCRIMINATE OR  
3 PERMIT DISCRIMINATION AGAINST ANY INDIVIDUAL BECAUSE OF  
4 RACE, COLOR, RELIGION OR NATIONAL ORIGIN, PERIOD.

5 THEN THERE'S A SECOND SENTENCE, NOR SHALL  
6 THE PROVIDER DISCRIMINATE OR PERMIT DISCRIMINATION  
7 AGAINST INDIVIDUALS IN EMPLOYMENT, HOUSING AND REAL  
8 PROPERTY PRACTICES AND/OR PUBLIC ACCOMMODATION  
9 PRACTICES. IT THEN GOES ON TO DEFINE BOTH  
10 DISCRIMINATION AND APPLY IT TO A NUMBER OF ADDITIONAL  
11 PROTECTED CLASSES, INCLUDING SEXUAL ORIENTATION. AND SO  
12 BY PLAIN TERMS OF THE CONTRACT, IT ONLY PROHIBITS  
13 ACTIONS THAT THE CITY WOULD TERM DISCRIMINATION AGAINST  
14 SEXUAL ORIENTATION IF THEY OCCUR IN THE CONTEXT OF A  
15 PUBLIC ACCOMMODATION. WRITTEN CERTIFICATIONS FOR HOME  
16 STUDIES ARE NOT A PUBLIC ACCOMMODATION.

17 FIRST, CATHOLIC SOCIAL SERVICES IS NOT A  
18 PLACE OF PUBLIC ACCOMMODATION WITHIN THE MEANING OF THE  
19 CITY'S ORDINANCE. IT IS A PRIVATE RELIGIOUS ENTITY.  
20 AND IN A PRIOR CASE THE PENNSYLVANIA COMMONWEALTH COURT  
21 DETERMINED THAT A RELIGIOUS SCHOOL RUN BY THE  
22 ARCHDIOCESE OF PHILADELPHIA WAS NOT A PUBLIC  
23 ACCOMMODATION UNDER STATE LAW.

24 THE SAME IS TRUE HERE, CATHOLIC SOCIAL  
25 SERVICES IS NOT A PUBLIC ACCOMMODATION LIKE A HOTEL OR A

1 RESTAURANT OR A TRAIN STATION. SECOND, WRITTEN  
2 CERTIFICATIONS FOR HOME STUDIES ARE NOT A GOOD OR  
3 SERVICE THAT IS GENERALLY MADE AVAILABLE TO THE PUBLIC.  
4 THEY ARE NOT SOMETHING YOU CAN WALK IN THE DOOR, PAY  
5 YOUR MONEY AND SAY, HEY, I HAVE PAID THE PRICE, GIVE ME  
6 THAT THING. THEY ARE GOVERNED BY STATE LAW, AND STATE  
7 LAW IS CLEAR THAT A NUMBER OF SUBJECTIVE AND  
8 DISCRETIONARY CRITERIA GO INTO MAKING THAT  
9 DETERMINATION. I AM GOING TO BE LOOKING AT 55  
10 PENNSYLVANIA CODE, SECTION 3700.64. THESE ARE STATE  
11 REGULATIONS GOVERNING THE CERTIFICATIONS FOR THE HOME  
12 STUDY PROCESS.

13 THE FACTORS THAT FOSTER CARE AGENCIES  
14 MUST CONSIDER INCLUDE STABLE, MENTAL AND EMOTIONAL  
15 ADJUSTMENT, INCLUDING IN SOME CASES A PSYCHOLOGICAL  
16 EVALUATION. SUPPORTIVE COMMUNITY TIES, EXISTING FAMILY  
17 RELATIONSHIPS, ATTITUDES AND EXPECTATIONS, ABILITY OF  
18 THE APPLICANT TO WORK IN PARTNERSHIP WITH AN FSCA, A  
19 FOSTER CARE AGENCY. AND SO THE DETERMINATIONS INVOLVED  
20 IN HOME STUDIES AND IN THE WRITTEN CERTIFICATIONS ARE BY  
21 NATURE DISCRETIONARY DETERMINATIONS GOVERNED BY DETAILED  
22 STATE REGULATIONS. THEY ARE NOT PUBLIC ACCOMMODATIONS  
23 THAT ARE MADE AVAILABLE TO THE GENERAL PUBLIC. YOU  
24 DON'T HAVE TO GO THROUGH AN EVALUATION OF SUPPORTIVE  
25 COMMUNITY TIES IN ORDER TO RENT A HOTEL ROOM. YOU DON'T

1 HAVE TO PROVE YOU HAVE STABLE, MENTAL AND EMOTIONAL  
2 ADJUSTMENT IN ORDER TO BUY A BUS TICKET. THEY DON'T ASK  
3 YOU ABOUT YOUR EXISTING FAMILY RELATIONSHIPS AND  
4 ATTITUDES AND EXPECTATIONS TOWARDS CHILDREN WHEN YOU GO  
5 TO BUY A TRAIN TICKET. THIS IS NOT A PUBLIC  
6 ACCOMODATION WITHIN THE MEANING OF THE CONTRACT.

7 AND SO THE CITY'S DEFENSE ON THIS POINT  
8 FALLS APART. CATHOLIC SOCIAL SERVICES IS SUBSTANTIALLY  
9 BURDENED WITHIN THE MEANING OF STATE LAW. THE  
10 INDIVIDUAL FOSTER FAMILIES ARE SUBSTANTIALLY BURDENED AS  
11 WELL. AND THE CITY MUST PROVE THAT IT HAS A COMPELLING  
12 GOVERNMENT INTEREST IN WHAT HAS BEEN DONE HERE, AND THAT  
13 IT HAS USED THE LEAST RESTRICTIVE MEANS AVAILABLE TO  
14 FURTHER THAT INTEREST.

15 FIRST, IT'S IMPORTANT TO NOTE THAT WHEN  
16 THERE IS A COMPELLING GOVERNMENT INTEREST, THE QUESTION  
17 IS NOT, IS THIS INTEREST COMPELLING IN THE BROAD SENSE.  
18 THE QUESTION IS, IS THE INTEREST COMPELLING IN THIS  
19 PARTICULAR CASE.

20 IN THE 9-0 SUPREME COURT DECISION OF  
21 CHURCH OF LUKUMI BABALU AYE V. CITY OF HIALEAH, THE  
22 SUPREME COURT SAID THAT PUBLIC HEALTH WAS NOT A  
23 COMPELLING GOVERNMENT INTEREST BECAUSE THE CITY HAD  
24 FAILED TO PURSUE IT EVENHANDEDLY. IN THE 9-0 SUPREME  
25 COURT DECISION OF HOLT V. HOBBS, THE SUPREME COURT SAID

1 PRISON SECURITY WAS NOT A COMPELLING GOVERNMENT INTEREST  
2 BECAUSE THE CITY HAD FAILED TO BEAR ITS BURDEN OF PROOF  
3 THAT WHAT MR. HOBBS WAS DOING WAS ACTUALLY ENDANGERING  
4 PRISON SECURITY.

5 THE CITY HERE SAYS THAT IT HAS A  
6 COMPELLING INTEREST IN ITS FAIR PRACTICES ORDINANCE, BUT  
7 IT HAS NOT SHOWN THAT THAT COMPELLING INTEREST APPLIES  
8 IN THIS PARTICULAR CASE, AND IT HAD A DIFFICULT TIME  
9 DOING THAT BECAUSE THERE HAS NOT BEEN A SINGLE COMPLAINT  
10 AGAINST CATHOLIC FOR FOLLOWING THEIR RELIGIOUS  
11 PRACTICES.

12 THE STATUTE ALSO REQUIRES THE CITY TO  
13 PROVE THAT THE COMPELLING -- THAT THE ACTIONS ACTUALLY  
14 FURTHER THE COMPELLING INTEREST. THAT'S SOMETHING ELSE  
15 THE CITY CAN'T DO, ESPECIALLY WHEN IT COMES TO THE  
16 QUESTION OF THE INDIVIDUAL FOSTER FAMILIES. THE CITY  
17 HAS CUT OFF ALL FOSTER CARE REFERRALS TO CATHOLIC.  
18 THERE IS NO WAY TO BE ABLE TO PLACE CHILDREN IN THESE  
19 HOMES WITHOUT REFERRALS FROM THE CITY. ALL FOSTER CARE  
20 REFERRALS FROM PHILADELPHIA CHILDREN COME THROUGH DHS.

21 AND SO AS A RESULT, MRS. PAUL'S HOME IS  
22 CURRENTLY SITTING EMPTY. AS SHE WILL TELL YOU TODAY, IT  
23 HAS NEVER SAT EMPTY FOR THIS AMOUNT OF TIME BEFORE. THE  
24 CITY IS REFUSING TO PLACE CHILDREN IN THE HOMES OF THESE  
25 INDIVIDUAL FAMILIES SIMPLY BECAUSE THEY WORK WITH



1 CATHOLIC. THE CITY CANNOT HOPE TO PROVE THAT IT HAS --  
2 THAT IT FURTHERS ITS COMPELLING INTEREST TO PENALIZE  
3 FAMILIES WHO WERE CERTIFIED LONG AGO. THIS IS NOT  
4 RELATED TO THEIR INTEREST IN WHAT HAPPENS WITH HOME  
5 STUDIES IN THE FUTURE GOING FORWARD. THEY DON'T HAVE A  
6 COMPELLING INTEREST IN WHAT THEY ARE DOING HERE, NOR  
7 HAVE THEY USED THE LEAST RESTRICTIVE MEANS AVAILABLE.  
8 AGAIN, THE HISTORY, THE LONG HISTORY OF CATHOLIC'S  
9 DEDICATED SERVICE TO FOSTER CHILDREN AND FAMILIES WITH  
10 NO COMPLAINTS SHOWS THAT THE SYSTEM HAS WORKED AND THE  
11 CITY COULD PERMIT THEM TO MAKE REFERRALS. THEY ARE NOT  
12 ASKING TO STAND IN ANYONE'S WAY. THEY ARE NOT ASKING TO  
13 PREVENT ANYONE FROM BECOMING A FOSTER PARENT. THEY ARE  
14 ONLY ASKING FOR THE ABILITY TO MAKE REFERRALS TO AN  
15 AGENCY THAT IS A GOOD FIT FOR A COUPLE WHO COMES TO  
16 THEM.

17 THE CITY HAS FAILED TO PROVE THAT THAT IS  
18 NOT A LESS-RESTRICTIVE ALTERNATIVE TO MEET THEIR GOALS.  
19 THE SAME STRICT SCRUTINY STANDARD APPLIES TO THE  
20 PLAINTIFFS' CLAIMS UNDER THE FREE EXERCISE CLAUSE. AND  
21 I WANT TO MENTION FOR A MOMENT THE FREE EXERCISE CLAUSE.  
22 THE CITY HAS SORT OF MERGED TOGETHER TWO DIFFERENT  
23 ANALYSES AND THEY ARE TWO SEPARATE ANALYSES. FIRST, THE  
24 3RD CIRCUIT HAS MADE CLEAR IN THE BLACK HAWK CASE THAT  
25 WHERE YOU HAVE A GOVERNMENT SYSTEM THAT CREATES A REGIME

1 OF INDIVIDUALIZED DISCRETIONARY EXEMPTIONS, STRICT  
2 SCRUTINY APPLIES. THAT'S FROM BLACKHAWK V.  
3 PENNSYLVANIA, 381 F.3D AT 209. SO THE MERE PRESENCE OF  
4 A REGIME OF INDIVIDUALIZED DISCRETIONARY EXEMPTIONS  
5 WHERE RELIGIOUS EXEMPTION HAS BEEN DENIED IS SUBJECT TO  
6 SCRUTINY BECAUSE IT IS NOT A NEUTRAL LAW OF GENERAL  
7 APPLICABILITY, SO THE RATIONAL-BASIS TEST DOES NOT  
8 APPLY, IT GOES TO THE STRICT SCRUTINY TEST.

9 HERE, THAT'S EXACTLY WHAT THE CITY HAS IN  
10 PLACE. AND I WOULD POINT YOU TOWARD CONTRACT PROVISION  
11 SECTION 3.21. THAT'S ECF 13-4, AT PAGES 14 THROUGH 15.  
12 THIS IS WHAT THE CITY TERMS THE NON-REFERRAL PROVISION.  
13 THE PROVIDER SHALL NOT REJECT A CHILD OR FAMILY FOR  
14 SERVICES BASED UPON THE LOCATION OR THE CONDITION OF THE  
15 FAMILY'S RESIDENCE. I WANT TO ADDRESS THAT IN A MOMENT.  
16 AND THEN AT THE END, UNLESS AN EXCEPTION IS GRANTED BY  
17 THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE IN HIS  
18 OR HER SOLE DISCRETION.

19 SO THE CITY HAS A SYSTEM OF  
20 INDIVIDUALIZED AND DISCRETIONARY EXEMPTIONS FROM THIS  
21 CONTRACT PROVISION. AND THE CITY HAS MADE CLEAR IN ITS  
22 MAY 7TH LETTER FROM THE LAW DEPARTMENT TO CATHOLIC THAT  
23 IT WOULD NOT MAKE AN EXCEPTION FOR CATHOLIC IN THESE  
24 CIRCUMSTANCES. THOSE TWO FACTS STANDING ALONE ARE  
25 ENOUGH TO SUBJECT THE CITY'S ACTIONS TO STRICT SCRUTINY.

1 I DO WANT TO JUST NOTE FOR A MOMENT, THE  
2 CITY CLAIMS THAT THIS PROVISION OF THE CONTRACT IS A  
3 FLAT BAN BECAUSE IT ASSUMES THAT IT'S TALKING ABOUT HOME  
4 STUDIES. THAT DOES NOT APPEAR TO BE THE CASE. IT  
5 APPEARS TO BE TALKING ABOUT CHILDREN AND FAMILIES WHO  
6 ARE REFERRED FOR FOSTER SERVICE, NOT FOR HOME STUDIES.  
7 I NOTE THE LANGUAGE THERE SAYS YOU CAN'T REJECT THEM  
8 BASED UPON THE LOCATION OR CONDITION OF THE FAMILY'S  
9 RESIDENCE.

10 55 PENNSYLVANIA CODE SECTION 3700.66  
11 ACTUALLY HAS A WHOLE LIST OF REQUIREMENTS ABOUT THE  
12 CONDITION OF THE FAMILY'S RESIDENCE THAT YOU CONSIDER AS  
13 PART OF THE HOME STUDY. AND SO GIVEN THAT THE LANGUAGE  
14 IN THIS CONTACT PROVISION SEEMS TO BE IN CONFLICT WITH  
15 THE STATE REGULATIONS, I BELIEVE THAT THE BEST READING  
16 OF THIS CONTRACT PROVISION IS THAT IT'S NOT TALKING  
17 ABOUT HOME STUDIES AT ALL. AND THIS IS WHAT THE CITY IS  
18 USING TO ARGUE THAT CATHOLIC SOCIAL SERVICES IS  
19 COMPELLED TO PERFORM THESE HOME STUDIES PURSUANT TO THE  
20 CONTRACT.

21 GIVEN THAT THERE IS A SYSTEM OF  
22 INDIVIDUALIZED AND DISCRETIONARY EXEMPTION, STRICT  
23 SCRUTINY APPLIES. AS I HAVE DISCUSSED, THE CITY CANNOT  
24 HOPE TO MEET IT. SECOND, THE CITY'S ACTIONS HAVE NOT  
25 BEEN NEUTRAL. THE CITY HAS MADE A NUMBER OF EXCEPTIONS

1 TO ITS SUPPOSED REFERRAL BAN FOR SECULAR REASONS, AND WE  
2 WILL HEAR A LITTLE BIT MORE ABOUT THAT THROUGH EVIDENCE  
3 TODAY.

4 FINALLY, UNDER THE FREE EXERCISE CLAUSE,  
5 I JUST WANT TO BRIEFLY NOTE THE SUPREME COURT'S RECENT  
6 DECISION IN MASTERPIECE CAKESHOP. THE SUPREME COURT IN  
7 THAT CASE MADE CLEAR THAT THERE ARE DIFFICULT ISSUES ON  
8 BOTH SIDES OF THESE QUESTIONS, AND THAT THE FREE  
9 EXERCISE CLAUSE DOES NOT DISAPPEAR WHEN THESE DIFFICULT  
10 QUESTIONS COME UP. THE SUPREME COURT RECOGNIZED THAT  
11 GOVERNMENTS -- AND THAT THE COURTS MUST STRIKE THE  
12 BALANCE. BUT THE GOVERNMENT WHEN THEY ARE CONSIDERING  
13 QUESTIONS OF RELIGIOUS EXEMPTION MUST TAKE THOSE  
14 QUESTIONS SERIOUSLY AND CANNOT DENIGRATE AND REFUSE TO  
15 ACCEPT RELIGIOUS EXERCISE AND SINCERE RELIGIOUS  
16 OBJECTIONS OUT OF HAND.

17 HERE, THE CITY COUNSEL HAS TARGETED  
18 CATHOLIC IN ITS RESOLUTION. THE LAW DEPARTMENT HAS MADE  
19 CLEAR THAT -- THE DEPARTMENT OF HUMAN SERVICES THROUGH  
20 THE LAW DEPARTMENT HAS MADE CLEAR THAT IT WILL NOT GRANT  
21 ANY EXCEPTIONS AND COMPARE CATHOLIC'S ACTIONS TO RACE  
22 DISCRIMINATION. THE HUMAN RELATIONS COMMISSION STATED  
23 IN ITS LETTER THAT IT WAS ACTING AT THE BEHEST OF THE  
24 MAYOR. AND THE MAYOR, I WILL LET HIM SPEAK IN HIS OWN  
25 WORDS, CHAPUT'S ACTIONS ARE NOT CHRISTIAN. THE ARCH

1 DON'T CARE ABOUT PEOPLE, IT'S ABOUT IMAGE AND MONEY.  
2 POPE FRANCIS NEEDS TO COME KICK SOME ASS HERE. I COULD  
3 CARE LESS ABOUT THE PEOPLE AT THE ARCHDIOCESE.

4 THESE ARE STATEMENTS FROM THE MAYOR'S  
5 TWITTER FEED. THEY WERE REPORTED IN THE NEWS ARTICLES  
6 WE HAVE CITED ECF 13-7 AT 18 THROUGH 25 IN THE NEWS  
7 ARTICLES AS THEY ARE REPRODUCED THERE. WHERE CITY HAS  
8 ENGAGED IN DENIGRATION OF RELIGIOUS BELIEFS AND THEN  
9 TAKEN ACTIONS THAT HAVE PENALIZED RELIGIOUS BELIEVERS  
10 AND DEMONSTRATED THAT IT IS NOT WILLING TO GIVE DUE  
11 CONSIDERATION TO THEIR FREE EXERCISE RIGHT. THE FREE  
12 EXERCISE CLAUSE HAS BEEN VIOLATED UNDER MASTERPIECE.

13 THE COURT: AND YOU ARE SAYING THAT THE  
14 STATEMENTS OF THE MAYOR DID DENIGRATE AND THEREFORE IS  
15 IN VIOLATION?

16 MS. WINDHAM: YOUR HONOR, I AM SAYING  
17 THESE STATEMENTS OF THE MAYOR ARE PROOF THAT THE CITY'S  
18 ACTIONS WERE TAKEN TO TARGET CATHOLIC FOR ITS RELIGIOUS  
19 BELIEFS.

20 I WANT TO TOUCH BRIEFLY ON CATHOLIC'S --  
21 THE PLAINTIFFS' FREE SPEECH CLAIMS. FIRST, THE CITY HAS  
22 ENGAGED IN RETALIATION UNDER THE FREE SPEECH CLAUSE.  
23 THEY DON'T DENY THAT CATHOLIC WAS SPEAKING ON A MATTER  
24 OF PUBLIC CONCERN. THEY DO QUESTION WHETHER THE  
25 RETALIATORY CONDUCT WAS RESPONSE TO PROTECTED ACTIVITY.

1 AS I UNDERSTAND THEIR ARGUMENT, THEY ARE SAYING NO, NO,  
2 NO, THIS IS NOT BECAUSE OF YOUR STATEMENT ABOUT  
3 MARRIAGE, THIS IS ABOUT YOUR STATEMENT -- BECAUSE OF  
4 YOUR STATEMENTS ABOUT THE CONTRACT.

5 AS I HAVE ALREADY EXPLAINED, I DON'T  
6 BELIEVE THAT THE CONTRACT ACTUALLY PROHIBITS WHAT  
7 CATHOLIC SOCIAL SERVICES SAID IT WOULD DO. BUT SECOND,  
8 I WOULD ALSO NOTE THAT WHEN IT COMES TO RETALIATORY  
9 CONDUCT, I WOULD POINT THE COURT TO THE DECLARATION OF  
10 JAMES BLACK AND THE DECLARATION OF DOE FOSTER MOTHER  
11 NUMBER ONE WHERE THEY WERE INFORMED THAT A DENIAL OF A  
12 REFERRAL IN URGENT CIRCUMSTANCES WAS MADE DUE TO THE  
13 CASE WITH CSS. THIS SHOWS RETALIATORY CONDUCT FOR  
14 CATHOLIC COMING BEFORE THIS COURT AND FILING A LAWSUIT  
15 TO PROTECT ITS CIVIL RIGHTS. THAT IS RETALIATORY  
16 CONDUCT IN VIOLATION OF THE FREE SPEECH CLAUSE.

17 FINALLY, DEFENDANTS ARE CONDITIONING  
18 GOVERNMENT CONTRACTS ON COMPELLED SPEECH. AND THEY ARE  
19 CONDITIONING SPEECH THAT FALLS OUTSIDE THE SERVICES THAT  
20 IT COMPENSATES CATHOLIC FOR PROVIDING. THE VALAQUES  
21 CASE, THE A.O.C. CASE BEFORE THE SUPREME COURT AND THE  
22 CRADLE OF LIBERTY CASE BEFORE THIS COURT DEMONSTRATE  
23 THAT THE CITY CANNOT EVEN IN THE AREA OF GOVERNMENT  
24 CONTRACTING USE GOVERNMENT CONTRACTS AS A VEHICLE TO  
25 REACH OUT AND RESTRICT SPEECH. IT CANNOT DO INDIRECTLY

1 WHAT IT IS CONSTITUTIONALLY PROHIBITED FROM DOING  
2 DIRECTLY.

3 HERE WITH REGARD TO HOME STUDIES, THE  
4 CITY DOES NOT COMPENSATE CATHOLIC, NOT ONE PENNY FOR  
5 HOME STUDIES THAT ARE PERFORMED. THE CITY ONLY  
6 COMPENSATES CATHOLIC AFTER A PLACEMENT HAS BEEN MADE IN  
7 A FAMILY, AND FOR EACH DAY THAT THAT CHILD IS PLACED  
8 WITH THAT FAMILY THEY RECEIVE COMPENSATION. AND SO THE  
9 CITY IS REACHING OUT BEYOND THE ACTIVITIES THAT IT IS  
10 FUNDING TO REACH OUT AND GRAB OTHER ACTIVITIES AND OTHER  
11 SPEECH BY THE PLAINTIFFS.

12 SECOND, I WOULD NOTE THAT WITH REGARD TO  
13 THESE ACTIONS, A REFERRAL FOR A FAMILY TO SAY THIS OTHER  
14 AGENCY WOULD BE A BETTER FIT FOR YOU, THAT IS CONDUCT  
15 THE CITY IS DEFINITELY NOT FUNDING. THERE IS NOT ONE  
16 PENNY THAT IS GOING TO BE PAID FOR SOMEONE WHO IS MAKING  
17 A REFERRAL IN THE HOME STUDY CONTEXT. AND SO THE CITY'S  
18 ACTIONS ARE ATTEMPTING TO COMPEL SPEECH OUTSIDE OF THE  
19 CONTRACT. FOR ALL OF THOSE REASONS, THE CITY HAS  
20 VIOLATED THE FIRST AMENDMENT, HAS VIOLATED THE FREE  
21 SPEECH CLAUSE, THE FREE EXERCISE CLAUSE, AND THE  
22 PENNSYLVANIA RELIGIOUS FREEDOM PROTECTION ACT.

23 THE PLAINTIFFS HAVE ALSO SHOWN THAT THEY  
24 MEET THE RESPITE TEST. THEY WILL BE IRREPARABLY HARMED.  
25 THEY ARE ALREADY BEING IRREPARABLY HARMED ABSENT AN

1 INJUNCTION. THE CITY CONCEDES THAT THEIR FIRST  
2 AMENDMENT RIGHTS ARE AT STAKE HERE. IRREPARABLE HARM IF  
3 THOSE WERE PROVEN IS TAKING PLACE. SECOND, AN  
4 INJUNCTION IS IN THE PUBLIC INTEREST. THE CITY OFFERS  
5 PUBLIC INTEREST ARGUMENTS, BUT THAT ARGUMENT IS ENTIRELY  
6 CIRCULAR. IT SAYS THAT CHILDREN HAVE AN INTEREST IN --  
7 THE CHILDREN SHOULD NOT BE PLACED WITH CATHOLIC SOCIAL  
8 SERVICES BECAUSE IT HAD DECIDED TO SHUT DOWN CATHOLIC  
9 SOCIAL SERVICES AND SO IT IS NOT IN THE BEST INTEREST OF  
10 CHILDREN TO PLACE WITH AN AGENCY IT HAS DECIDED TO SHUT  
11 DOWN. THIS ARGUMENT IS ENTIRELY CIRCULAR AND DOES NOT  
12 GET TO THE ULTIMATE QUESTION OF CATHOLIC SOCIAL SERVICES  
13 AND ITS EXCELLENT SERVICES FOR CHILDREN. THE BEST  
14 INTEREST OF CHILDREN IS NOT A MAGICAL PHRASE THE CITY  
15 CAN INVOKE ANY TIME IT NEEDS TO JUSTIFY SOMETHING.

16 IT'S A TERM THAT HAS MEANING, IT'S A TERM  
17 WITH MEANING THAT IN PART DEFINED BY STATE LAW WHICH  
18 DEFINES IT IN PART, AND I AM GOING TO BE PUTTING  
19 PENNSYLVANIA STATUTE SECTION 2633, PARAGRAPH 4. THE  
20 ABILITY TO LIVE IN THE LEAST RESTRICTIVE, MOST  
21 FAMILY-LIKE SETTING THAT IS SAFE, HEALTHY AND  
22 COMFORTABLE AND MEETS THE CHILD'S NEEDS. THERE ARE 35  
23 OF THOSE OPTIONS AVAILABLE IN FAMILY-LIKE SETTINGS OR  
24 WILL BE AVAILABLE BY THE END OF JUNE, AT LEAST 26 THAT  
25 ARE AVAILABLE TODAY. AND THE CITY IS REFUSING TO PLACE



1 CHILDREN IN THOSE HOMES BECAUSE OF ITS DISAGREEMENT WITH  
2 CATHOLIC. THIS IS NOT IN THE CHILDREN'S BEST INTEREST.  
3 FOR THE SAME REASONS THE BALANCE OF THE EQUITIES FAVORS  
4 THE PLAINTIFFS, IT IS IN THE BEST INTEREST OF CHILDREN  
5 TO BE PLACED IN THESE HOMES. IT IS ALSO IN THE BEST  
6 INTEREST OF THE PUBLIC TO VINDICATE FIRST AMENDMENT  
7 RIGHTS.

8 FOR ALL OF THESE REASONS, WE BELIEVE THAT  
9 THE PRELIMINARY INJUNCTION AND/OR TEMPORARY RESTRAINING  
10 ORDER SHOULD BE GRANTED.

11 THE COURT: OKAY, THANK YOU.

12 MS. EWING: GOOD AFTERNOON, YOUR HONOR.

13 THE COURT: GOOD AFTERNOON.

14 MS. EWING: COUNSEL FOR CSS HAS STATED  
15 THAT THERE ARE SERIOUS, URGENT AND ONGOING HARMS WITH  
16 RESPECT TO THE CHILD WELFARE SYSTEM BECAUSE OF THE  
17 ACTIONS WHICH DHS AND THE CITY HAVE TAKEN TO ENFORCE THE  
18 CONTRACT FOR FOSTER CARE SERVICES WITH CSS. YOU WILL  
19 HEAR TESTIMONY TODAY FROM THE HIGHEST OFFICIALS AT DHS  
20 THAT THERE IS NO CRISIS WITH RESPECT TO PLACING  
21 CHILDREN. THERE IS NO RIGHT OF ANY GIVEN FOSTER AGENCY,  
22 FIRST OF ALL, TO A CONTRACT WITH THE CITY, AND SECONDLY,  
23 FOR THE CITY TO FILL ANY AVAILABLE HOME WHEN IT -- WHEN  
24 THERE IS A PROBLEM WITH THE UNDERLYING CONTRACT. BUT  
25 THERE ARE NO CHILDREN WHO ARE NOT BEING PLACED. THERE

1 ARE NO CHILDREN WHO ARE NOT BEING PLACED APPROPRIATELY.

2 THE OTHER HARM WHICH I BELIEVE I HEARD  
3 WAS AN ALLEGATION THAT INDIVIDUAL CARE DECISIONS ABOUT  
4 CHILDREN ARE BEING HINDERED BECAUSE OF THE CONTRACT  
5 DISPUTE. AGAIN, YOU WILL HEAR FROM THE HIGHEST  
6 OFFICIALS AT DHS THAT THEY HAVE SPECIFICALLY MADE CLEAR  
7 TO CATHOLIC SOCIAL SERVICES THAT THEY THEMSELVES ARE  
8 AVAILABLE TO MAKE DECISIONS QUICKLY AS LONG AS THEY HAVE  
9 THE APPROPRIATE INFORMATION AS TO WHETHER AN EXCEPTION  
10 SHOULD BE MADE. AND THE TYPES OF EXCEPTIONS THAT HAVE  
11 BEEN MADE HAVE BEEN THINGS LIKE IF A CHILD -- A SIBLING  
12 IS IN FOSTER CARE AND THE OTHER SIBLINGS ARE ALREADY IN  
13 A CATHOLIC SOCIAL SERVICES HOME, THEN THE NEW SIBLING  
14 WILL BE PLACED IN THAT HOME. THERE YOU WILL SEE AND THE  
15 PARTIES HAVE BRIEFED A SPECIFIC INSTANCE IN WHICH  
16 CATHOLIC SOCIAL SERVICES HAS SAID THAT THERE WERE ISSUES  
17 WHICH SHOULD HAVE BEEN RESOLVED MORE QUICKLY.

18 WE BELIEVE, IN FACT, THAT ENTANGLING THEM  
19 IN THE LITIGATION AND TAKING THEM OUT OF THE SYSTEM, THE  
20 FAMILY COURT SYSTEM, AND THE INSTANT COMMUNICATION AND  
21 EASY COMMUNICATION THAT NEEDS TO BE MADE IN ORDER TO  
22 DETERMINE WHAT THE BEST INTEREST OF ANY GIVEN CHILD IS  
23 THAT IT -- THAT MAKING A DECISION SUBJECT TO THIS  
24 LITIGATION ACTUALLY HINDERED RESOLUTION AND CAN'T BE  
25 ALLOWED TO CONTINUE.

1                   BUT I WOULD LIKE TO MOVE AND COMMENT A  
2                   LITTLE BIT ON THE MERITS. YOU WILL ALSO BE HEARING SOME  
3                   TESTIMONY, AND SO I ASSUME WE WILL BE ARGUING IN CLOSING  
4                   SOME OF THE SAME THINGS. BUT THIS IS -- THERE CERTAINLY  
5                   IS NO REASON FOR A -- THAT HAS BEEN PROVIDED FOR A  
6                   TEMPORARY RESTRAINING ORDER IN THIS CASE. THERE IS NO  
7                   URGENCY, THERE IS NO SERIOUS HARM, THE CHILDREN ARE  
8                   OKAY. AND CATHOLIC SOCIAL SERVICES ACTED ACCORDINGLY IN  
9                   WAITING TWO MONTHS BETWEEN WHEN THE INTAKE WAS CLOSED  
10                  AND WHEN IT BROUGHT THIS MOTION. BUT IT IS -- MOVING TO  
11                  THE PRELIMINARY INJUNCTION, IT IS -- THE REMEDY IS AN  
12                  EXTRAORDINARY ONE AND IT'S CATHOLIC SOCIAL SERVICES'  
13                  BURDEN TO ESTABLISH THE LIKELIHOOD THAT IT WILL SUCCEED  
14                  ON DEMONSTRATING SUBSTANTIAL BURDEN ON ITS RELIGIOUS  
15                  FREEDOM AND FREE EXERCISE CLAIMS, IRREPARABLE HARM, THE  
16                  BALANCE OF EQUITIES AND THE PUBLIC POLICY  
17                  CONSIDERATIONS. WE BELIEVE, YOUR HONOR, THAT YOU WILL  
18                  FIND THAT NONE OF THESE FACTORS HAVE BEEN MET IN THIS  
19                  INSTANCE.

20                         THE UNIQUE FACTOR IN THE CASE BEFORE THIS  
21                         COURT, AND ONE WHICH CATHOLIC SOCIAL SERVICES HAS NOT  
22                         REALLY COME TO GRIPS WITH, IS THAT IT INVOLVES A WRITTEN  
23                         CONTRACT FOR SERVICES WHICH THE CITY IS CHARGED BY THE  
24                         COMMONWEALTH TO ITSELF PROVIDE AND WHICH IT IS  
25                         DELEGATING TO CONTRACTORS WHO ENTER INTO AGREEMENTS,

1 WRITTEN AGREEMENTS, TO PERFORM SERVICES AND BE PAID WITH  
2 TAXPAYER DOLLARS. THIS DISTINGUISHES THE CASE AT HAND  
3 FROM MOST OF ALL OF THE OTHER CASES THAT YOU WILL HEAR  
4 ABOUT AND HAVE BEEN WRITTEN ABOUT IN THIS ACTION.

5 A WRITTEN CONTRACT IS AN AGREEMENT  
6 BETWEEN THE PARTIES WHERE THEY UNDERTAKE TO DO WHAT THEY  
7 SAY THEY ARE GOING TO DO. AND IN THIS INSTANCE, THE CSS  
8 AGREED THAT IT WILL APPLY THE CRITERIA WHICH THE  
9 COMMONWEALTH PROVIDES FOR EVALUATING FOSTER FAMILIES AND  
10 FOR CERTIFYING THOSE FAMILIES, AND NONE OF WHICH HAVE  
11 ANY RELIGIOUS COMPONENT TO THEM. SINCE THIS IS WORK  
12 THAT THE CITY ITSELF IS CHARGED WITH DOING AND HAS  
13 DELEGATED, THE CITY CERTAINLY COULD NOT BE APPLYING  
14 RELIGIOUS CONSIDERATIONS TO DECIDING ON WHO WOULD BE A  
15 GOOD FOSTER PARENT. AND OUR POSITION IS THAT OUR  
16 CONTRACTORS CAN -- WE CANNOT ALLOW OUR CONTRACTORS TO BE  
17 DOING THAT WHEN THEY PERFORM THAT. IN EFFECT, CSS HAS  
18 ENTERED INTO A CONTRACT WITH THE CITY AND WANTS TO  
19 CHANGE A TERM OF THAT CONTRACT UNILATERALLY TO PERMIT IT  
20 TO ADD RELIGIOUS CRITERIA.

21 SO THAT IS AN IMPORTANT -- A CRITICAL  
22 DIFFERENCE IN OUR CASE. AND WITH THAT IN MIND, I WOULD  
23 LIKE TO DEAL A LITTLE BIT UP FRONT WITH THE RELIGIOUS  
24 LIBERTY CLAIMS. CSS IS CLAIMING THAT OUR REQUIREMENT  
25 THAT IT DEAL WITH SINGLE SEX COUPLES THE SAME WAY THAT

1 IT DEALS WITH ALL OTHER FOSTER PARENT APPLICANTS AND TO  
2 APPLY THE COMMONWEALTH'S SECULAR CRITERIA SOMEHOW  
3 INTERFERES WITH THEIR FREE EXERCISE OF RELIGION UNDER  
4 THE FIRST AMENDMENT. THE STARTING POINT FOR FREE  
5 EXERCISE ANALYSIS IS THE SMITH VERSUS OREGON  
6 UNEMPLOYMENT BUREAU CASE WHICH HOLDS THAT THERE IS NO  
7 FREE EXERCISE VIOLATION FROM THE APPLICATION OF A VALID  
8 NEUTRAL LAW OF GENERAL APPLICATION SO LONG AS THE LAW  
9 PASSES RATIONAL BASIS SCRUTINY. OUR FAIR PRACTICES  
10 ORDINANCE, WHICH WE DISAGREE WITH CSS AS TO WHETHER IT  
11 IS APPLICABLE TO CATHOLIC SOCIAL SERVICES IN THIS -- IN  
12 THE CONTRACT AND THE CONTRACT IS PART OF THE RECORD  
13 BEFORE YOUR HONOR. BUT IT IS OBVIOUSLY SUCH A VALID  
14 NEUTRAL AND GENERALLY APPLICABLE LAW. AND THESE -- THIS  
15 IS THE TYPE OF LAW, THE ANTIDISCRIMINATION LAWS WHICH  
16 JUSTICE KENNEDY IN THE MASTERPIECE BAKESHOP DECISION, HE  
17 DESCRIBES THE GENERAL RULE THAT RELIGIOUS AND  
18 PHILOSOPHICAL OBJECTIONS TO GAY MARRIAGE DO NOT ALLOW  
19 BUSINESSES, AND CSS FOR ALL OF ITS MISSION IS ALSO A  
20 BUSINESS, TO DENY PROTECTED PERSONS EQUAL ACCESS TO  
21 GOODS AND SERVICES UNDER A NEUTRAL GENERALLY APPLICABLE  
22 LAW -- ANTIDISCRIMINATION PUBLIC ACCOMMODATIONS LAW.

23 SO TO AVOID THE APPLICATION OF THE SMITH  
24 CASE, CSS MUST CONVINCING THIS COURT THAT THERE IS SOME  
25 EXCEPTION, EITHER IN THE CASE LAW WHICH HAS FOLLOWED

1 SMITH OR IN STATUTES, SUCH AS THE PENNSYLVANIA RELIGIOUS  
2 FREEDOM ACT, TO WHICH CSS REFERRED. THIS STATUTE  
3 PROVIDES FOR STRICT SCRUTINY, BUT ONLY FOR CLAIMS WHICH  
4 MEET THE REQUIREMENT OF THE STATUTE. AND THE MAJOR  
5 REQUIREMENT IN ANY FREE EXERCISE CLAIM, WHETHER CASE LAW  
6 OR STATUTORY, IS THE DEMONSTRATION OF A SUBSTANTIAL  
7 BURDEN ON SOME RELIGIOUS PRACTICE.

8 SO UNDER THE -- SO CSS HAS TO DEMONSTRATE  
9 A SUBSTANTIAL BURDEN. AND AT LEAST ITS PAPERS HAVE NOT  
10 BEEN CLEAR AS TO HOW ITS -- THE CHURCHES ACKNOWLEDGED  
11 SINCERELY HELD RELIGIOUS BELIEFS REGARDING GAY MARRIAGE  
12 AND SINGLE SEX COUPLES TRANSLATES OR AFFECTS OR BURDENS  
13 OR HAS ANYTHING TO DO WITH THE JOB THAT IT UNDERTAKES TO  
14 DO FOR THE CITY, WHICH IS TO EVALUATE FAMILIES AND TO  
15 REPORT AS TO WHETHER OR NOT THEY CAN PROVIDE A NURTURING  
16 AND SECURE AND SAFE HOME FOR A FOSTER CHILD.

17 WHAT WE HAVE A RIGHT TO EXPECT UNDER THE  
18 CONTRACT AND WHAT WE HAVE ASKED IS THAT WHEN CATHOLIC  
19 SOCIAL SERVICES PERFORMS THE WORK OF RECRUITING AND  
20 CERTIFYING FOSTER PARENTS FOR US, IF IT IS UNDERTAKEN  
21 UNDER THE CONTRACT, THAT IT NOT TURN AWAY ANY COUPLES  
22 WHO COME TO IT AND THAT IT PROVIDES THEM WITH AN  
23 EVALUATION UNDER THE SECULAR CRITERIA THAT ARE SET FORTH  
24 BY THE COMMONWEALTH, NONE OF WHICH RELATES TO RELIGION  
25 AND CERTAINLY NONE OF THEM WHICH WOULD DISQUALIFY ANY

1 APPLICANT ON THE BASIS OF SEXUAL ORIENTATION.

2 SO I WOULD ALSO LIKE TO BRING THE COURT'S  
3 ATTENTION TO A RECENT 6TH CIRCUIT CASE THAT PROVIDES  
4 SOME ILLUMINATION ON WHEN A PARTY CLAIMS THE SUBSTANTIAL  
5 BURDEN IN COMPLYING WITH A GENERALLY APPLICABLE  
6 ANTIDISCRIMINATION LAW ON RELIGIOUS GROUNDS. AND THAT  
7 CASE IS -- WE HAVE CITED I THINK IN OUR PAPERS EEOC  
8 VERSUS HARRIS FUNERAL HOME, 884 F.3D, 560. AND IN THAT  
9 CASE A FUNERAL DIRECTOR CLAIMED THAT TITLE SEVEN IMPOSED  
10 A SUBSTANTIAL BURDEN UNDER SIMILAR RELIGIOUS FREEDOM  
11 PROTECTION ACT ON HIS RELIGIOUS MINISTRY OF WORKING WITH  
12 BEREAVED FAMILIES. AND HE SAID THIS WAS TRUE, THIS WAS  
13 THE CASE BECAUSE HE HAD AN ASSISTANT WHOM HE FIRED  
14 BECAUSE SHE WAS TRANSGENDER AND TRANSITIONING FROM MALE  
15 TO FEMALE. HE CLAIMED THAT THIS WOULD -- THAT IF HE  
16 RETAINED THE EMPLOYEE, THIS WOULD CONSTITUTE AN  
17 ENDORSEMENT OR SUPPORT OF HER TRANSGENDER STATUS AND  
18 THAT THAT WOULD BE AGAINST HIS RELIGIOUS CONVICTIONS.

19 THE 6TH CIRCUIT FOUND THAT IT WAS  
20 ENTITLED TO LOOK AT HOW EXACTLY -- WHAT EXACTLY THE  
21 REQUIREMENT OF THE STATUTE HAD TO DO WITH THE RELIGIOUS  
22 BELIEF. AND THAT BARE COMPLIANCE WITH TITLE SEVEN DID  
23 NOT CONSTITUTE AN ENDORSEMENT, AND THEREFORE THAT THE  
24 EMPLOYER WAS REQUIRED TO COMPLY WITH THE TITLE SEVEN  
25 REQUIREMENT.

1 SO ACCORDINGLY, THIS COURT CAN FIND THAT  
2 SIMPLE COMPLIANCE WITH THE CITY'S ANTIDISCRIMINATION  
3 REQUIREMENT DOES NOT ENDORSE GAY MARRIAGE AND IS NOT A  
4 SUBSTANTIAL BURDEN ON A SINCERELY HELD RELIGIOUS BELIEF  
5 THAT GAY MARRIAGE MAY VIOLATE TENETS OF THE CATHOLIC  
6 CHURCH.

7 BUT WE DEFINITELY DISAGREE WITH CSS AS  
8 FAR AS WHETHER EVEN IF STRICT SCRUTINY WOULD APPLY THAT  
9 WE WOULD NOT PASS THE TEST. THERE ARE MANY CASES THAT  
10 FIND THAT ANTIDISCRIMINATION LAWS ARE A PRECISE METHOD  
11 OF ACHIEVING A COMPELLING GOVERNMENTAL INTEREST IN  
12 PREVENTING DISCRIMINATION TO GROUPS OF PEOPLE, TO  
13 PROTECTED CLASSES. AND SO IN THAT FUNERAL HOME CASE,  
14 THE COURT FOUND THAT EVEN IF THERE HAD BEEN A  
15 SUBSTANTIAL BURDEN THAT STRICT SCRUTINY WAS STILL  
16 SATISFIED BECAUSE TITLE SEVEN WAS -- BECAUSE TITLE SEVEN  
17 THEN WOULD PREVAIL.

18 NOW, JUST A FEW WORDS ON SOME OF THE  
19 OTHER EXCEPTIONS THAT CSS RAISED BEFORE YOUR HONOR THIS  
20 MORNING, ARGUING THAT THERE WAS TARGETING UNDER THE  
21 TERMS OF MASTERPIECE CAKESHOP, AND REFERRING TO SOME  
22 TWEETS OF THE MAYOR WHICH WERE A LONG TIME AGO, BY THE  
23 WAY, AND HAD NOTHING DO WITH THIS CONTRACT SITUATION.  
24 AND IN THE MEANTIME, THE CITY AND CSS HAVE SINCE  
25 SUCCESSFULLY NEGOTIATING A HOST OF OTHER CONTRACTS,



1 INCLUDING RENEWALS OF MANY CONTRACTS, BUT NOT THIS  
2 FOSTER CARE ONE. SO THIS IS HARDLY INDICATIVE OF SOME  
3 SORT OF ANIMUS AGAINST CATHOLIC SOCIAL SERVICES.  
4 MASTERPIECE CAKESHOP ALSO WAS DECIDED ON THE BASIS THAT  
5 THESE COMMENTS, WHICH WERE A LOT MORE -- SOMETHING LIKE  
6 CALLING THE BAKER IN THAT CASE DESPICABLE FOR HOLDING  
7 THE VIEWS THAT HE DID. THAT THESE WERE HELD BY PEOPLE  
8 WHO WERE SUPPOSED TO BE THE NEUTRAL ADJUDICATORS FROM  
9 THE CIVIL RIGHTS COMMISSION AND, YOU KNOW, IT'S HARDLY  
10 THAT IF PARTIES HAVE A CONTRACT DISAGREEMENT AND CANNOT  
11 AGREE ON WHAT THE CONTRACT MEANS AND WHETHER IT'S BEING  
12 MET, THAT THEY ARE NOT ALLOWED TO DESCRIBE THAT IN  
13 RESPECTFUL TERMS.

14 SIMILARLY, THERE IS NO SELECTIVE  
15 ENFORCEMENT HERE. TWO CONTRACTORS, CATHOLIC SOCIAL  
16 SERVICES AND ANOTHER CONTRACTOR, TOLD THE CITY IN NO  
17 UNCERTAIN TERMS THAT THEY WOULD NOT SERVE SINGLE SEX  
18 FAMILIES AND THEY WOULD NOT PERFORM CERTIFICATIONS OF  
19 THEM TO BE FOSTER PARENTS. THE OTHER -- THE CITY HAS  
20 ABOUT 28 OTHER CONTRACTS WITH OTHER AGENCIES FOR FOSTER  
21 CARE SERVICES AND IT -- NONE OF THESE AGENCIES HAD ANY  
22 PROBLEM WITH -- OF THE SAME TYPE. THE OTHER CONTRACTOR,  
23 IN FACT, HAS WITHDRAWN FROM THE POSITION THAT IT  
24 INITIALLY ARTICULATED AND IS IN THE PROCESS OF  
25 NEGOTIATING A COMPLIANCE PLAN AND A NEW CONTRACT AND

1 HAVING ITS INTAKE RESTORED.

2 THE EXEMPTION CASES ALSO DO NOT APPLY.

3 THERE IS A LOT OF -- IF YOU LOOK AT PARTICULARLY AT THE  
4 3RD CIRCUIT'S DECISION IN THE FOP VERSUS CITY OF NEWARK  
5 CASE, IT GIVES A GOOD BASIS OF ANALYSIS AS TO WHAT KIND  
6 OF EXEMPTIONS ARE RELEVANT ONES, AND THEY ARE ONES THAT  
7 YOU HAVE TO IDENTIFY THE CORRECT POLICY AND THEN YOU  
8 HAVE TO DECIDE WHETHER AN EXCEPTION IS OF THE SAME TYPE  
9 DIRECTED TO FURTHERING THAT POLICY OR WHETHER IT'S  
10 SOMETHING, IT'S APPLES AND ORANGES. AND WE MAINTAIN  
11 THAT IN THIS CASE, FIRST OF ALL THE POLICY IS THE --  
12 WHETHER OR NOT ANY EXEMPTIONS ARE BEING GIVEN TO ALLOW  
13 DISCRIMINATION, AND THE ANSWER IS NO, EMPHATICALLY. AND  
14 EVEN THE EXEMPTIONS THAT CATHOLIC SOCIAL SERVICES TALKS  
15 ABOUT ALLOWING YOU TO REFER FOR GEOGRAPHIC CONVENIENCE  
16 AND SUCH ARE FOR THE BEST INTEREST OF THE CHILDREN  
17 WHEREAS GIVING AN EXEMPTION TO DISCRIMINATE IS NOT.

18 SO ANOTHER LINE OF CASES THEY RELY ON ARE  
19 PUBLIC BENEFIT CASES. YOU CANNOT DENY A PUBLIC BENEFIT  
20 TO AN APPLICANT SIMPLY BECAUSE THEY ARE RELIGIOUS, BUT A  
21 STATE CONTRACT OR A CITY CONTRACT FOR SERVICES,  
22 GOVERNMENT SERVICES IS NOT A PUBLIC BENEFIT. THE TEEN  
23 RANCH CASE THAT WE CITE IN OUR BRIEF HOLDS SQUARELY TO  
24 THAT EFFECT.

25 AS FAR AS SPEECH, THERE IS NO EVIDENCE TO

1 SUPPORT A FIRST AMENDMENT RETALIATION CLAIM AGAINST THE  
2 EVIDENCE THAT YOU WILL HEAR AND THAT YOU HAVE SEEN IN  
3 YOUR -- IN THE AFFIDAVITS MERELY TALKS ABOUT A CONTRACT  
4 DISPUTE, A REGRETFUL CONTRACT DISPUTE BECAUSE WE VALUE  
5 THE SERVICES THAT CATHOLIC SOCIAL SERVICES HAS PROVIDED.  
6 BUT WE CANNOT ALLOW RELIGIOUS EXEMPTIONS TO OUR -- YOU  
7 KNOW, WHEN THIS IS OUR JOB, OUR WORK, DHS'S WORK AND THE  
8 CITY CANNOT PICK AND CHOOSE AND FAVOR ONE RELIGION OVER  
9 ANOTHER.

10 AND THERE CERTAINLY IS NO COMPELLED  
11 SPEECH. ANY SPEECH THAT IS BEING REQUIRED IS WITHIN THE  
12 TERMS OF THE CONTRACT. SO I ASSUME THAT WE WILL ARGUE A  
13 BIT AT THE END, BUT CSS WILL NOT -- HAS NOT BEEN ABLE TO  
14 -- OR WILL NOT BE ABLE TO PREVAIL ON THE MERITS PART OF  
15 ITS ARGUMENT. IT CAN ONLY ASSERT ITS OWN VIOLATIONS OF  
16 CIVIL RIGHTS, NOT DERIVATIVE ONES SO AS TO -- IT CANNOT  
17 BRING THE CLAIMS OF FOSTER PARENTS AND FOSTER PARENTS  
18 CANNOT CLAIM CIVIL RIGHTS VIOLATIONS AS A RESULT OF ANY  
19 VIOLATION OR ALLEGED VIOLATION OF THE FREE EXERCISE OF  
20 CATHOLIC SOCIAL SERVICES.

21 BUT THERE IS NO IRREPARABLE HARM, ANY  
22 BUSINESS HARMS. WE ARE TRYING TO MITIGATE. WE ARE  
23 TRYING TO NEGOTIATE WITH THEM. AND WE ARE DOING  
24 EVERYTHING WITH THE POLE STAR OF THE BEST INTEREST OF  
25 THE CHILDREN, TO KEEP THOSE CHILDREN IN THE HOMES WHERE

1       THEY HAVE BEEN PLACED SO THAT THEY ARE NOT BEING --  
2       THEIR CARE IS NOT BEING DISRUPTED.   THEY ARE WITH THEIR  
3       FOSTER PARENTS, AND AS YOU WILL HEAR, IF THERE CANNOT BE  
4       A RESOLUTION TO THIS, DHS HAS TRANSITIONED FAMILIES IN  
5       THE PAST, SEVERAL TIMES BEFORE, AND WITHOUT ANY HARM.

6                       AND IN CONCLUSION, WE WILL -- YOU KNOW, I  
7       ARGUE THERE IS NO BASIS FOR AN INJUNCTION AND THAT ANY  
8       -- THAT REQUIRING THE CITY TO ENTER INTO A CONTRACT  
9       WOULD BE A FORM OF RELIEF THAT WOULD NOT REPRESENT THE  
10      STATUS QUO, WHICH IS WHAT THEY ARE ASKING.   OUR  
11      CONTRACTS EXPIRE ON THE 30TH OF JUNE AND SO THEY ARE  
12      ACTUALLY ASKING FOR A CONTRACT OF THEIR CHOICE AS  
13      INTERIM RELIEF.   AND WE ARE DOING WHATEVER WE CAN TO  
14      MINIMIZE THE PROBLEM SO THE INTAKE IS NOT A PENALTY BUT  
15      IT IS A WAY OF MAKING SURE THAT WE ARE NOT CREATING --  
16      ENLARGING THE NUMBER OF HOMES THAT ARE GOING TO HAVE TO  
17      BE ADDRESSED IF WE CAN'T GET TO AN AGREEMENT.   SO IN THE  
18      -- THERE IS NO BASIS UPON WHICH AN INJUNCTION SHOULD BE  
19      GRANTED AND THE EQUITIES DO NOT POINT TO CATHOLIC SOCIAL  
20      SERVICES.   WE VALUE THEIR SERVICE, BUT IF WE CANNOT GET  
21      TO A PLACE WHERE WE CAN AGREE AND GO FORWARD ON THE  
22      CONTRACT THAT IS WRITTEN AND OUR ANTIDISCRIMINATION  
23      POLICY, THEN WE HAVE TO PART.   THANK YOU.

24                       THE COURT:   THANK YOU.

25                       PLAINTIFF, CALL YOUR FIRST WITNESS.

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 HAVE ON CHILDREN?

2 A. IT WAS DEVASTATING. CHILDREN, YOU KNOW, THEY  
3 COME FROM A TRAUMATIC EXPERIENCE, LOSING THEIR  
4 BIOLOGICAL FAMILY, BEING PLACED OUT BY THEIR BIOLOGICAL  
5 FAMILY INTO AN UNKNOWN CIRCUMSTANCE, INTO AN UNKNOWN  
6 PLACEMENT, AND THEN BEING RELOCATED AGAIN FOR WHATEVER  
7 REASON. SO IT INTERRUPTED THEIR STABILITY, THEIR  
8 ABILITY TO BOND, THEIR ABILITY TO FORM ATTACHMENTS AND  
9 THEIR EDUCATION.

10 Q. DID YOU EXPERIENCE THERE TO BE ANY SORT OF  
11 CORRELATION BETWEEN NOT IN A FOSTER HOME AND THE AMOUNT  
12 OF TIMES CHILDREN WOULD BE TRANSFERRED?

13 A. YES.

14 Q. WHAT WAS THE CORRELATION?

15 A. YES. SO IF THERE WERE NOT A LOT OF FOSTER HOMES  
16 OR AVAILABLE FOSTER HOMES, CHILDREN WOULD BE MOVED  
17 MULTIPLE TIMES AGAIN. THEY MAY BE MOVED INTO A SHELTER,  
18 THEY MAY BE MOVED INTO A RESPITE, THEY MAY BE MOVED INTO  
19 A PERMANENT HOME IF IT WERE AVAILABLE.

20 Q. WHAT HAPPENS TO A CHILD IN YOUR EXPERIENCE WHEN  
21 THEY ARE BEING TRANSFERRED?

22 A. AGAIN, CHILDREN LOSE THEIR ATTACHMENT, THEY LOSE  
23 THEIR SENSE OF SELF, THEIR EDUCATION MAY BE INTERRUPTED.

24 Q. IS THERE ANY TRAUMA INVOLVED?

25 A. ABSOLUTELY. EVERY TIME A CHILD IS MOVED, THEIR



1 TRAUMA IS IMPACTED AND COMPACTED.

2 Q. CAN YOU DESCRIBE A LITTLE MORE FROM YOUR  
3 EXPERIENCE WHAT IT'S LIKE FOR A CHILD TO SPEND A NIGHT  
4 OR MULTIPLE NIGHTS AT THE DHS OFFICE?

5 A. IT'S DEVASTATING. I HAVE BEEN THERE JUST A FEW  
6 HOURS AS A WORKER AND IT'S NOT A HAPPY PLACE, IT'S NOT  
7 DISNEY WORLD. SO FOR A CHILD TO HAVE TO SPEND, YOU  
8 KNOW, MORE THAN A COUPLE OF HOURS THERE, POSSIBLY HAVING  
9 TO SPEND THE NIGHT THERE, I AM SURE IT'S A VERY --

10 MS. CORTES: YOUR HONOR, I AM GOING TO  
11 OBJECTION TO SPECULATION AT THIS POINT.

12 THE COURT: SUSTAINED.

13 MS. CORTES: AND I WOULD LIKE TO STRIKE  
14 THE RECORD FOR THE ENTIRE LINE OF QUESTIONING.

15 THE COURT: BUT I WON'T STRIKE IT. BUT  
16 IF YOU COULD PROCEED TO ANOTHER SUBJECT.

17 MS. BARCLAY: CERTAINLY, YOUR HONOR.

18 BY MS. BARCLAY:

19 Q. HOW WOULD YOU DESCRIBE THE DIFFERENCE, AGAIN  
20 WHAT YOU EXPERIENCED BEING A STAFF MEMBER IN SOME OF  
21 THESE DIFFERENT FACILITIES, BETWEEN THE CARE YOU  
22 PROVIDED TO A CHILD IN A GROUP HOME AS OPPOSED TO THE  
23 TYPE OF CARE A CHILD RECEIVED IN A PERMANENT FOSTER  
24 HOME?

25 A. IN A PERMANENT FOSTER HOME, A CHILD RECEIVES

1 CONSISTENT LOVE AND SUPPORT, EDUCATIONAL SUPPORT,  
2 CONSISTENT SUPERVISION. THE OPPOSITE TO THAT IN A GROUP  
3 HOME OR A FOSTER HOME, IN ANY RESIDENTIAL TREATMENT  
4 FACILITY BUT --

5 MS. CORTES: YOUR HONOR, SAME OBJECTION.

6 MS. BARCLAY: YOUR HONOR, THIS IS --

7 THE COURT: OVERRULED.

8 THE WITNESS: WHETHER IT BE A SHELTER,  
9 THE CHILD DOES NOT RECEIVE THAT SAME LOVE AND CARE, THAT  
10 SAME NURTURING, THAT SAME SUPPORT. IT IS BASICALLY JUST  
11 ABOUT SUPERVISION, MAKING SURE THAT THE CHILD ADHERES TO  
12 RULES. THERE IS NO ONE-TO-ONE OR VERY LITTLE ONE-TO-ONE  
13 INTERACTION THAT THE CHILD WILL RECEIVE FROM A STAFF  
14 MEMBER.

15 BY MS. BARCLAY:

16 Q. HOW WOULD YOU DESCRIBE YOUR PRIMARY ROLE IN A  
17 GROUP HOME?

18 A. TO SUPERVISE AND SUPPORT, TO MAKE SURE THAT  
19 RULES ARE FOLLOWED, TO MAKE SURE THAT STRUCTURE IS  
20 IMPLEMENTED.

21 Q. DID YOU EVER OBSERVE IN YOUR EXPERIENCE A  
22 CORRELATION BETWEEN THERE NOT BEING ENOUGH FOSTER HOMES  
23 AND CHILDREN BEING LEFT IN BIOLOGICAL HOMES?

24 A. YES.

25 Q. CAN YOU TALK ABOUT THAT A LITTLE?

1 A. YES, WHEN I WAS A FOSTER CARE SOCIAL WORKER, THE  
2 AGENCIES THAT I HAD WORKED WITH AT THE TIME WERE  
3 PREPARING TO CLOSE AND WE HAD CHILDREN WHO -- BECAUSE OF  
4 CONTRACTUAL ISSUES WITH THE CITY, THE CHILDREN WERE  
5 BEING PLACED INTO SHELTER CARE, SOME OF THEM WERE PLACED  
6 INTO RESPITE, TWO WERE PLACED BACK INTO BIOLOGICAL  
7 HOMES, WHICH AT THE TIME AS A FOSTER CARE WORKER WAS NOT  
8 APPROPRIATE FOR THEM.

9 Q. AND SO YOU HAVE DISCUSSED GROUP HOMES, SHELTERS,  
10 OTHER BIOLOGICAL HOMES, THE DHS OFFICE. IN YOUR  
11 EXPERIENCE WORKING WITH CHILDREN, HOW DID THOSE OPTIONS  
12 COMPARE TO THE CARE GIVEN A CHILD IN A PERMANENT FOSTER  
13 HOME?

14 A. NOTHING COMPARES TO THE STABILITY OF A PERMANENT  
15 FOSTER HOME. NOTHING COMPARES TO THAT DAILY LOVE AND  
16 CARE, THOSE HUGS AND KISSES, THE EDUCATIONAL SUPPORT,  
17 NOTHING IN THE WORLD COMPARES TO THAT.

18 Q. IF YOU HAD THE CHOICE BETWEEN A TEMPORARY FOSTER  
19 PLACEMENT FOR A CHILD OR A PERMANENT FOSTER PLACEMENT,  
20 WHICH IN YOUR EXPERIENCE WOULD HAVE GENERALLY BEEN IN  
21 THE BEST INTEREST OF THE CHILD?

22 A. 100 PERCENT A MORE PERMANENT FOSTER HOME.

23 Q. DID YOU EVER EXPERIENCE A TIME WHEN THERE WAS A  
24 FREEZE IN REFERRALS WHEN YOU WERE A FOSTER CARE WORKER?

25 A. YES. AGAIN, THERE WERE CONTRACTUAL ISSUES WITH

1 THE AGENCY THAT I WAS WORKING WITH AND THERE WAS A  
2 FREEZE. SO WE WERE NOT GETTING ANY NEW REFERRALS,  
3 CHILDREN WERE BEING AGAIN NOT PLACED IN THE APPROPRIATE  
4 PLACEMENT BECAUSE OUR FOSTER CARE REFERRALS WERE BEING  
5 FROZEN. AND SO AGAIN WE HAD TO PLACE KIDS AS BEST AS WE  
6 COULD.

7 Q. DOES THE AGENCY THAT YOU WERE WORKING AT STILL  
8 EXIST?

9 A. NO.

10 Q. WERE YOU THERE WHEN THAT AGENCY CLOSED?

11 A. YES, I WAS.

12 Q. CAN YOU DESCRIBE WHAT YOU OBSERVED TO BE IMPACTS  
13 ON SOME OF THE FAMILIES AND SOME OF THE CHILDREN YOU  
14 WORKED WHEN THAT AGENCY CLOSED?

15 A. I WITNESSED CHILDREN BEING MOVED FROM KINSHIP  
16 HOMES INTO RESPITE HOMES AND GROUP HOMES AND SHELTERS.  
17 I WITNESSED FOSTER CHILDREN BEING PLACED IN RESPITE  
18 HOMES BECAUSE THE AGENCY WAS WORKING -- SOME OF THOSE  
19 FOSTER PARENTS AND SOME OF THOSE KINSHIP PARENTS CHOSE  
20 NOT TO GO TO ANOTHER AGENCY, FOR WHATEVER REASON. AND  
21 SO CHILDREN WERE CONSTANTLY BEING PLACED INTO UNFAMILIAR  
22 SITUATIONS.

23 Q. SO WERE ANY OF THESE FAMILIES THAT YOU SERVED  
24 BROKEN APART?

25 A. ABSOLUTELY.

1 Q. AND WHAT DID YOU OBSERVE TO BE THE IMPACT ON THE  
2 CHILDREN?

3 A. IT WAS DEVASTATING. I HAD A CASE ABOUT A LITTLE  
4 GIRL, SHE WAS APPROXIMATELY SEVEN YEARS OLD. SHE WAS IN  
5 A KINSHIP HOME. SHE HAD BEEN THERE ALMOST SINCE BIRTH,  
6 AND BECAUSE OF THE DIFFICULTIES WITH -- YOU KNOW, WITH  
7 THE CONTRACT, THE CITY SAID THAT WE HAD TO LOCATE A MORE  
8 PERMANENT HOME FOR HER, BECAUSE THE KINSHIP AUNT WOULD  
9 NOT ADOPT THE CHILD. THERE WAS A VERY STRONG BOND  
10 BETWEEN THE BIOLOGICAL MOTHER AND THE CHILD AND THE  
11 FAMILY AND THEY DIDN'T WANT TO TAKE THAT BOND AWAY. WE  
12 HAD TO REMOVE THAT CHILD TO ANOTHER HOME. AND I  
13 WITNESSED HER DEVASTATION, I WITNESSED HER TRAUMA.

14 Q. DID SOME OF THESE FAMILIES FEEL LIKE THEY WERE  
15 UNABLE TO TRANSFER TO A NEW AGENCY?

16 A. YES.

17 Q. HOW DID THIS HAPPEN?

18 A. THEY DIDN'T FEEL LIKE THEY WERE GOING TO GAIN  
19 THE SAME SUPPORT AS THEY HAD BEEN RECEIVING.

20 MS. CORTES: OBJECTION, YOUR HONOR,  
21 SPECULATION AGAIN.

22 THE COURT: SUSTAINED.

23 MS. CORTES: I ASK THAT YOU STRIKE HER  
24 ANSWER.

25 THE COURT: THAT ANSWER WILL BE STRICKEN.

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 PLACING NATIVE AMERICAN CHILDREN, AGAIN, WHAT WOULD THAT  
2 AGENCY DO FOR YOU?

3 A. REFER ME OUT.

4 Q. AS A FOSTER PARENT, DID YOU EVER WORK WITH GAY  
5 -- OR EXCUSE ME. AS A FOSTER WORKER, DID YOU EVER WORK  
6 WITH GAY FOSTER PARENTS?

7 A. YES.

8 Q. WHAT WAS YOUR EXPERIENCE WITH THAT FAMILY?

9 A. I HAD A SPECIFIC FAMILY, A MALE FOSTER PARENT.  
10 HE HAD THREE YOUNG BOYS. I THOUGHT HE WAS AN EXCELLENT  
11 FOSTER PARENT. TOOK VERY WELL -- YOU KNOW, TOOK VERY  
12 GOOD CARE OF THOSE BOYS.

13 Q. I WANT TO TALK TO YOU A LITTLE BIT ABOUT YOUR  
14 INTERACTIONS WITH OTHER FOSTER AGENCIES DURING YOUR  
15 CHILD ADVOCACY WORK. WHEN YOU WORKED AS A CHILD  
16 ADVOCATE SOCIAL WORKER, DID YOU PERSONALLY INTERACT WITH  
17 OTHER FOSTER AGENCIES IN PHILADELPHIA?

18 A. YES. YES, I HAVE.

19 Q. WHICH AGENCIES DID YOU INTERACT WITH?

20 A. PRETTY MUCH ALL OF THEM.

21 Q. FROM YOUR INTERACTIONS, WHAT DID YOU PERSONALLY  
22 OBSERVE ABOUT THE QUALITY OF CARE THAT THESE AGENCIES  
23 WERE PROVIDING?

24 MS. CORTES: YOUR HONOR, I WOULD OBJECT  
25 TO RELEVANCE.

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 BY MS. CORTES:

2 Q. GOOD AFTERNOON, MS. BUSCH.

3 A. GOOD AFTERNOON.

4 Q. MS. BUSCH, YOU HAD TESTIFIED EARLIER ABOUT YOUR  
5 PRIOR EXPERIENCE WITHIN THE FOSTER CARE AGENCY, IS THAT  
6 CORRECT?

7 A. THAT IS CORRECT.

8 Q. AND YOU HAD TESTIFIED EARLIER ABOUT CHILDREN  
9 BEING RELOCATED AND RESPITE AND THAT'S -- DO YOU RECALL  
10 THAT TESTIMONY?

11 A. YES, MA'AM.

12 Q. I DIDN'T GET THE DATE. CAN YOU TELL US WHEN YOU  
13 EXPERIENCED THAT?

14 A. THAT WAS APPROXIMATELY -- IT WAS A LITTLE OVER  
15 TEN YEARS AGO.

16 Q. OKAY.

17 A. YES.

18 Q. AND DESPITE YOUR -- YOU HAVE ONLY BEEN A FOSTER  
19 PARENT WITH CATHOLIC SOCIAL SERVICES, IS THAT CORRECT?

20 A. YES.

21 Q. YOU HAVE NOT BEEN A FOSTER PARENT WITH ANY OTHER  
22 OF -- ANY OF THE OTHER 30 AGENCIES IN THE CITY, CORRECT?

23 A. NO, WHEN I --

24 Q. OKAY, THANK YOU.

25 AND JUST FOCUSING ON SOME -- YOU ARE

1 FAMILIAR WITH THE CERTIFICATION PROCESS THAT YOU HAD TO  
2 GO THROUGH TO BE A FOSTER PARENT?

3 A. YES, MA'AM.

4 Q. DO YOU PERFORM ANY OF THE CERTIFICATIONS FOR ANY  
5 NEW FOSTER FAMILY FOR CSS?

6 A. NO, MA'AM.

7 Q. OKAY.

8 MS. CORTES: COURT'S INDULGENCE, YOUR  
9 HONOR.

10 (BRIEF PAUSE IN THE PROCEEDING.)

11 BY MS. CORTES:

12 Q. I THINK IT'S ONE LAST QUESTION.

13 YOU MENTIONED THAT A FOSTER AGENCY HAD  
14 CLOSED IN YOUR EXPERIENCE AS A SOCIAL WORKER?

15 A. YES, MA'AM.

16 Q. CAN YOU TELL US WHAT WAS THE NAME OF THAT FOSTER  
17 AGENCY?

18 A. YES, IT WAS PSI FAMILY SERVICES. IT WAS LOCATED  
19 AT 701 MARKET STREET IN PHILADELPHIA.

20 Q. AND WHEN DID THAT HAPPEN?

21 A. AGAIN, A LITTLE OVER TEN YEARS AGO. I'M SORRY,  
22 I DON'T HAVE THE SPECIFIC DATE.

23 Q. OKAY, THAT'S FINE.

24 MS. CORTES: THANK YOU.

25 MS. BARCLAY: BRIEF REDIRECT, YOUR HONOR?

1 THE COURT: YES.

2 REDIRECT

3 BY MS. BARCLAY:

4 Q. MS. SIMMS-BUSCH, YOU HAVE ONLY BEEN A FOSTER  
5 PARENT WITH CATHOLIC SOCIAL SERVICES, CORRECT?

6 A. YES.

7 Q. HAVE YOU HAD EXPERIENCES WITH ALL THE OTHER  
8 FOSTER AGENCIES IN PHILADELPHIA?

9 A. YES, I HAVE.

10 MS. CORTES: OBJECTION TO THE RELEVANCE,  
11 YOUR HONOR.

12 MS. BARCLAY: YOUR HONOR, THIS IS GOING  
13 TO BE RELEVANT TO WHY --

14 THE COURT: OVERRULED.

15 MS. BARCLAY: THANK YOU, YOUR HONOR.

16 BY MS. BARCLAY:

17 Q. DO YOU HAVE EXPERIENCE WITH ALL THE OTHER FOSTER  
18 AGENCIES IN PHILADELPHIA?

19 A. YES, I HAVE.

20 Q. AND THAT WAS AS A CHILD ADVOCATE SOCIAL WORKER?

21 A. YES, AS A CHILD ADVOCATE SOCIAL WORKER, AS A  
22 FOSTER CARE WORKER AS WELL.

23 Q. WAS YOUR EXPERIENCE WITH THE OTHER AGENCIES  
24 RELEVANT TO YOUR DECISION TO CHOOSE CATHOLIC SOCIAL  
25 SERVICES?

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 HAD BUILT.

2 MS. BARCLAY: NO FURTHER QUESTIONS, YOUR  
3 HONOR.

4 THE COURT: ANY OTHER QUESTIONS?

5 MS. CORTES: NO, YOUR HONOR.

6 THE COURT: THANK YOU.

7 THE WITNESS: THANK YOU, YOUR HONOR.

8 THE COURT: NOW YOU MAY CALL YOUR NEXT  
9 WITNESS.

10 MS. BARCLAY: THE PLAINTIFFS CALL MS.  
11 CECILIA PAUL, YOUR HONOR.

12 (WITNESS SWORN.)

13 THE WITNESS: MY NAME IS CECILIA,  
14 C-E-C-I-L-I-A, PAUL, P-A-U-L.

15 DIRECT EXAMINATION

16 MS. BARCLAY:

17 Q. GOOD AFTERNOON, MS. PAUL.

18 A. GOOD AFTERNOON.

19 Q. CAN YOU TELL US WHAT YOUR CURRENT RELATIONSHIP  
20 IS TO CATHOLIC SOCIAL SERVICES?

21 A. RIGHT NOW I AM A FOSTER PARENT WITH CATHOLIC  
22 SOCIAL SERVICES, BUT HAVE NO CHILDREN BECAUSE OF THE  
23 CONDITIONS THAT ARE GOING ON RIGHT NOW.

24 Q. IN WHAT CITY DO YOU CURRENTLY LIVE?

25 A. PHILADELPHIA.

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. GOOD AFTERNOON.

2 Q. MS. FULTON, YOU MENTIONED THAT YOU WERE AT A DHS  
3 TRAINING?

4 A. YES.

5 Q. CAN YOU TELL US WHAT YEAR THAT WAS?

6 A. NOT REALLY. I WOULD SAY MORE THAN TEN YEARS  
7 AGO.

8 Q. AND I TAKE IT THAT IF YOU -- IF IT WAS THAT LONG  
9 AGO, YOU CANNOT TELL US WHAT PARTICULAR AGENCY WAS THE  
10 TRAINING AGENCY?

11 A. IT WAS THROUGH DHS AND IT WAS AT THEIR  
12 HEADQUARTERS AT THAT TIME.

13 Q. AND THAT'S ALL THE INFORMATION YOU CAN GIVE US?

14 A. WELL, IT WAS ABOUT UNDERSTANDING OUR POSITION AS  
15 A FOSTER PARENT, AS I BELIEVE. AND THERE WERE MANY  
16 OTHER FOSTER PARENTS THERE FROM ALL OVER THE CITY FOR  
17 THAT PARTICULAR TRAINING. AND AS I SAID EARLIER, THE  
18 INSTRUCTOR STARTED OUT WITH MORE OR LESS DISCIPLINING US  
19 AND SAYING, JUST REMEMBER, THEY ARE NOT YOUR CHILDREN,  
20 YOU ARE ONLY SURROGATES, AND I HONESTLY FELT SAD ABOUT  
21 THAT.

22 MS. CORTES: OKAY. COURT'S INDULGENCE.

23 (BRIEF PAUSE IN THE PROCEEDING.)

24 MS. CORTES: NO FURTHER QUESTIONS.

25 THE COURT: THANK YOU, MA'AM.

1 THE WITNESS: THANK YOU.

2 MS. BARCLAY: NOTHING FURTHER FROM THE  
3 PLAINTIFFS, YOUR HONOR.

4 THE COURT: OKAY. DOES THE CITY HAVE ANY  
5 WITNESSES?

6 MR. FIELDS: WE DO, YOUR HONOR, BUT  
7 BEFORE WE GET TO OUR WITNESSES, WE MOVE TO EXCLUDE THE  
8 AFFIDAVITS OF BISHOP MCINTYRE, FROM JIM AMATO, JAMES  
9 AMATO, AND THE AFFIDAVIT OF JAMES BLACK THAT WAS FILED  
10 LATE LAST WEEK. THERE ARE A MYRIAD OF DISPUTED FACTS IN  
11 THOSE AFFIDAVITS AS WELL AS AVERMENTS THAT WE HAVE A  
12 RIGHT TO INQUIRE INTO.

13 THE COURT: OKAY, WE ARE GOING TO TAKE A  
14 BRIEF RECESS, JUST ABOUT FIVE MINUTES. AND THEN WE WILL  
15 COME BACK.

16 (BRIEF RECESS.)

17 THE COURT: OKAY, YOU MAY BE SEATED.

18 BEFORE WE BROKE THERE WAS A MOTION. CAN  
19 YOU REPEAT THE MOTION, PLEASE?

20 MR. FIELD: SO I WAS MOVING TO EXCLUDE  
21 THE AFFIDAVITS OF BISHOP MCINTYRE, JAMES AMATO AND JAMES  
22 BLACK AS THERE ARE DISPUTED FACTS IN THOSE AND WE HAVE  
23 NOT HAD AN OPPORTUNITY TO CROSS-EXAMINE THE WITNESSES.

24 MS. WINDHAM: YOUR HONOR, WITH REGARD TO  
25 THE DECLARATIONS, THIS COURT HAS SET A NARROW TIME

1 WINDOW FOR THE HEARING. I BELIEVE THERE ARE AT LEAST  
2 SEVEN DIFFERENT WITNESSES WHO HAVE SUBMITTED  
3 DECLARATIONS ON THIS CASE. IF THE COURT WANTS TO CARRY  
4 THIS HEARING OVER TO TOMORROW TO ALLOW ALL OF THOSE  
5 WITNESSES, THAT'S SOMETHING THAT WE ARE HAPPY TO DO.  
6 HOWEVER, I WOULD ALSO NOTE THAT FEDERAL RULES OF  
7 EVIDENCE 65(B)(1)(A) SPECIFICALLY CONTEMPLATES EVIDENCE  
8 COMING IN THROUGH AFFIDAVITS, JUST AS WE HAVE DONE HERE,  
9 ON A TEMPORARY RESTRAINING ORDER. I ALSO NOTE THE 3RD  
10 CIRCUIT'S DECISION IN KOS PHARMACY V. ANDRX CORP., 369  
11 F.3D 700, WHICH SAYS A PRELIMINARY INJUNCTION IS  
12 CUSTOMARILY GRANTED ON THE BASIS OF PROCEDURES THAT ARE  
13 LESS FORMAL AND EVIDENCE LESS COMPLETE THAN A TRIAL ON  
14 THE MERITS. THE CITY HAS HAD AMPLE OPPORTUNITY TO OFFER  
15 ARGUMENTS AND OFFER ITS OWN WITNESSES. WE SEE NO REASON  
16 TO EXCLUDE THE DECLARATIONS HERE.

17 THE COURT: THE COURT HAS NO PROBLEM WITH  
18 CARRYING OVER THIS MATTER SO THAT THE WITNESSES CAN  
19 TESTIFY UNDER THE CIRCUMSTANCES. SO YOU CAN MAKE A  
20 CHOICE. EITHER WE HAVE THE WITNESSES TESTIFY OR THE  
21 AFFIDAVITS WILL BE EXCLUDED.

22 MS. WINDHAM: YOUR HONOR, WE ARE HAPPY TO  
23 CARRY OVER.

24 THE COURT: OKAY.

25 MS. WINDHAM: WE NEED TO CHECK WITH THE

1 WITNESSES TO SEE WHEN WE WOULD BE ABLE TO HAVE THEM HERE  
2 FOR THE COURT.

3 THE COURT: OKAY. MY INTENTION IS TO  
4 RESUME AT 1 O'CLOCK TOMORROW. I HAVE OTHER CASES  
5 SCHEDULED, BUT I WILL MOVE THEM AROUND SO THAT WE CAN  
6 FINISH THIS MATTER.

7 ARE THERE ANY WITNESSES THAT CAN BE  
8 CALLED AT THIS POINT BY THE CITY SINCE THEY ARE HERE? I  
9 UNDERSTAND THEY WILL BE OUT OF TURN, BUT...

10 MS. OLIVER: YES, YOUR HONOR.

11 THE COURT: OKAY. CALL YOUR WITNESS.

12 MS. OLIVER: THANK YOU, YOUR HONOR. GOOD  
13 AFTERNOON. I CALL KIMBERLY ALI.

14 (WITNESS SWORN.)

15 THE WITNESS: MY NAME IS KIMBERLY ALI,  
16 K-I-M-B-E-R-L-Y, A-L-I.

17 DIRECT EXAMINATION

18 BY MS. OLIVER:

19 Q. GOOD AFTERNOON, MS. ALI.

20 A. GOOD AFTERNOON.

21 Q. WHERE ARE YOU EMPLOYED?

22 A. I AM EMPLOYED AT THE PHILADELPHIA DEPARTMENT OF  
23 HUMAN SERVICES.

24 Q. AND WHAT IS YOUR CURRENT POSITION?

25 A. I AM DEPUTY COMMISSIONER FOR CHILD WELFARE

1 OPERATIONS .

2 Q. TURNING TO YOUR EDUCATIONAL BACKGROUND, WILL YOU  
3 PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND FOR THE  
4 COURT?

5 A. YES. I HAVE A BACHELOR'S DEGREE IN CRIMINAL  
6 JUSTICE FROM TEMPLE UNIVERSITY. I HAVE A MASTER'S  
7 DEGREE IN SOCIAL WORK FROM TEMPLE UNIVERSITY, AND I AM  
8 ALSO A LICENSED SOCIAL WORKER.

9 Q. WHEN DID YOU BEGIN YOUR EMPLOYMENT WITH THE  
10 DEPARTMENT OF HUMAN SERVICES?

11 A. IN JANUARY OF 2000.

12 Q. AND WHAT POSITION DID YOU HOLD THEN?

13 A. I WAS A SOCIAL WORKER IN THE ONGOING SERVICE  
14 REGION. AS A SOCIAL WORKER IN THAT REGION, I WAS  
15 RESPONSIBLE FOR SERVICING FAMILIES THAT RECEIVED BOTH  
16 IN-HOME SERVICES OR PLACEMENT SERVICES.

17 Q. AND THEREAFTER, DID YOU HOLD ANY OTHER POSITIONS  
18 WITH THE DEPARTMENT?

19 A. YES. IN 2002 I BECAME A SUPERVISOR AT THE  
20 DEPARTMENT OF HUMAN SERVICES IN THE ONGOING SERVICE  
21 REGION. I WAS RESPONSIBLE FOR SUPERVISING FIVE SOCIAL  
22 WORKERS WHO IN TURN WORKED WITH FAMILIES THAT RECEIVED  
23 IN-HOME SERVICES AS WELL AS PLACEMENT SERVICES.

24 Q. AND HAVE YOU HELD ANY OTHER POSITIONS WITHIN THE  
25 DEPARTMENT OF HUMAN SERVICES?

1 A. YES. FOUR YEARS LATER I WAS PROMOTED TO HUMAN  
2 SERVICES PROGRAM ADMINISTRATOR FROM THE CENTRAL REFERRAL  
3 UNIT AT DHS. IN THAT CAPACITY I WAS RESPONSIBLE FOR A  
4 SECTION WHO IDENTIFIED BOTH IN-HOME SERVICES FOR  
5 FAMILIES AS WELL AS PLACEMENT FOR CHILDREN AND YOUTH.

6 Q. AND AFTER THAT DID YOU HOLD ANY OTHER POSITIONS?

7 A. I DID. IN 2009 I WAS PROMOTED TO DIRECTOR OF  
8 PROVIDER RELATIONS AND EVALUATION OF PROGRAMS AT DHS. I  
9 WAS RESPONSIBLE FOR ABOUT 30 PROGRAM ANALYSTS AS WELL AS  
10 SUPERVISORS WHO WERE RESPONSIBLE FOR EVALUATING AND  
11 MONITORING PROVIDERS OVER -- APPROXIMATELY OVER 200  
12 PROJECTED PROVIDERS, DELINQUENT PROVIDERS, DEPENDENT  
13 PROVIDERS AS WELL AS PREVENTION PROVIDERS.

14 Q. AND BY THE WAY, SINCE YOUR FIRST POSITION AS A  
15 SOCIAL WORKER, WERE ALL OF THESE SUBSEQUENT POSITIONS  
16 PROMOTIONS THAT YOU RECEIVED?

17 A. YES, THEY WERE.

18 Q. AND WHAT IS THE NEXT PROMOTION THAT YOU  
19 RECEIVED?

20 A. IN 2010 I BECAME THE OPERATION DIRECTOR FOR THE  
21 CHILDREN AND YOUTH DIVISION AT DHS. IN THAT CAPACITY I  
22 WAS RESPONSIBLE FOR CASES FROM THE HOTLINE, SO ALL CHILD  
23 ABUSE AND NEGLECT REPORTS THAT CAME IN THROUGH THE  
24 HOTLINE UP UNTIL CASES WERE CLOSED OUT THROUGH THE  
25 DEPARTMENT.

1 Q. DID YOU RECEIVE ANY OTHER PROMOTIONS?

2 A. YES. IN 2014 I BECAME THE CHIEF IMPLEMENTATION  
3 OFFICER FOR THE DEPARTMENT OF HUMAN SERVICES FOR  
4 IMPROVING OUTCOMES FOR CHILDREN. I WAS RESPONSIBLE FOR  
5 HELPING THE COMMUNITY UMBRELLA AGENCIES, OR CUA'S, BEGIN  
6 TO RECEIVE THEIR SERVICES.

7 Q. MAY I STOP YOU FOR A MOMENT AND ASK YOU TO  
8 EXPLAIN TO THE COURT THE TERM THAT YOU JUST USED,  
9 IMPROVING OUTCOMES FOR CHILDREN?

10 A. YES. IMPROVING OUTCOMES FOR CHILDREN IS A  
11 SYSTEM TRANSFORMATION THAT THE DEPARTMENT UNDERTOOK IN  
12 2012 IN WHICH WE SEPARATED THE CITY INTO TEN  
13 GEOGRAPHICAL AREAS. WE ISSUED AN RFP BECAUSE WE WANTED  
14 COMMUNITY-BASED PROVIDERS TO PROVIDE CASE MANAGEMENT  
15 SERVICES TO FAMILIES. AT THAT PARTICULAR TIME, PRIOR TO  
16 IMPROVING OUTCOMES FOR CHILDREN, WE HAD A DUAL CASE  
17 MANAGEMENT SYSTEM IN WHICH EVERY FAMILY HAD A DHS SOCIAL  
18 WORKER AND A PROVIDER SOCIAL WORKER. WE FELT THAT IT  
19 CAUSED A LOT OF CONFUSION FOR FAMILIES, SO WE MOVED TO A  
20 SINGLE CASE MANAGEMENT SYSTEM IN 2013 IN WHICH FAMILIES  
21 RECEIVED ONE CUA -- COMMUNITY UMBRELLA AGENCY CASE  
22 MANAGER AS WELL AS WE DEVELOPED ONE SINGLE CASE PLAN FOR  
23 FAMILIES.

24 Q. AND SO ESSENTIALLY THAT STREAMLINED THE PROCESS  
25 FOR FAMILIES?



1 A. YES, IT DID.

2 Q. DID YOU HAVE ANY OTHER DUTIES AS THE CHIEF  
3 IMPLEMENTATION OFFICER FOR IMPROVING OUTCOMES FOR  
4 CHILDREN?

5 A. THE MAIN -- MY MAIN RESPONSIBILITY DURING THAT  
6 TIME WAS TO ENSURE THAT CASES THAT CAME INTO THE FRONT  
7 DOOR, IF THEY WERE ACCEPTED FOR SERVICES THROUGH THE  
8 DEPARTMENT OF HUMAN SERVICES, THAT THEY WENT DIRECTLY TO  
9 THE COMMUNITY UMBRELLA AGENCY SO THEY COULD PROVIDE CASE  
10 MANAGEMENT SERVICES. ADDITIONALLY, WE HAD A NUMBER OF  
11 CASES THAT WERE STILL IN OUR ONGOING SERVICE REGION. I  
12 SUPERVISED TWO UNITS THAT WERE RESPONSIBLE FOR LOOKING  
13 AT EACH CASE INDIVIDUALLY TO TRY TO DETERMINE THE NEEDS  
14 OF THE CHILD AND THE FAMILY. IF THE CHILD AND THE  
15 FAMILY CONTINUED TO NEED SERVICES THROUGH THE DEPARTMENT  
16 OF HUMAN SERVICES, THEN WE TRANSFERRED THOSE CASES OVER  
17 TO THE COMMUNITY UMBRELLA AGENCY. ANY CHILD WHO WAS  
18 ABOUT TO ACHIEVE PERMANENCY, WE KEPT IT AT THE  
19 DEPARTMENT OF HUMAN SERVICES SO THAT WE COULD ASSURE  
20 THAT PERMANENCY WAS ACHIEVED FOR THAT CHILD.

21 Q. AND JUST VERY BRIEFLY, WHEN YOU REFERRED TO  
22 PERMANENCY, WHAT ARE YOU REFERRING TO?

23 A. I AM REFERRING TO GOALS FOR CHILDREN AND YOUTH.  
24 ANY CHILD OR YOUTH THAT COME INTO PLACEMENT WITH THE  
25 DEPARTMENT IN WHICH THE DEPARTMENT OF HUMAN SERVICES HAS

1 LEGAL CUSTODY OF THAT CHILD, WE ESTABLISH A GOAL FOR  
2 THAT PARTICULAR CHILD. THE GOAL CONSISTS OF  
3 REUNIFICATION, THAT MEANS RETURNING A YOUNG PERSON TO  
4 THAT PARTICULAR FAMILY. IF REUNIFICATION CANNOT OCCUR,  
5 THEN THE NEXT HIERARCHY IN TERMS OF GOAL IS ADOPTION.  
6 SO IDENTIFYING APPROPRIATE ADOPTIVE RESOURCES FOR THAT  
7 CHILD OR YOUTH, AND THEN THE THIRD HIERARCHY IS  
8 PERMANENT LEGAL CUSTODIANSHIP.

9 Q. THANK YOU.

10 WILL YOU TALK A LITTLE BIT ABOUT THE  
11 STRUCTURED LEVEL OF CARE INSTRUMENT?

12 A. YES. UNDER MY LEADERSHIP AS THE CHIEF  
13 IMPLEMENTATION OFFICER AT THE DEPARTMENT OF HUMAN  
14 SERVICES, WE DEVELOPED -- WITH THE SUPPORT OF CASEY  
15 FAMILY PROGRAMS, WE DEVELOPED A STRUCTURED LEVEL OF TOOL  
16 INSTRUMENT. WHAT THAT INSTRUMENT IS USED FOR IS TO  
17 DETERMINE THE APPROPRIATE LEVEL OF CARE FOR A CHILD OR A  
18 YOUTH. IN DOING SO, WE GATHER REFERRAL INFORMATION THAT  
19 IS COMPLETED BY THE CUA CASE MANAGER OR THE DHS SOCIAL  
20 WORKER, WE IN PARTNERSHIP WITH COMMUNITY BEHAVIORAL  
21 HEALTH, WHO IS OUR MANAGED CARE ORGANIZATION FOR THE  
22 CITY OF PHILADELPHIA. THEY ARE ACTUALLY CO-LOCATED AT,  
23 DHS IN THE CENTRAL REFERRAL UNIT AT DHS. THEY WILL  
24 REVIEW THE CHILD'S BEHAVIORAL HEALTH HISTORY. WE HAVE  
25 DHS SCREENING SOCIAL WORKERS AT THE CENTRAL REFERRAL

1 UNIT THAT WILL GATHER THE INFORMATION FROM COMMUNITY  
2 BEHAVIORAL HEALTH AS WELL AS INFORMATION ON THE REFERRAL  
3 AS WELL AS INTERVIEWING THE DHS SOCIAL WORKER WITH THE  
4 CUA SOCIAL WORKER TO GATHER AND ASK STRUCTURED QUESTIONS  
5 SO THAT WE CAN DETERMINE THE APPROPRIATE LEVEL OF CARE  
6 FOR A CHILD OR YOUTH. WHAT I MEAN BY APPROPRIATE LEVEL  
7 OF CARE, CHILDREN CAN BE PLACED IN GENERAL FOSTER CARE  
8 OR GENERAL KINSHIP. THAT MEANS THEY WILL BE PLACED IN A  
9 FAMILY-LIKE SETTING AND THEY DON'T HAVE ANY SPECIAL  
10 NEEDS. WE ALSO HAVE SPECIALIZED BEHAVIOR HEALTH FOR  
11 TREATMENT IN FOSTER CARE, WHAT A YOUNG PERSON NEEDS,  
12 THERAPEUTIC INTERVENTION, THEY MAY BE ON SOME TYPE OF  
13 MEDICATION, OR MAYBE RECEIVING OUTPATIENT THERAPY, THEIR  
14 MEDICAL FOSTER CARE BECAUSE OF MEDICAL NEEDS AND THEN WE  
15 HAVE CONGREGATE CARE AS WELL.

16 Q. SO IT'S IMPORTANT TO IDENTIFY A PLACEMENT THAT  
17 IS MOST APPROPRIATE FOR EACH CHILD?

18 A. YES.

19 Q. AND IS IT THE GOAL OF YOUR AGENCY TO TRY TO  
20 PLACE CHILDREN IN THE LEAST RESTRICTIVE SETTING?

21 A. ABSOLUTELY.

22 Q. AFTER YOU WERE THE CHIEF IMPLEMENTATION OFFICER  
23 FOR IMPROVING OUTCOMES FOR CHILDREN, WHAT POSITION DID  
24 YOU HOLD?

25 A. SO OCTOBER 2016, I WAS PROMOTED TO DEPUTY

1 COMMISSIONER OF CHILD WELFARE OPERATIONS AT THE  
2 DEPARTMENT, IN WHICH I WAS RESPONSIBLE FOR BOTH THE  
3 DEPARTMENT HUMAN SERVICES, SO INTERNAL DIVISIONS AT THE  
4 DEPARTMENT OF HUMAN SERVICES CHILD WELFARE AS WELL AS  
5 THE COMMUNITY UMBRELLA AGENCY.

6 Q. AND YOUR POSITION AS DEPUTY COMMISSIONER OF  
7 CHILD WELFARE OPERATIONS, THAT'S OBVIOUSLY A HIGH LEVEL  
8 LEADERSHIP POSITION, CORRECT?

9 A. YES.

10 Q. AND YOU HAVE THE AUTHORITY TO MAKE DECISIONS ON  
11 BEHALF OF THE AGENCY, IS THAT CORRECT?

12 A. YES.

13 Q. TURNING YOUR ATTENTION TO FOSTER CARE GENERALLY  
14 IN PENNSYLVANIA, WILL YOU PLEASE EXPLAIN TO THE COURT  
15 HOW MANY FOSTER CARE AGENCIES -- HOW THE FOSTER CARE  
16 SYSTEM WORKS IN PENNSYLVANIA?

17 A. SO THE FOSTER CARE SYSTEM WORKS -- THE  
18 PENNSYLVANIA DEPARTMENT OF HUMAN SERVICES GIVES FOSTER  
19 CARE AGENCIES THE AUTHORITY TO EITHER APPROVE,  
20 DISAPPROVE OR PROVISIONALLY APPROVE FOSTER PARENTS. A  
21 FOSTER PARENT WOULD CONTACT A PARTICULAR -- CONTACT THE  
22 PARTICULAR AGENCY ON THEIR OWN BECAUSE THEY ARE  
23 INTERESTED IN BECOMING A FOSTER PARENT. IN DOING --

24 Q. EXCUSE ME, MS. ALI, MAY I INTERRUPT YOU FOR A  
25 MOMENT BECAUSE THAT IS ACTUALLY NOT WHAT I WAS INQUIRING

1 OF YOU .

2 SO STATE LAW REQUIRES HOW MANY CHILDREN  
3 -- EACH AGENCY, SUCH AS DHS, IT MANDATES THAT THEY ARE  
4 RESPONSIBLE FOR PROVIDING SERVICES TO CHILDREN WHO HAVE  
5 BEEN ABUSED OR NEGLECTED OR WHO ARE IN NEED OF ANY  
6 IN-HOME SERVICES, CORRECT?

7 A. YES .

8 Q. AND DHS DOES THAT HOW?

9 A. HOW DHS DOES THAT IS DHS WILL DO AN  
10 INVESTIGATION. SO WE WILL GET A REPORT INTO OUR  
11 HOTLINE, WE WILL DO AN INVESTIGATION BASED ON THE  
12 ALLEGATIONS IN THE REPORT. DURING THE COURSE OF OUR  
13 INVESTIGATION IF WE DETERMINE THAT A YOUNG PERSON THAT  
14 THERE IS PRESENT DANGER OR ACTIVE SAFETY THREAT IN A  
15 PARTICULAR HOME IN WHICH WE CANNOT MITIGATE, THEN WE  
16 WOULD SEEK AN ORDER OF PROTECTIVE CUSTODY IN ORDER TO  
17 REMOVE THE YOUNG PERSON FROM HIS OR HER HOME .

18 Q. NOW, AFTER THE DEPARTMENT REMOVES A CHILD FROM  
19 THE HOME, HOW DOES THE DEPARTMENT GO ABOUT LOCATING AN  
20 ALTERNATIVE HOME FOR THAT CHILD?

21 A. SO THE DHS INVESTIGATING SOCIAL WORKER UPON  
22 REMOVAL WILL COMPLETE A REFERRAL. THAT REFERRAL GOES  
23 OVER TO OUR CENTRAL REFERRAL UNIT ELECTRONICALLY AS WELL  
24 AS TO OUR COMMUNITY UMBRELLA AGENCY ELECTRONICALLY.

25 Q. PRIOR TO THAT REFERRAL, IS THERE AN ATTEMPT TO

1 PLACE CHILDREN WITH A KIN?  
2 A. YES. SO THEY STILL NEED A REFERRAL, SO THE  
3 FIRST QUESTION THAT WE WOULD ASK OF CARE A PARENT, THE  
4 CHILD IF THE CHILD IS AN APPROPRIATE AGE IS WHETHER OR  
5 NOT THERE IS AN APPROPRIATE KINSHIP CARE GIVER OR WHO IS  
6 IN YOUR FAMILY OR WHO DO YOU KNOW IN TERMS OF A FRIEND,  
7 IS THERE A COACH, IS THERE A TEACHER IN WHICH WE CAN  
8 PLACE THE YOUNG PERSON WITH SOMEONE THAT THEY KNOW  
9 VERSUS PLACING THEM IN FOSTER CARE. IF THE FAMILY OR  
10 THE CHILD IS ABLE TO IDENTIFY A POTENTIAL FAMILY MEMBER,  
11 DHS INVESTIGATIVE SOCIAL WORKER COMPLETES EMERGENCY  
12 CLEARANCES IN WHICH WE GET THE SAME DAY. THOSE  
13 CLEARANCES WILL BE A CHILD ABUSE CLEARANCE TO MAKE SURE  
14 THERE IS NO ABUSE OR NEGLECT. WE COMPLETE AN ONLINE  
15 STATE CRIMINAL CLEARANCE TO MAKE SURE THERE ARE NO  
16 CRIMINAL ACTIVITIES OR NO PROHIBITED OFFENSES THAT WILL  
17 BAR THE PERSON FROM BECOMING A KINSHIP CARE GIVER. WE  
18 ALSO DO A DHS HISTORY CHECK TO INSURE THAT THERE IS NO  
19 ACTIVE DHS CASE OR HISTORY AGAIN THAT WOULD PROHIBIT US  
20 FROM PLACING THE YOUNG PERSON WITH A PARTICULAR  
21 RELATIVE. AND THEN WE COMPLETE A HOME ASSESSMENT TO  
22 GATHER INFORMATION TO DETERMINE WHETHER OR NOT IT IS AN  
23 APPROPRIATE PLACEMENT FOR THE CHILD.  
24 AFTER THAT DETERMINATION IS MADE, AGAIN  
25 THE REFERRAL IS OVER ELECTRONICALLY TO THE CENTRAL

1 REFERRAL UNIT. THE CENTRAL REFERRAL UNIT WOULD THEN  
2 GATHER THE ADDITIONAL INFORMATION AND SEND THAT  
3 PARTICULAR FILE TO A FOSTER CARE AGENCY.

4 Q. HOW MANY FOSTER CARE AGENCIES ARE THERE IN  
5 PHILADELPHIA CURRENTLY?

6 A. 30.

7 Q. AND WHO LICENSES THE FOSTER CARE AGENCIES?

8 A. THE STATE LICENSES FOSTER CARE AGENCIES, PADHS.

9 Q. AND WILL YOU PLEASE INFORM THE COURT AS TO WHAT  
10 EFFORTS ARE MADE IN TERMS OF THE GEOGRAPHIC LOCATION OF  
11 WHERE CHILDREN WILL BE PLACED IN FOSTER HOMES?

12 A. IT IS OUR ATTEMPT TO PLACE YOUNG PEOPLE IN THEIR  
13 COMMUNITY TO ENSURE THAT YOUNG PEOPLE MAY MAINTAIN A  
14 CONNECTION TO THEIR COMMUNITY, CERTAINLY MAINTAIN THE  
15 SCHOOL THAT THEY ARE ATTENDING, ANY ACTIVITIES THAT THEY  
16 ARE ATTENDING, IF IT IS SAFE FOR THAT YOUNG PERSON TO  
17 MAINTAIN -- BE MAINTAINED IN THEIR COMMUNITY. IF NOT,  
18 BECAUSE OUR FOSTER CARE AGENCIES ARE CITY-WIDE AND THEY  
19 STILL HAVE AN APPROPRIATE MATCH, ALTHOUGH IT MAY BE IN A  
20 DIFFERENT SECTION OF THE CITY, THEN IT IS THE  
21 RESPONSIBILITY FOR THE CUA CASE MANAGER TO ENSURE THAT  
22 THE CHILD CONTINUES TO REMAIN IN THE SAME SCHOOL,  
23 CONTINUE TO RECEIVE THE SAME SERVICES.

24 Q. SO WE HAVE BEEN TALKING ABOUT CUA'S AND ALSO  
25 FOSTER CARE AGENCIES.

1 A. YES.

2 Q. COULD YOU PLEASE DIFFERENTIATE FOR THE COURT THE  
3 DISTINCTION BETWEEN FOSTER CARE AGENCIES AND CUA  
4 AGENCIES?

5 A. YES. THE CUA'S ARE COMMUNITY UMBRELLA AGENCIES.  
6 AS I STATED, THE CITY IS DIVIDED INTO TEN GEOGRAPHICAL  
7 NEIGHBORHOOD, IF YOU WILL. AND THE COMMUNITY UMBRELLA  
8 AGENCIES -- WE ACTUALLY HAVE SIX PROVIDERS WHO ARE  
9 RESPONSIBLE FOR PROVIDING THE CASE MANAGEMENT SERVICES  
10 TO CHILDREN AND FAMILIES WHO ARE ACCEPTED FOR FORMAL  
11 CHILD WELFARE SERVICES. SO FOR EXAMPLE, IF A FAMILY IS  
12 RECEIVING IN-HOME SERVICES BECAUSE WE ARE ABLE TO  
13 MAINTAIN A CHILD IN THEIR HOME, THEN THE CUA CASE  
14 MANAGER IS RESPONSIBLE FOR ENSURING THE CHILD'S SAFETY  
15 THROUGH WEEKLY VISITATION, IS RESPONSIBLE FOR DEVELOPING  
16 A CASE PLAN FOR THE FAMILY SO THAT THE FAMILY KNOWS WHAT  
17 SERVICES NEED TO BE PROVIDED SO THAT WE CAN SAFELY CLOSE  
18 THEIR CASE. THE CUA CASE MANAGER IS RESPONSIBLE FOR ALL  
19 ASSESSMENTS AND ALL REFERRALS OR INTERVENTIONS THAT THE  
20 FAMILY NEEDS.

21 IF THE CUA CASE MANAGER -- IF A YOUNG  
22 PERSON IS IN PLACEMENT, THE CUA CASE MANAGER AGAIN IS  
23 RESPONSIBLE FOR ALL CASE MANAGEMENT ACTIVITIES WHICH  
24 INCLUDES THE SAME THING, ASSESSMENT AND SAFETY THROUGH  
25 VISITATION. THAT VISITATION IS ACTUALLY MONTHLY, CASE



1 PLANNING AND INTERVENTION THAT THE FAMILY NEEDS AS WELL.

2 Q. AND IF A CHILD HAS SPECIAL NEEDS AND HAS TO SEE  
3 A THERAPIST, FOR EXAMPLE, OR HAS MULTIPLE MEDICAL  
4 APPOINTMENTS TO ATTEND, WHOSE RESPONSIBILITY IS IT TO  
5 ENSURE THAT THE CHILD RECEIVES THOSE SERVICES AND  
6 ATTENDS THOSE APPOINTMENTS?

7 A. SO THE FOSTER CARE PARENT, BECAUSE WE WANT  
8 FOSTER PARENTS TO TREAT THE CHILD LIKE IT'S THEIR CHILD,  
9 IS RESPONSIBLE FOR TAKING THE CHILD TO SCHOOL, MEDICAL  
10 APPOINTMENTS, BEHAVIORAL HEALTH APPOINTMENTS. HOWEVER,  
11 IN THE EVENT -- BECAUSE AT TIMES FOSTER PARENTS MAY HAVE  
12 MULTIPLE CHILDREN IN THEIR HOMES, IN THE EVENT THAT THEY  
13 ARE UNABLE TO DO SO, IT IS THE CUA CASE MANAGER'S  
14 RESPONSIBILITY.

15 Q. AND NOW WILL YOU PLEASE EXPLAIN THE ROLE OF THE  
16 FOSTER CARE AGENCY?

17 A. YES. THE FOSTER CARE AGENCY IS RESPONSIBLE FOR  
18 IDENTIFYING POTENTIAL FOSTER PARENTS; THEY ARE  
19 RESPONSIBLE FOR RECRUITING THOSE FOSTER PARENTS; THEY  
20 ARE RESPONSIBLE FOR PROVIDING TRAINING OF FOSTER PARENTS  
21 AND KINSHIP CARE PARENTS, AND THEY ARE ALSO RESPONSIBLE  
22 FOR THE CERTIFICATION AND MAINTAINING THE CERTIFICATION  
23 OF THE FOSTER PARENTS.

24 Q. AND THE CERTIFICATION CRITERIA IS DETERMINED BY  
25 THE PENNSYLVANIA DEPARTMENT OF HUMAN SERVICES?

1 A. YES.

2 Q. AND DHS CONTRACTS WITH WHOM?

3 A. DHS CONTRACTS WITH THE FOSTER CARE PROVIDER  
4 AGENCIES.

5 Q. AND THE FOSTER CARE AGENCIES CONTRACT WITH THE  
6 CUA'S?

7 A. NO, DHS ALSO CONTRACTS WITH THE CUA'S. SO DHS  
8 HAS CONTRACTS WITH THE COMMUNITY UMBRELLA AGENCIES AS  
9 WELL AS FOSTER CARE AGENCIES.

10 MS. BARCLAY: YOUR HONOR, I WOULD OBJECT  
11 TO THE LEADING QUESTIONS.

12 THE COURT: OVERRULED.

13 BY MS. OLIVER:

14 Q. AND FOR PURPOSES OF THIS LITIGATION WITH REGARD  
15 TO CATHOLIC SOCIAL SERVICES, CATHOLIC SOCIAL SERVICES IS  
16 A FOSTER CARE AGENCY?

17 A. YES, IT IS.

18 Q. AND CATHOLIC SOCIAL SERVICES ALSO HAS THE CUAS,  
19 IS THAT CORRECT?

20 A. YES.

21 Q. SO WHO MAKES THE DETERMINATION AS TO WHETHER OR  
22 NOT A CHILD IS PLACED IN A PARTICULAR HOME?

23 A. THE CENTRAL REFERRAL UNIT MAKES THE  
24 DETERMINATION OF THE APPROPRIATE LEVEL OF CARE. SO  
25 WHETHER OR NOT THE CHILD HAS TO BE PLACED IN FOSTER

1 CARE, GENERAL FOSTER CARE, TREATMENT FOSTER CARE. THE  
2 FOSTER CARE. WE THEN -- THE CENTRAL REFERRAL UNIT THEN  
3 SENDS OVER THAT REFERRAL INFORMATION TO THE FOSTER CARE  
4 AGENCY AND THE FOSTER CARE AGENCY SELECTS THE FOSTER  
5 PARENT AND BASED ON THE REFERRAL INFORMATION THAT CRU  
6 SYNTHESISES.

7 Q. DO FOSTER PARENTS HAVE THE ABILITY TO DECIDE  
8 WHICH FOSTER CARE AGENCY THEY WOULD LIKE TO WORK WITH?

9 A. YES.

10 Q. ARE THERE INSTANCES WHEREIN THE DEPARTMENT OF  
11 HUMAN SERVICES HAS EVER OPPOSED A CHILD'S PLACEMENT IN A  
12 PARTICULAR HOME?

13 A. YES.

14 Q. AND WILL YOU PLEASE INFORM THE COURT, FOR  
15 EXAMPLE, LIKE A CIRCUMSTANCE UNDER WHICH THAT MIGHT  
16 OCCUR?

17 A. YES. PRIOR TO THE CERTIFICATION OF A FOSTER  
18 PARENT, THE FOSTER CARE PROVIDER AGENCY SUBMITS  
19 INFORMATION TO THE DEPARTMENT OF HUMAN SERVICES BY WAY  
20 OF OUR PROVIDER UNIT SO THAT WE CAN ISSUE WHAT WE CALL A  
21 PROVIDER LOCATION CODE FOR THAT PARTICULAR FOSTER  
22 PARENT. THAT CODE TELLS YOU WHERE THE FOSTER PARENT IS  
23 LOCATED. BUT PART OF THAT CODE IS THAT WE DO  
24 BACKGROUND, A DHS BACKGROUND TO DETERMINE WHETHER OR NOT  
25 THE FOSTER PARENT IS KNOWN TO THE DEPARTMENT OF HUMAN

1 SERVICES, EITHER HAVE AN ACTIVE PLACEMENT OR ACTIVE CASE  
2 WITH THE DEPARTMENT OF HUMAN SERVICES OR WHETHER OR NOT  
3 THEY HAD A DHS HISTORY. SO THERE HAVE BEEN TIMES IN  
4 WHICH FOSTER PARENTS, POTENTIAL FOSTER PARENT MAY HAVE  
5 AN ACTIVE DHS CASE IN WHICH THEIR CHILD, FOR EXAMPLE, IS  
6 IN PLACEMENT ON THE DELINQUENT SIDE OF THE SYSTEM. IN  
7 THOSE SITUATIONS, WE WOULD NOT ISSUE A PROVIDER LOCATION  
8 CODE. OR WE MAY FIND SOMETHING IN THE FOSTER PARENT  
9 HISTORY, THEY MAY HAVE HAD AN EXTENSIVE HISTORY WITH THE  
10 DEPARTMENT OF HUMAN SERVICES THAT COULD BE A RECENT  
11 HISTORY. AGAIN, WE WOULD DENY THE ISSUANCE OF A  
12 PROVIDER LOCATION CODE IN THOSE SITUATIONS.

13 Q. THANK YOU.

14 YOU TALKED ABOUT THE FACT THAT CUA CASE  
15 MANAGERS HAVE CERTAIN RESPONSIBILITIES WITH REGARD TO  
16 CHILDREN. WHAT IS THE CUA CHAIN OF COMMAND?

17 A. SO THE CUA CASE MANAGER REPORTS TO A CUA  
18 SUPERVISOR WHO IN TURN REPORTS TO A CASE MANAGEMENT  
19 DIRECTOR WHO IN TURN REPORTS TO A DIRECTOR.

20 Q. AND IS THERE AN OPERATIONS DIRECTOR FOR A CUA?

21 A. IT DEPENDS. EACH CUA HAS A DIFFERENT STRUCTURE.  
22 SO SOME HAVE OPERATIONS DIRECTOR, PARTICULARLY THE ONES  
23 WHO MAY MANAGE TWO COMMUNITY UMBRELLA AGENCIES, BUT FOR  
24 THE MOST PART, MOST CUA'S REPORT FROM THEIR DIRECTOR TO  
25 AN EXECUTIVE DIRECTOR FOR THE AGENCY.

1 Q. MS. ALI, DO YOU HAVE INFORMATION REGARDING  
2 APPROXIMATELY HOW MANY CHILDREN WHO ARE IN PLACEMENT --  
3 WELL, HOW MANY CHILDREN AT THIS TIME TO YOUR KNOWLEDGE  
4 APPROXIMATELY ARE IN PLACEMENT THROUGH THE DEPARTMENT OF  
5 HUMAN SERVICES?

6 A. 6,000 CHILDREN.

7 Q. OKAY. AND OF THOSE CHILDREN, CAN YOU INFORM THE  
8 COURT ROUGHLY APPROXIMATELY HOW MUCH OF THOSE CHILDREN  
9 ARE PLACED IN KINSHIP CARE?

10 A. SO ABOUT 45 PERCENT OF THE CHILDREN WHO ARE IN  
11 PLACEMENT ARE IN KINSHIP CARE.

12 Q. AND ALSO WITH REGARD TO THE GEOGRAPHIC LOCATION  
13 OF CHILDREN IN TERMS OF THEIR PLACEMENT, COULD YOU TELL  
14 THE COURT APPROXIMATELY WHAT PERCENTAGE OF CHILDREN LIVE  
15 WITHIN 5 MILES OF THEIR HOME OF ORIGIN?

16 A. APPROXIMATELY 52 PERCENT OF THE CHILDREN IN  
17 PLACEMENT LIVE WITHIN 5 MILES.

18 Q. APPROXIMATELY WHAT PERCENTAGE OF CHILDREN ARE  
19 PLACED WITHIN 10 MILES OF THEIR HOME OF ORIGIN?

20 A. APPROXIMATELY 76 PERCENT. AND THOSE ARE FOR  
21 CHILDREN AND YOUTH WHO ARE IN FOSTER CARE OR KINSHIP  
22 CARE SETTINGS.

23 Q. THANK YOU.

24 ARE THERE SITUATIONS WHEN FOSTER PARENTS  
25 WORK FOR ONE AGENCY AND THEY DECIDE TO CHANGE AGENCIES?

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 YOU TALKED A BIT ABOUT FOSTER HOME PLACEMENT, FOSTER  
2 CARE HOME PLACEMENTS. CAN YOU TALK A LITTLE BIT ABOUT  
3 THE OTHER TYPES OF PLACEMENTS SUCH AS CONGREGATE CARE,  
4 GROUP HOMES AND MEDICAL TREATMENT FACILITIES?

5 A. YES. SO CONGREGATE CARE IS THE BROADER TERM  
6 WHEN WE TALK ABOUT NONFAMILY-LIKE SETTINGS. SO THEY  
7 CONSIST OF GROUP HOMES IN WHICH GROUP HOMES ARE LOCATED  
8 WITHIN THE COMMUNITY. THEY ARE IN VARIOUS SECTIONS OF  
9 THE CITY AND OUTSIDE THE CITY. THE YOUNG PERSON TENDS  
10 TO -- TYPICALLY WILL ATTEND A SCHOOL THAT IS IN THEIR  
11 PARTICULAR COMMUNITY. WE ALSO HAVE CHILD WELFARE  
12 PLACEMENT THAT I CALL INSTITUTIONAL PLACEMENTS. THOSE  
13 PLACEMENTS ARE CAMPUS-LIKE PLACEMENTS IN WHICH THE YOUNG  
14 PERSON LIVES ON THE CAMPUS AND THE SCHOOL IS PRIMARILY  
15 AN ON-GROUNDS SCHOOL IN WHICH IT IS RUN BY THE  
16 PARTICULAR PLACEMENT AGENCY. AND THEN THERE ARE  
17 RESIDENTIAL TREATMENT FACILITIES. THESE ARE FACILITIES  
18 IN WHICH A YOUNG PERSON HAS A PSYCHIATRIC EVALUATION  
19 THAT INDICATES THAT THERE IS A MEDICAL NECESSITY BECAUSE  
20 THAT YOUNG PERSON NEEDS A LEVEL OF TREATMENT. THE RTFS  
21 ARE CONTRACTED BY COMMUNITY BEHAVIORAL HEALTH, WHICH IS  
22 A MANAGED CARE ORGANIZATION, AND DHS ALSO HOLDS A SMALL  
23 CONTRACT WITH THE RESIDENTIAL TREATMENT FACILITIES IF  
24 THE YOUNG PERSON IS COMMITTED TO THE DEPARTMENT TO  
25 PROVIDE A PERSONAL ONE-ON-ONE FOR THE CHILD OR YOUTH.



1 Q. SO AN ASSESSMENT IS DONE WHICH DETERMINES THE  
2 TYPE OF PLACEMENT THAT WOULD BE BEST SUITED TO A  
3 PARTICULAR CHILD?

4 A. YES.

5 Q. AND WILL YOU TALK ABOUT RESPITE CARE, PLEASE?

6 A. YES. RESPITE CARE -- SO RFPA'S ARE LICENSED  
7 FOSTER PARENTS WHO ARE WILLING TO PROVIDE TEMPORARY CARE  
8 FOR A CHILD OR A YOUTH. RESPITE PROVIDERS TYPICALLY  
9 WANT TO DO SHORT-TERM AS OPPOSED TO LONG-TERM PLACEMENTS  
10 FOR CHILDREN AND YOUTH.

11 Q. AND WHY MIGHT RESPITE CARE BE USED?

12 A. RESPITE CARE IS USED FOR A NUMBER OF REASONS.  
13 WHEN YOUNG PEOPLE HAVE HIGHER LEVEL OF NEED SUCH AS  
14 BEHAVIORAL HEALTH NEEDS OR MEDICAL NEEDS, A FOSTER  
15 PARENT MAY NEED A BREAK, IF YOU WILL. SO THAT CHILD OR  
16 YOUTH WILL BE PLACED IN RESPITE CARE, OR YOU COULD USE  
17 RESPITE CARE IF A FOSTER PARENT IS GOING OUT OF TOWN,  
18 FOR EXAMPLE, FOR THE WEEKEND. AND THEN THE CHILD AGAIN  
19 IS PLACED TEMPORARY IN RESPITE.

20 Q. ONCE A CHILD IS PLACED IN CARE, DOES DHS HAVE  
21 THE AUTHORITY TO MOVE THAT CHILD TO A DIFFERENT HOME?

22 A. DHS HAS TO SEEK APPROVAL FROM THE COURT IN ORDER  
23 TO MOVE A CHILD FROM A PLACEMENT. AND IF IT'S AN  
24 EMERGENCY SITUATION, THEN DHS CAN MOVE THE CHILD  
25 IMMEDIATELY. BUT AGAIN, WE HAVE TO SEEK COURT APPROVAL

1 ON THE BACK END. IF IT IS A NONEMERGENCY SITUATION,  
2 THEN WE HAVE TO GET COURT APPROVAL BEFORE THE MOVE IS TO  
3 TAKE PLACE.

4 Q. THANK YOU.

5 MS. OLIVER: THE COURT'S INDULGENCE,  
6 PLEASE.

7 (BRIEF PAUSE IN THE PROCEEDING.)

8 MS. OLIVER: THANK YOU, YOUR HONOR.

9 BY MS. OLIVER:

10 Q. MS. ALI, GENERALLY DO CUA'S MAKE THE FIRST -- DO  
11 FOSTER CARE AGENCIES AND CUA'S MAKE REFERRALS TO OTHER  
12 AGENCIES?

13 A. NO, ALL REFERRALS COME THROUGH THE CENTRAL  
14 REFERRAL UNIT AT DHS. WE CENTRALIZED THAT PROCESS BACK  
15 IN JULY OF 2017. THE ONLY TIME A FOSTER CARE AGENCY CAN  
16 MAKE REFERRALS IS IF THEY ARE REFERRING INTERNALLY TO  
17 THEIR PROGRAM. SO FOR EXAMPLE, NET -- IF A YOUNG PERSON  
18 IS IN FOSTER HOME THROUGH NORTHEAST TREATMENT, THE  
19 FOSTER -- THE CHILD IS DISRUPTIVE OR NEEDS TO MOVE FROM  
20 THEIR FOSTER CARE AGENCY, THEN NORTHEAST TREATMENT OR  
21 NET WILL LOOK WITHIN THEIR OWN CONTINUUM FOR THE  
22 REFERRALS TO OCCUR.

23 Q. NOW, YOU HEARD TESTIMONY TODAY THAT THE  
24 DEPARTMENT OF HUMAN SERVICES HAS CLOSED INTAKE WITH  
25 CATHOLIC SOCIAL SERVICES, CORRECT?

1 A. YES.

2 Q. AND TO YOUR KNOWLEDGE, WHO MADE THAT DECISION?

3 A. COMMISSIONER CYNTHIA FIGUEROA.

4 Q. HAVE THERE BEEN OTHER OCCASIONS IN THE PAST WHEN  
5 THE DEPARTMENT OF HUMAN SERVICES HAS CLOSED INTAKE AT  
6 OTHER AGENCIES?

7 A. YES.

8 Q. AND WHEN THAT HAS HAPPENED, COULD YOU PLEASE  
9 DESCRIBE THAT PROCESS TO THE COURT AND WHAT HAS HAPPENED  
10 TO CHILDREN WHEN INTAKE HAS BEEN CLOSED AT AGENCIES?

11 A. SO WHEN INTAKE IS CLOSED AT AGENCIES, THE  
12 CENTRAL REFERRAL UNIT WILL NO LONGER SEND NEW REFERRALS  
13 TO A PARTICULAR AGENCY. HOWEVER, WHEN A CHILD OR A  
14 YOUTH IS KNOWN TO A PARTICULAR AGENCY, OR IF THEY HAVE  
15 SIBLINGS WITH A PARTICULAR AGENCY, THEN HIGHER LEVEL  
16 LEADERSHIP AT DHS WILL GRANT EXCEPTIONS.

17 Q. AND TO YOUR KNOWLEDGE, IN LIGHT OF THE CURRENT  
18 STOPPAGE OF REFERRALS TO CATHOLIC SOCIAL SERVICES, HAVE  
19 THERE BEEN ANY EXCEPTIONS TO THAT?

20 A. YES.

21 Q. AND WHO MAKES THE DETERMINATION AS TO WHETHER  
22 EXCEPTIONS SHOULD BE GRANTED?

23 A. I DO.

24 Q. AND WHO MAKES THE REQUESTS FOR THOSE EXCEPTIONS?

25 A. HIGHER LEVEL LEADERSHIP AT THE PARTICULAR

1 AGENCY. IF YOU TALK ABOUT -- IN THIS PARTICULAR CASE IT  
2 WOULD HAVE BEEN JIM AMATO FROM CATHOLIC SOCIAL SERVICES  
3 OR JIM BLACK FROM CATHOLIC SOCIAL SERVICES.

4 Q. AND WHEN INTAKE IS CLOSED AT A PARTICULAR  
5 AGENCY, WHAT HAPPENS TO THE CHILDREN WHO ARE ALREADY  
6 PLACED WITH THOSE AGENCIES?

7 A. THEY REMAIN WITH THE AGENCY.

8 MS. OLIVER: THANK YOU. I HAVE NO  
9 FURTHER QUESTIONS.

10 THE COURT: CROSS-EXAMINE.

11 MS. BARCLAY: MAY I CROSS THIS WITNESS,  
12 YOUR HONOR?

13 THE COURT: YES.

14 MS. BARCLAY: MAY I HAVE PERMISSION TO  
15 MOVE THIS CHAIR JUST TO PUT MY BINDER ON IT?

16 THE COURT: OKAY.

17 CROSS-EXAMINATION

18 BY MS. BARCLAY:

19 Q. GOOD AFTERNOON, MS. ALI.

20 A. GOOD AFTERNOON.

21 Q. YOU ENCOURAGE PROSPECTIVE FOSTER FAMILIES TO  
22 FIND A FOSTER AGENCY IN PHILADELPHIA THAT WOULD BE THE  
23 BEST FIT FOR THAT PARTICULAR FAMILY?

24 A. YES.

25 Q. YOU WANT FAMILIES TO FEEL CONFIDENT AND

1 COMFORTABLE ABOUT THE AGENCIES THEY CHOOSE?

2 A. YES.

3 Q. YOU TESTIFIED THAT PARENTS HAVE THE ABILITY TO  
4 DECIDE WHICH AGENCY TO WORK WITH?

5 A. YES.

6 Q. THESE AGENCIES WILL BE A BIG SUPPORT TO THE  
7 FOSTER PARENT DURING THEIR PARENTAL JOURNEY, WON'T THEY?

8 A. YES.

9 Q. THE DHS WORKS WITH A RANGE OF FOSTER CARE  
10 AGENCIES WITH DIFFERENT SPECIALTIES, RIGHT?

11 A. YES.

12 Q. THE MAYOR'S OFFICE HAS AN OFFICE OF LGBTQ  
13 AFFAIRS, CORRECT?

14 A. YES.

15 Q. THAT OFFICE DOES NOT PROVIDE SERVICES TO PEOPLE  
16 WHO DO NOT IDENTIFY AS LGBTQ, CORRECT?

17 MS. OLIVER: OBJECTION.

18 THE COURT: I DON'T KNOW THAT SHE WOULD  
19 KNOW THAT.

20 THE WITNESS: I WAS GOING TO SAY I DON'T  
21 KNOW.

22 BY MS. BARCLAY:

23 Q. FAIR ENOUGH.

24 THAT OFFICE HAS PARTNERED WITH OTHER  
25 FOSTER AGENCIES LIKE SECOND CHANCE AND PHILADELPHIA

1 FAMILY PRIDE FOR LGBTQ RECRUITING EVENTS, CORRECT?

2 MS. OLIVER: OBJECTION.

3 THE COURT: IF YOU KNOW.

4 THE WITNESS: I'M NOT SURE.

5 MS. BARCLAY: WITH INDULGENCE, YOUR  
6 HONOR.

7 THE COURT: YES.

8 (BRIEF PAUSE IN THE PROCEEDING.)

9 MS. BARCLAY: PERMISSION TO APPROACH THE  
10 WITNESS, YOUR HONOR?

11 THE COURT: YES.

12 BY MS. BARCLAY:

13 Q. MS. ALI, I HAVE HANDED YOU A DOCUMENT ENTITLED  
14 FOSTER PARENT RECRUITMENT. THIS IS ON THE PHILADELPHIA  
15 FAMILY PRIDE WEBSITE. DOES THAT LOOK CORRECT TO YOU?

16 A. YES.

17 Q. THE DOCUMENT SAYS THAT PHILADELPHIA FAMILY PRIDE  
18 HAS PARTNERED WITH THE MAYOR'S OFFICE WITH LGBTQ  
19 AFFAIRS?

20 MS. OLIVER: OBJECTION.

21 MS. BARCLAY: I AM NOT SURE WHAT THE  
22 OBJECTION IS, YOUR HONOR.

23 MS. OLIVER: YOUR HONOR, THIS DOCUMENT IS  
24 NOT A DOCUMENT, THAT PAGE, THAT WAS ISSUED BY THE  
25 DEPARTMENT OF HUMAN SERVICES, IT'S A DOCUMENT FROM

1 PHILADELPHIA FAMILY PRIDE.

2 MS. BARCLAY: YOUR HONOR, I AM JUST  
3 ASKING HER A QUESTION ABOUT IT, NUMBER ONE, AND NUMBER  
4 TWO, THE RULES OF EVIDENCE DON'T APPLY AT A PRELIMINARY  
5 INJUNCTION HEARING.

6 THE COURT: WELL, IT SPEAKS FOR ITSELF.  
7 OVERRULED.

8 BY MS. BARCLAY:

9 Q. MS. ALI, IT SAYS THAT PHILLY FAMILY PRIDE HAS  
10 PARTNERED WITH THE MAYOR'S OFFICE OF LGBTQ AFFAIRS, A  
11 SECOND CHANCE AND DHS RECRUIT LGBTQ ADULTS, SINGLE OR  
12 PARTNERED, IN THE PHILADELPHIA AREA TO BECOME FOSTER  
13 PARENTS, SPECIFICALLY FOR LGBTQ YOUTHS IN THE SYSTEM.  
14 DID I READ THAT CORRECTLY?

15 A. YES.

16 Q. DOES THIS REFRESH YOUR RECOLLECTION ABOUT ANY  
17 RECRUITING THAT IS GOING ON BY AGENCIES FOR LGBTQ  
18 POPULATION?

19 A. IT ACTUALLY REFRESHES MY RECOLLECTION ABOUT THE  
20 FOSTER CARE RECRUITMENT THAT THE DEPARTMENT OF HUMAN  
21 SERVICES DID IN MARCH IN WHICH WE HAD A RECRUITMENT  
22 STRATEGY AND WE DID A PHONE BANK IN WHICH WE WANTED  
23 LGBTQ INDIVIDUALS WHO ARE INTERESTED IN PROVIDING THAT  
24 LEVEL OF CARE TO YOUNG PEOPLE. SO WE ACTUALLY TARGETED  
25 -- THE PHILADELPHIA DEPARTMENT OF HUMAN SERVICES

1 ACTUALLY TARGETED EVERYONE IN ALL FOSTER CARE AGENCIES  
2 AND NOT JUST ONE FOSTER CARE AGENCY IN PARTICULAR.

3 Q. SO DHS WAS ENCOURAGING RECRUITMENT OF POPULATION  
4 FOR PARENTS TO CARE FOR LGBTQ YOUTHS, RIGHT?

5 A. YES.

6 Q. AND THAT'S A PRIORITY FOR DHS?

7 A. ONE OF MANY, YES.

8 Q. ONE OF THE POINTS OF THESE TARGETED RECRUITING  
9 SESSIONS WAS ALSO TO FIND LGBTQ FOSTER PARENTS TO CARE  
10 FOR LGBTQ YOUTHS, CORRECT?

11 A. LGBTQ AFFIRMING FOSTER PARENTS. SO THE FOSTER  
12 PARENTS IN AND OF THEMSELVES DID NOT HAVE TO BE LGBTQ.

13 Q. SURE. BUT THERE WAS ALSO AN EFFORT TO RECRUIT  
14 LGBTQ PARENTS NOW THAT THEY WERE A PRIORITY AS WELL,  
15 CORRECT?

16 A. YES.

17 Q. AND AS YOU SAID, TO FIND PARENTS WHO WOULD BE  
18 SUPPORTIVE AND AFFIRMING OF A LGBTQ FOSTER CHILD?

19 A. YES.

20 Q. IF A FAMILY WENT TO ANOTHER AGENCY LOOKING FOR A  
21 PARTICULAR EXPERTISE WITH SUPPORTING LGBTQ POPULATION,  
22 IT WOULD BE APPROPRIATE FOR THAT AGENCY TO SEND THAT  
23 COUPLE TO SECOND CHANCE, FOR EXAMPLE, IF THEY WANTED  
24 PARTICULAR EXPERTISE?

25 A. I WOULD NOT BE ABLE TO ANSWER THAT QUESTION.



1 Q. YOU WERE TRYING TO ENSURE THROUGH THESE PROGRAMS  
2 THAT LGBTQ POPULATIONS WOULD BE ABLE TO FIND A FOSTER  
3 AGENCY THAT IS A GOOD FIT FOR THEM AND THEY CAN BE  
4 CONFIDENT IN, RIGHT?

5 A. YES.

6 Q. IF LGBTQ POPULATIONS WERE NOT ABLE TO WORK WITH  
7 AN AGENCY THAT WAS A GOOD FIT OR THAT WAS AFFIRMING OF  
8 THEM, THOSE LGBTQ FAMILIES WOULD BE HARMED, RIGHT?

9 A. CAN YOU REPEAT YOUR QUESTION?

10 Q. IF LGBTQ FAMILIES WERE NOT ABLE TO WORK WITH AN  
11 AGENCY THAT WAS AFFIRMING OF THEM, THOSE LGBTQ FAMILIES  
12 WOULD BE HARMED, RIGHT?

13 A. YES.

14 Q. SO IT WAS IMPORTANT FOR THEM TO BE ABLE TO FIND  
15 AN AGENCY THAT IS A GOOD FIT?

16 A. YES.

17 Q. AND PREVENTING FAMILIES FROM WORKING WITH AN  
18 AGENCY THAT THEY THINK IS THE BEST FIT WOULD CAUSE THEM  
19 HARM, RIGHT?

20 A. ALL OF OUR AGENCIES -- THE REASON WHY WE DID A  
21 LGBTQ RECRUITMENT STRATEGY IS BECAUSE WE HAVE A NUMBER  
22 OF YOUNG PEOPLE WHO ARE LGBTQ.

23 Q. I UNDERSTAND, THAT'S NOT THE QUESTION I AM  
24 ASKING, MS. ALI.

25 A. WHAT IS THE QUESTION?

1 Q. IF A FAMILY WAS PREVENTED FROM AN AGENCY THAT  
2 THEY BELIEVE WOULD BE THE BEST FIT FOR THEM, WOULD THAT  
3 CAUSE A HARM FOR THE FAMILY?

4 MS. OLIVER: OBJECTION, YOUR HONOR.

5 THE COURT: SUSTAINED.

6 MS. OLIVER: JUST CUT IT DOWN, THE  
7 QUESTION AS TO WHAT WOULD BE HARMFUL TO THE FAMILY.

8 BY MS. BARCLAY:

9 Q. YOU HEARD FROM MRS. PAUL AND AND MS. FULTON AND  
10 MS. SIMMS-BUSCH OFFER TESTIMONY TODAY?

11 A. I DID.

12 Q. ALL OF THOSE INDIVIDUALS TALKED ABOUT HOW  
13 CATHOLIC SOCIAL SERVICES IS A GOOD FIT FOR THEM, RIGHT?

14 A. YES.

15 Q. DO YOU THINK IT'S IMPORTANT FOR FAMILIES TO BE  
16 ABLE TO FEEL CONFIDENT AND CONFIDENT WITH THE OPTION  
17 THEY CHOOSE?

18 A. YES.

19 Q. AND YOU FEEL IT'S ALSO IMPORTANT FOR THOSE  
20 FAMILY TO FEEL SUPPORTED AND CONFIDENT IN THEIR  
21 DECISION?

22 A. YES. AND, IN TURN, I THINK FOSTER CARE PROVIDER  
23 AGENCIES SHOULD MAKE THEM FEEL THAT WAY.

24 Q. YOU KNOW MS. PAUL FROM YOUR WORK AT DHS, RIGHT?

25 A. I DO NOT KNOW MS. PAUL PERSONALLY OR FROM MY

1 PROFESSIONAL WORK AT DHS .

2 Q. WE HAVE DISCUSSED HOW FAMILIES NEED TO BE ABLE  
3 TO FIND AN AGENCY THAT IS A GOOD FIT FOR THEM, BUT  
4 AGENCIES ALSO NEED TO EVALUATE PROSPECTIVE FAMILIES FOR  
5 FOSTER CARE, CORRECT?

6 A. YES .

7 Q. THERE ARE LIMITS ON WHO CAN BECOME A FOSTER  
8 PARENT?

9 A. YES. BASED ON THE 3700 REGULATIONS .

10 Q. YOU ALSO SAID THAT YOU MIGHT DENY A FAMILY BASED  
11 ON THEIR HISTORY WITH DHS THAT COMES TO YOU BEFORE  
12 CERTIFICATION, CORRECT?

13 A. WE DENY THE ISSUANCE OF A PROVIDER LOCATION  
14 CODE, NOT DENYING FOSTER PARENTS .

15 Q. THE PROVIDER LOCATION CODE FOR THE AGENCY?

16 A. THE PROVIDER LOCATION CODE FOR THE AGENCY, AND  
17 IT SPEAKS FOR THE AGENCY AS WELL AS THE PARTICULAR  
18 FOSTER HOME .

19 Q. SO IF YOU DENIED THE LOCATION CODE, WOULD THAT  
20 FAMILY BE ABLE TO BE A FOSTER PARENT THROUGH THAT  
21 AGENCY?

22 A. YES. THROUGH ANOTHER COUNTY .

23 Q. IN ANOTHER COUNTY?

24 A. YES .

25 Q. BUT NOT IN PHILADELPHIA?

1 A. YES.

2 Q. SO YOU'RE -- YOU HAVE DENIED THE ABILITY OF  
3 FAMILIES TO BE A FOSTER PARENT IN PHILADELPHIA BASED ON  
4 THEIR HISTORY WITH DHS?

5 A. I HAVE DENIED THE ISSUANCE OF A PROVIDER  
6 LOCATION CODE.

7 Q. WHICH HAS THE IMPACT OF PREVENTING THEM FROM  
8 BEING A FOSTER PARENT IN PHILADELPHIA, AS YOU JUST SAID?

9 A. YES.

10 Q. YOU ARE AWARE THAT STATE LAW ACTUALLY REQUIRES  
11 AGENCIES TO CONSIDER THE ABILITY OF THE APPLICANTS TO  
12 WORK IN PARTNERSHIP WITH THE FOSTER AGENCY, CORRECT?

13 A. YES.

14 Q. AND YOU SAID THAT THE STATE ACTUALLY LICENSES  
15 FOSTER AGENCIES.

16 A. YES.

17 Q. AND THAT REQUIREMENT I JUST QUOTED YOU, THAT'S  
18 STATE LAW, CORRECT?

19 A. YES.

20 Q. AND DHS'S CONTRACT REQUIRES CATHOLIC TO COMPLY  
21 WITH STATE LAW.

22 A. YES.

23 Q. THE DHS CONTRACT ALSO HAS A LIST OF CRIMINAL  
24 CONVICTIONS THAT WOULD PREVENT AN INDIVIDUAL FROM  
25 BECOMING A FOSTER PARENT.

1 A. YES.

2 Q. WHEN A FOSTER AGENCY IS CONSIDERING CERTIFYING A  
3 FAMILY FOR FOSTER -- TO FOSTER CHILDREN, STATE LAW  
4 REQUIRES THAT THE AGENCY CONSIDER ADDITIONAL FACTORS,  
5 AND I WANT TO LOOK AT YOU WITH WHAT SOME OF THOSE  
6 FACTORS ARE.

7 THE AGENCY IS REQUIRED TO CONSIDER THE  
8 ABILITY TO PROVIDE CARE, NURTURING, AND SUPERVISION TO  
9 CHILDREN.

10 A. YES.

11 Q. THE AGENCY HAS CONSIDERED THERE IS A  
12 DEMONSTRATED STABLE, MENTAL, AND EMOTIONAL ADJUSTMENT.

13 A. OF THE PARENT.

14 Q. OF THE PROJECTED FOSTER FAMILY.

15 A. YES. YES.

16 Q. AND THAT MIGHT EVEN REQUIRE A PSYCHOLOGICAL  
17 EVALUATION, CORRECT?

18 A. YES.

19 Q. WHETHER THE FAMILY HAS SUPPORTIVE COMMUNITY TIES  
20 IS ANOTHER FACTOR TO CONSIDER.

21 A. YES.

22 Q. THE AGENCY HAS TO CONSIDER FAMILIAL  
23 RELATIONSHIPS, ATTITUDES, AND EXPECTATIONS, ESPECIALLY  
24 THAT MIGHT AFFECT THE FOSTER CHILD.

25 A. YES.

1 Q. THEY HAVE TO CONSIDER THE FAMILY'S ABILITY TO  
2 ACCEPT THE CHILD'S RELATIONSHIP WITH HIS OWN PARENTS.

3 A. YES.

4 Q. THEY HAVE TO CONSIDER THE NUMBER AND  
5 CHARACTERISTICS OF CHILDREN BEST SUITED TO THE FOSTER  
6 FAMILY.

7 A. YES.

8 Q. AND THIS LAW REQUIRES AGENCIES TO CONSIDER THE  
9 ABILITY OF THE APPLICANT TO WORK IN PARTNERSHIP WITH THE  
10 FOSTER AGENCY.

11 A. YES.

12 Q. THIS INVOLVED A CONSIDERATION OF WHICH FAMILIES  
13 WOULD BE A GOOD FIT WITH THE AGENCIES.

14 A. I AM NOT SURE EXACTLY WHAT YOU ARE SAYING TO --  
15 IN TERMS OF GOOD FIT.

16 Q. THERE'S NOTHING IN STATE LAW THAT SAYS THAT  
17 AGENCIES MUST CERTIFY THE APPLICANT AFTER CONSIDERING  
18 THESE FACTORS, IS THERE?

19 A. I AM NOT SURE.

20 Q. YOU ARE NOT AWARE OF ANYTHING IN STATE LAW THAT  
21 SETS FORTH THAT REQUIREMENT, ARE YOU?

22 MS. OLIVER: OBJECTION.

23 THE COURT: SHE SAID SHE IS NOT SURE.

24 THE WITNESS: I AM NOT SURE.

25 MS. BARCLAY: JUST A MOMENT, YOUR HONOR.

1 BY MS. BARCLAY:

2 Q. DHS'S CONTRACT WITH CATHOLIC IS NOT JUST LIMITED  
3 TO FOSTER CARE SERVICES, CORRECT?

4 A. CORRECT.

5 Q. IT ALSO INVOLVES SERVICES FOR ADJUDICATED  
6 DELINQUENTS, ADJUDICATED DEPENDENT TEENS, AND  
7 REINTEGRATION SERVICES THAT COME FROM THE CENTRAL  
8 REFERRAL UNIT, CORRECT?

9 A. ONLY THE DEPENDENT SERVICES COME FROM THE  
10 CENTRAL REFERRAL UNIT.

11 Q. AND THE CONTRACT WITH CATHOLIC SOCIAL SERVICES  
12 INVOLVES SERVICES FOR THOSE DEPENDENT TEEN BOYS AND  
13 GIRLS, CORRECT?

14 A. YES.

15 Q. AND THE CONTRACT ALSO INVOLVES SERVICES FOR  
16 ADJUDICATED DELINQUENTS.

17 A. YES.

18 Q. AND THE CONTRACT INVOLVES REINTEGRATION  
19 SERVICES.

20 A. YES.

21 Q. THIS CONTRACT HAS A PROVISION ABOUT THE CITY'S  
22 PUBLIC ACCOMMODATION ORDINANCE.

23 A. YES.

24 Q. PUBLIC ACCOMMODATIONS IN PHILADELPHIA SHOULD  
25 ACCEPT ALL COMERS, RIGHT?

1 A. I DON'T KNOW THE SPECIFICS.

2 Q. CATHOLIC'S HAS BEEN PARTNERING WITH THE  
3 GOVERNMENT TO PROVIDE FOSTER CARE SERVICES FOR YEARS,  
4 RIGHT?

5 A. YES.

6 Q. THE DHS CONTRACT SPECIFICALLY OBSERVES THAT  
7 CATHOLIC IS AN ORGANIZATION WITH A RELIGIOUS MISSION.

8 MS. OLIVER: OBJECTION, YOUR HONOR. THE  
9 QUESTIONS SPECIFICALLY WITH REGARD TO THE DHS CONTRACT,  
10 THE CONTRACT WAS ENTERED AS AN EXHIBIT IN THESE  
11 PROCEEDINGS. AND I BELIEVE THE COURT CAN CERTAINLY  
12 REVIEW THE CONTRACT IF THE COURT DEEMS IT NECESSARY AND  
13 APPROPRIATE.

14 MS. BARCLAY: MAY I HAVE PERMISSION TO  
15 APPROACH THE WITNESS WITH THE CONTRACT, YOUR HONOR?

16 THE COURT: YES.

17 MS. OLIVER: YOUR HONOR, AT THIS TIME,  
18 BEFORE THIS DOCUMENT IS SHOWN TO THE WITNESS, IF WE CAN  
19 PLEASE TAKE A LOOK AT THE DOCUMENT.

20 THE COURT: YES.

21 BY MS. BARCLAY:

22 Q. MS. ALI, IF YOU CAN TURN YOUR ATTENTION TO THE  
23 BOTTOM OF PAGE 27. THIS IS ECF 13-3.

24 MS. OLIVER: OBJECTION, YOUR HONOR. I AM  
25 OBJECTING AT THIS TIME TO THIS WITNESS BEING QUESTIONED



1 REGARDING THE CONTRACT, AS THE CONTRACT SPEAKS FOR  
2 ITSELF AND THIS WITNESS IS NOT AN ATTORNEY.

3 MS. BARCLAY: IF THE CONTRACT SPEAKS FOR  
4 ITSELF, YOUR HONOR, THERE SHOULD NOT BE A PROBLEM  
5 BRIEFLY DISCUSSING THAT.

6 MS. OLIVER: YOUR HONOR, SHE IS ALSO NOT  
7 THE PERSON WHO NEGOTIATED THE CONTRACT AND WOULD NOT  
8 HAVE KNOWLEDGE SPECIFICALLY AS TO THE TERMS OF THE  
9 CONTRACT. I SUBMIT TO THE COURT THAT ON  
10 CROSS-EXAMINATION THAT HER TESTIMONY -- HER QUESTIONS  
11 SHOULD BE LIMITED TO QUESTIONS ABOUT DHS'S POLICY,  
12 PRACTICES OR PROCEDURES, AND SPECIFICALLY NOT QUESTIONS  
13 WITH REGARD TO THE CONTRACT ABOUT WHICH SHE DOES NOT  
14 HAVE KNOWLEDGE.

15 MS. BARCLAY: THE RELIGIOUS NATURE OF THE  
16 AGENCY, YOUR HONOR, IS RELEVANT TO QUESTIONS ABOUT FIT  
17 WITH FAMILIES AND THE POPULATION THAT THE AGENCY  
18 REACHES. AND SO WE ARE BRINGING THE WITNESS'S ATTENTION  
19 TO THAT FOR THE CROSS-EXAMINATION PURPOSES.

20 THE COURT: FOR THAT LIMITED PURPOSE, I  
21 WILL PERMIT IT.

22 BY MS. BARCLAY:

23 Q. MS. ALI, IF I COULD TURN YOUR ATTENTION TO THE  
24 BOTTOM OF PAGE 27 OF DOCUMENT ECF 13-3. THIS SAYS  
25 THAT --

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. IN ALL THE TIME YOU HAVE BEEN AT DHS, FOR THE  
3 18 YEARS, I BELIEVE YOU SAID -- CORRECT, MS. ALI?

4 A. YES.

5 Q. -- YOU ARE NOT AWARE OF ANYONE FILING A  
6 COMPLAINT AGAINST CATHOLIC SOCIAL SERVICES FOR  
7 PERFORMING FOSTER CARE CONSISTENT WITH THIS RELIGIOUS  
8 MISSION, ARE YOU?

9 THE COURT: ASK THAT QUESTION AGAIN.

10 BY MS. BARCLAY:

11 Q. IN THE 18 YEARS THAT YOU HAVE BEEN AT DHS, YOU  
12 ARE NOT AWARE OF ANYONE FILING A COMPLAINT AGAINST  
13 CATHOLIC FOR PERFORMING FOSTER CARE CONSISTENT WITH THIS  
14 RELIGIOUS MISSION, ARE YOU?

15 A. I'M NOT -- I DON'T KNOW. NO.

16 Q. YOU ARE NOT AWARE --

17 A. I AM NOT AWARE.

18 Q. YOU ARE NOT AWARE OF ANYONE FILING A COMPLAINT  
19 AGAINST CATHOLIC SOCIAL SERVICES IN THE PROVISION OF  
20 FOSTER CARE, TO YOUR KNOWLEDGE?

21 A. I AM UNSURE.

22 Q. CAN YOU THINK THAT AT THIS TIME ANY EXAMPLE OF A  
23 COMPLAINT FILED AGAINST CATHOLIC SOCIAL SERVICES IN THE  
24 PROVISION OF FOSTER CARE SERVICES?

25 A. I AM REALLY NOT SURE.

1 Q. WOULD YOU HAVE REMEMBERED IF A COMPLAINT WAS  
2 FILED AGAINST THE AGENCY?

3 MS. OLIVER: OBJECTION, YOUR HONOR; ASKED  
4 AND ANSWERED.

5 THE COURT: SHE IS NOT SURE.

6 THE WITNESS: I'M NOT SURE. I DON'T KNOW  
7 HOW --

8 MS. BARCLAY: I AM NOT SURE IF SHE'S NOT  
9 SURE SHE WOULD NEVER HAVE KNOWN ABOUT THE COMPLAINTS  
10 BECAUSE IT WOULD NOT HAVE COME TO HER ATTENTION, OR SHE  
11 JUST AT THIS TIME CAN'T THINK OF ANY.

12 THE COURT: SHE SAID SHE IS NOT SURE. SO  
13 SHE -- THAT'S HER ANSWER. SHE IS NOT SURE.

14 MS. BARCLAY: YOUR HONOR, MAY I HAVE  
15 PERMISSION TO JUST CONFIRM WHAT THAT ANSWER MEANS?

16 THE COURT: I WOULD THINK THAT'S BASIC  
17 ENGLISH. SHE IS NOT SURE.

18 MS. BARCLAY: OKAY.

19 BY MS. BARCLAY:

20 Q. YOU ARE NOT AWARE OF ANY FAMILIES THAT WERE  
21 PREVENTED FROM BECOMING FOSTER PARENTS BECAUSE OF  
22 CATHOLIC SOCIAL SERVICES?

23 MS. OLIVER: OBJECTION.

24 THE COURT: OVERRULED.

25 THE WITNESS: I WOULD NOT KNOW THAT.

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 A. IT DEPENDS .

2 Q. ONE OF THE WAYS THAT NON-RELATIVE FAMILY MEMBERS  
3 CAN BECOME A FOSTER AGENCY -- OR CAN BECOME FOSTER  
4 PARENTS IS BY APPROACHING A FOSTER AGENCY, CORRECT?

5 A. YES. THAT'S ONE OF THE WAYS.

6 Q. AND IF THEY COME THROUGH THAT WAY, AGENCIES WILL  
7 DECIDE TO EVALUATE THOSE FAMILIES AS PART OF THEIR  
8 NORMAL INTAKE PROCESS.

9 A. AS PART OF THEIR NORMAL -- CAN YOU DEFINE WHAT  
10 INTAKE PROCESS IS?

11 Q. LET ME ASK YOU THE QUESTION A DIFFERENT WAY.

12 IF AN AGENCY IS EVALUATING A FAMILY THAT  
13 CAME TO THEM ON THEIR OWN, THAT TYPE OF FOSTER FAMILY IS  
14 NOT ONE THAT WAS REFERRED TO THE AGENCY BY DHS, IS IT?

15 A. NOT NECESSARILY.

16 Q. AND KIN CARE IS A SITUATION WHERE DHS WOULD  
17 REFER AN ENTIRE FAMILY, CORRECT?

18 A. YES.

19 Q. AND YOU TESTIFIED EARLIER THAT DHS, WHEN IT  
20 MAKES REFERRALS, WILL IDENTIFY THE NEEDS OF THE FAMILY  
21 AS WELL AS THE NEEDS OF THE CHILD TO TRY TO FIND THE  
22 ABILITY TO MEET THOSE NEEDS, CORRECT?

23 A. THE NEEDS OF THE CHILD. SO WE DETERMINE THE  
24 NEEDS OF THE CHILD AND WHETHER OR NOT THE FOSTER PARENT  
25 OR THE KINSHIP CAREGIVER IS ABLE TO MEET THOSE NEEDS.

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 MS. BARCLAY: IT IS ECF 13-4, AND IT'S  
2 PAGES 14 AND 15.

3 BY MS. BARCLAY:

4 Q. MS. ALI, WOULD IT BE HELPFUL IF I --

5 A. CAN YOU JUST MAKE SURE I HAVE THE CORRECT --  
6 YES, PLEASE.

7 Q. MS. ALI, THIS PARAGRAPH SAYS THAT PROVIDERS  
8 SHALL NOT REJECT A CHILD OR FAMILY FOR SERVICES BASED  
9 UPON THE LOCATION OR CONDITION OF THE FAMILY'S  
10 RESIDENCE, THEIR ENVIRONMENTAL OR SOCIAL CONDITION OR  
11 FOR ANY OTHER REASON IF THE PROFILE OF SUCH CHILD OR  
12 FAMILY IS CONSISTENT WITH PROVIDER'S SCOPE OF SERVICES.

13 MY QUESTION TO YOU EARLIER IS THAT A  
14 PROVIDER'S SCOPE OF SERVICES INCLUDES COMPLYING WITH  
15 APPLICABLE STATE LAWS, CORRECT?

16 A. YES.

17 THE COURT: DO YOU UNDERSTAND THE  
18 QUESTION?

19 THE WITNESS: YES.

20 BY MS. BARCLAY:

21 Q. THIS PROVISION DOES NOT PREVENT AGENCIES FROM  
22 REFERRING FAMILIES TO AN AGENCY THAT WOULD BE A BETTER  
23 FIT FOR THE FAMILY, DOES IT?

24 A. THE AGENCY IS NOT --

25 MS. OLIVER: OBJECTION.

1 THE COURT: OVERRULED.

2 ANSWER THE QUESTION.

3 THE WITNESS: REPEAT THE QUESTION,  
4 PLEASE.

5 BY MS. BARCLAY:

6 Q. THIS PROVISION THAT WE JUST READ DOES NOT  
7 PREVENT AGENCIES FROM REFERRING FAMILIES TO ANOTHER  
8 AGENCY THAT WOULD BE A BETTER FIT FOR THE FAMILY, DOES  
9 IT?

10 A. SO PROVIDER AGENCIES WOULD NOT REFER A FAMILY  
11 TO -- OR A CHILD TO ANOTHER AGENCY, AS I TESTIFIED  
12 EARLIER, THAT THE CENTRAL REFERRAL UNIT IS A UNIT IN THE  
13 DEPARTMENT OF HUMAN SERVICES THAT MAKES REFERRALS WHEN  
14 YOU ARE GOING OUTSIDE OF A PARTICULAR AGENCY.

15 Q. I UNDERSTAND THAT. I AM NOT ASKING YOU ABOUT A  
16 DHS REFERRAL OF A CHILD.

17 IF A PROSPECTIVE FOSTER PARENT APPROACHES  
18 AN AGENCY ABOUT BEING CONSIDERED FOR THE HOME STUDY  
19 CERTIFICATION PROCESS, THIS CONTRACT PROVISION DOES NOT  
20 PREVENT THAT AGENCY FROM SENDING THAT FAMILY OR ALLOWING  
21 THEM TO KNOW ABOUT ANOTHER AGENCY THAT WOULD BE A BETTER  
22 FIT FOR THE FAMILY, DOES THAT PROVISION?

23 MS. OLIVER: OBJECTION, YOUR HONOR. I  
24 RENEW MY OBJECTION WITH REGARD TO THE CONTRACT --

25 THE COURT: I THINK THAT'S AN UNFAIR

1 QUESTION BECAUSE IT'S ASKING FOR A NEGATIVE. SO I AM  
2 GOING TO SUSTAIN THE OBJECTION.

3 MS. BARCLAY: LET ME SEE IF I CAN WORD  
4 THAT A LITTLE DIFFERENTLY, YOUR HONOR.

5 BY MS. BARCLAY:

6 Q. SOMETIMES FAMILIES MIGHT COME TO AN AGENCY NOT  
7 AS A DHS REFERRAL BUT ON THEIR OWN. WE DISCUSSED THAT  
8 EARLIER, RIGHT?

9 A. YES.

10 Q. AND IF THAT FAMILY COMES TO AN AGENCY, THIS  
11 CONTRACT PROVISION DOES NOT SAY ANYTHING ABOUT WHETHER  
12 OR NOT THE AGENCY COULD GIVE THE FAMILY INFORMATION  
13 ABOUT ANOTHER AGENCY BETTER ABLE TO MEET THEIR NEEDS.

14 MS. OLIVER: OBJECTION, YOUR HONOR.  
15 QUESTIONS WITH REGARD TO THE CONTRACT ARE CONCLUSIONS OF  
16 LAW.

17 THE COURT: SUSTAINED.

18 BY MS. BARCLAY:

19 Q. DO YOU ENFORCE THIS CONTRACT PROVISION IN AN  
20 EVENHANDED MANNER?

21 THE COURT: WHAT CONTRACT PROVISION?

22 MS. BARCLAY: THIS CONTRACT, YOUR HONOR.

23 MS. OLIVER: OBJECTION, YOUR HONOR. IT'S  
24 AN IMPROPER QUESTION FOR THIS WITNESS. SHE DOES NOT  
25 ENFORCE THE CONTRACT.

1 MS. BARCLAY: YOUR HONOR, THIS WITNESS  
2 HAS TESTIFIED THAT SHE IS FAMILIAR WITH DHS'S  
3 OPERATIONS, POLICIES, AND PROCEDURES, INCLUDING THE  
4 PRACTICES THAT ARE THE SUBJECT OF THIS ACTION. AND  
5 UNDER THE FREE EXERCISE CLAUSE, ONE OF THE VERY  
6 IMPORTANT LEGAL QUESTIONS IS NOT JUST WHAT A CONTRACT  
7 PROVISION OR POLICY SAYS IN A VACUUM BUT HOW THE  
8 RELEVANT OFFICIALS ENFORCE THAT POLICY AND IF THEY  
9 ENFORCE IT IN AN EVEN MANNER. SO IT'S VERY RELEVANT TO  
10 THE QUESTIONS AT ISSUE IN THIS CASE.

11 MS. OLIVER: YOUR HONOR, I SUBMIT THAT  
12 SHE IS NOT THE RELEVANT OFFICIAL. IT'S NOT AN  
13 APPROPRIATE QUESTION FOR THIS WITNESS.

14 THE COURT: WELL, SHE IS AN APPROPRIATE  
15 WITNESS AS FAR AS THE POLICY. BUT I DON'T KNOW WHETHER  
16 OR NOT THERE IS AN ISSUE OF EQUAL APPLICATION. I MEAN,  
17 AS FAR AS SHE IS CONCERNED, SHE IS THE APPROPRIATE  
18 PERSON.

19 BY MS. BARCLAY:

20 Q. DHS WOULD NOT PREVENT AN AGENCY FROM LETTING A  
21 PROSPECTIVE FOSTER FAMILY KNOW ABOUT ANOTHER AGENCY THAT  
22 MIGHT BETTER MEET THEIR NEEDS?

23 A. DHS WILL HAVE A PROBLEM WITH THAT. IF A  
24 POTENTIAL FOSTER PARENT SEEKS OUT, AS YOU INDICATED, ON  
25 THEIR OWN AND CONTACT A PROVIDER -- A FOSTER CARE

1 PROVIDER AGENCY WANTING TO BECOME A FOSTER PARENT, WE  
2 WOULD EXPECT THE FOSTER CARE PROVIDER TO TRAIN AND  
3 CERTIFY THAT FOSTER PARENT.

4 Q. NO MATTER WHAT?

5 A. IF IT'S IN -- IF IT'S ALIGNED WITH THE 3700  
6 REGULATIONS.

7 Q. THE 3700 REGULATIONS MEANING?

8 A. THE FOSTER CARE REGULATIONS. SO WE EXPECT FOR  
9 THE FOSTER CARE PROVIDER AGENCY -- AS A FOSTER CARE  
10 PROVIDER AGENCY, WE EXPECT YOU TO RECRUIT, TO TRAIN, AND  
11 TO CERTIFY POTENTIAL FOSTER PARENTS.

12 Q. AND YOUR POSITION IS THAT IT WOULD VIOLATE THOSE  
13 REGULATIONS IF AN AGENCY LET PROSPECTIVE FOSTER PARENTS  
14 KNOW THAT A DIFFERENT AGENCY WOULD BE A BETTER FIT FOR  
15 THEM.

16 A. BECAUSE IT'S THE FOSTER PARENTS' CHOICE. SO IF  
17 IN THE FOSTER PARENT SOUGHT OUT A PARTICULAR PROVIDER  
18 AGENCY, THAT IS THE FOSTER CARE PROVIDER AGENCY THAT THE  
19 FOSTER PARENT WANTS TO WORK WITH. SO WE WOULD EXPECT  
20 THE FOSTER CARE PROVIDER AGENCY TO TRAIN AND CERTIFY  
21 THEM.

22 Q. AND IT WOULD BE A VIOLATION OF DHS POLICY IF  
23 THAT AGENCY REFERRED THEM TO A DIFFERENT AGENCY FOR ANY  
24 REASON?

25 THE COURT: WELL, THAT'S A KIND OF A

1 BROAD QUESTION.

2 BY MS. BARCLAY:

3 Q. IT WOULD BE A VIOLATION OF DHS POLICY IF THEY  
4 REFERRED THAT FAMILY TO ANOTHER AGENCY THAT THEY THOUGHT  
5 WOULD BE A BETTER FIT FOR THAT FAMILY?

6 A. IF THAT REFERRAL -- DEFINE YOUR REFERRAL. WHAT  
7 ARE YOU TALKING -- DEFINE YOUR REFERRAL.

8 Q. IF THAT AGENCY TOLD THE FAMILY THAT ANOTHER  
9 AGENCY WOULD BE A BETTER FIT FOR THEM, AND SO -- SENT  
10 THAT FAMILY TO A DIFFERENT AGENCY, IT'S YOUR POSITION  
11 THAT THIS WOULD VIOLATE DHS POLICY?

12 A. YES.

13 Q. SO THE CONTRACT'S PROVISION ALSO ALLOWS THE  
14 COMMISSIONER TO MAKE EXCEPTIONS IN HIS OR HER SOLE  
15 DISCRETION, CORRECT?

16 MS. OLIVER: OBJECTION. QUESTION IS  
17 REGARDING THE CONTRACT, YOUR HONOR.

18 MS. BARCLAY: I CAN MOVE ON, YOUR HONOR.

19 THE COURT: YES, PLEASE.

20 BY MS. BARCLAY:

21 Q. ARE YOU AWARE OF DHS MAKING EXCEPTIONS TO THIS  
22 POLICY IN THE PAST?

23 A. NO, I AM NOT.

24 MS. OLIVER: OBJECTION TO WHAT POLICY.

25 MS. BARCLAY: THE CONTRACT PROVISION THAT

1 WE HAVE BEEN DISCUSSING.

2 THE COURT: WELL, I THINK YOU NEED TO BE  
3 MORE SPECIFIC.

4 BY MS. BARCLAY:

5 Q. YOU TESTIFIED EARLIER THAT IF AN AGENCY REFERRED  
6 A FAMILY TO A DIFFERENT AGENCY BECAUSE THEY THOUGHT IT  
7 WOULD BE A BETTER FIT, THAT WOULD BE A VIOLATION OF DHS  
8 POLICY. AND I AM ASKING, HAS DHS MADE EXCEPTIONS TO  
9 THAT POLICY, THAT YOU ARE AWARE OF, IN THE PAST?

10 MS. OLIVER: OBJECTION. I BELIEVE THAT  
11 COUNSEL IS MISCHARACTERIZING HER TESTIMONY.

12 THE COURT: OVERRULED.

13 CAN YOU ANSWER THE QUESTION?

14 THE WITNESS: CAN SHE ASK IT AGAIN?

15 BY MS. BARCLAY:

16 Q. YOU TESTIFIED THAT IF A FAMILY APPROACHED AN  
17 AGENCY AND THE AGENCY REFERRED THEM TO A DIFFERENT  
18 AGENCY AS BEING A BETTER FIT FOR THAT FAMILY, THAT WOULD  
19 BE A VIOLATION OF DHS POLICY. AND I AM ASKING, ARE YOU  
20 AWARE OF TIMES IN THE PAST WHERE DHS MADE AN EXCEPTION  
21 TO THAT POLICY?

22 A. I AM NOT AWARE.

23 Q. ONLY CERTAIN AGENCIES ARE ALLOWED TO CARE FOR A  
24 FOSTER CHILD WITH CERTAIN BEHAVIORAL HEALTH ISSUES,  
25 CORRECT?

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 WOULD NEED TO BE REFERRED TO A DIFFERENT AGENCY, LIKE  
2 JEWISH FAMILY CHILDREN, THAT HAS THAT SPECIALTY?

3 A. YES.

4 THE COURT: THE BIGGEST PROBLEM IS I  
5 THINK YOU ARE DISAGREEING WHAT IS A REFERRAL.

6 THE WITNESS: YES.

7 THE COURT: I MEAN, WHAT IS IT YOU ARE  
8 TRYING TO DO -- AND I THINK IT'S INAPPROPRIATE -- IS TO  
9 GET THIS WITNESS TO USE THE SAME WORDS THAT YOU ARE  
10 USING AND MEAN THE SAME THING. SHE CLEARLY IS NOT ON  
11 THE SAME WAVELENGTH AS YOU WHEN TALKING ABOUT REFERRAL.  
12 AND I THINK THAT'S WHERE THE CONFUSION LIES.

13 BY MS. BARCLAY:

14 Q. SO THERE ARE TWO DIFFERENT WAYS THAT I AM AWARE  
15 OF THAT THE WORD "REFERRAL" CAN BE USED. IT CAN MEAN  
16 REFERRAL FROM DHS TO AGENCIES, RIGHT, FROM YOUR CENTRAL  
17 REFERRAL UNIT?

18 A. YES.

19 Q. AND SO FOR EASE OF REFERENCE, WHAT I HAVE BEEN  
20 TALKING ABOUT IS THAT SOMETIMES AGENCIES CAN PROVIDE  
21 ADDITIONAL INFORMATION TO FAMILIES ABOUT OTHER AGENCIES  
22 THAT WOULD SERVE THEIR NEEDS AND GIVE THEM THE CHOICE TO  
23 GO TO THAT AGENCY?

24 A. AND I AM INVOLVED TO THAT PROCESS.

25 Q. AND SO WHAT I AM EXPLAINING IS THAT -- WHAT I

1 UNDERSTAND, IF A FAMILY WENT TO -- WANTED TO ONLY FOSTER  
2 CHILDREN WITH A SPECIAL MEDICAL CONDITION, FOR EXAMPLE,  
3 AND IF THEY APPROACHED AN AGENCY THAT DOES NOT HAVE THAT  
4 SPECIALTY, IT WOULD BE APPROPRIATE FOR THAT AGENCY TO  
5 GIVE THEM INFORMATION ABOUT OTHER AGENCIES THAT WOULD  
6 BETTER MEET THEIR NEEDS AND GIVE THE FAMILY THE CHOICE  
7 TO GO TO THAT AGENCY.

8 THE COURT: WELL, THAT'S NOT WHAT  
9 HAPPENED HERE. THAT'S SPECULATIVE.

10 MS. BARCLAY: I AM TRYING TO UNDERSTAND  
11 WHAT DHS'S POSITION IS ON THE APPLICATION OF POLICY,  
12 YOUR HONOR.

13 THE COURT: I THINK THAT THE WITNESS HAS  
14 ALREADY STATED WHAT DHS'S POSITION IS. THE POLICY THAT  
15 YOU ARE ASKING ABOUT IS PURELY SPECULATIVE. IT'S NOT  
16 THE SITUATION THAT WE HAVE HERE. AT LEAST I HAVE NOT  
17 HEARD ANYTHING ABOUT SUCH A SITUATION.

18 MS. BARCLAY: MRS. SIMMS-BUSCH DID  
19 TESTIFY ABOUT REFERRALS THAT WERE MADE BY AGENCIES,  
20 ABOUT USING THE WORD REFERRAL; SHE MEANT SENDING  
21 FAMILIES TO OTHER AGENCIES THAT BETTER MET THEIR NEEDS  
22 BECAUSE THOSE FAMILIES WANTED TO CARE FOR CHILDREN WITH  
23 MEDICAL EXPERTISE.

24 THAT IS RELEVANT TO THE WAY IN WHICH THIS  
25 POLICY IS APPLIED VIS-À-VIS OTHER TYPES OF SITUATIONS

1 WHERE AN AGENCY MIGHT SEND A FAMILY TO A DIFFERENT  
2 AGENCY FOR A BETTER FIT, YOUR HONOR.

3 THE COURT: I AM GOING TO SUSTAIN THE  
4 OBJECTION. THERE IS NO OBJECTION. I AM GOING TO.

5 MS. OLIVER: OBJECTION, YOUR HONOR.

6 THE COURT: I AM GOING TO SUSTAIN THE  
7 OBJECTION.

8 BY MS. BARCLAY:

9 Q. SOME FOSTER AGENCIES THAT DHS WORKS WITH HAS  
10 ADVERTISED THAT THEY ONLY SERVE KIN CARE POPULATIONS,  
11 CORRECT?

12 A. I DON'T KNOW OF ANY FOSTER CARE PROVIDER THAT  
13 DHS PROVIDES FOSTER CARE WITH THAT ONLY DOES KIN.  
14 FOSTER CARE PROVIDER AGENCIES DO BOTH KIN AND FOSTER  
15 CARE.

16 MS. BARCLAY: PERMISSION TO APPROACH THE  
17 WITNESS, YOUR HONOR?

18 THE COURT: YES.

19 MS. BARCLAY: I AM ACTUALLY GOING TO MOVE  
20 ON, YOUR HONOR.

21 THE COURT: OKAY.

22 BY MS. BARCLAY:

23 Q. SOME AGENCIES HAVE AN EXPERTISE IN CERTAIN  
24 LATINO COMMUNITIES, CORRECT?

25 A. YES.

1 Q. FOR EXAMPLE, CONCILIO WAS ONE AGENCY THAT DHS  
2 WORKS WITH WITH THIS EXPERTISE?

3 A. YES.

4 Q. ANOTHER AGENCY WITH THIS SPECIALTY IS APM?

5 A. YES.

6 Q. IF A SPANISH-SPEAKING PROSPECTIVE FOSTER FAMILY  
7 APPROACHED AN AGENCY THAT DIDN'T HAVE SPANISH-SPEAKING  
8 SOCIAL WORKERS, IT WOULD BE APPROPRIATE FOR THE AGENCY  
9 TO TELL THE FAMILY ABOUT ANOTHER AGENCY, LIKE CONCILIO,  
10 THAT CAN BETTER MEET THEIR NEEDS, CORRECT?

11 A. WE EXPECT FOR FOSTER CARE PROVIDER AGENCIES,  
12 SINCE WE SERVICE THE ENTIRE CITY OF PHILADELPHIA, TO  
13 PROVIDE INTERPRETING SERVICES FOR FOSTER PARENTS AND  
14 BIOLOGICAL PARENTS. WE DON'T EXPECT THEM TO NECESSARILY  
15 REFER TO A SPANISH-SPEAKING AGENCY.

16 Q. BUT IF AN AGENCY DID MAKE THAT REFERRAL, THAT  
17 WOULD BE APPROPRIATE IF THEY THOUGHT ANOTHER AGENCY  
18 COULD BETTER MEET THE NEEDS OF THE SPANISH-SPEAKING  
19 FAMILY, RIGHT?

20 A. IF THE FOSTER PARENT CHOOSES TO GO TO A  
21 DIFFERENT AGENCY. IF THE FOSTER PARENT APPROACHED THAT  
22 FOSTER CARE PROVIDER AGENCY AND WANTED TO BE A FOSTER  
23 PARENT, WE EXPECT THE FOSTER CARE PROVIDER AGENCY TO  
24 TRAIN AND CERTIFY THAT FOSTER PARENT.

25 Q. SO IF AN AGENCY SAID, WE DON'T THINK WE WOULD BE



1 THE BEST FIT FOR YOU BECAUSE WE DON'T HAVE THE LANGUAGE  
2 EXPERTISE TO BEST SERVE YOUR NEEDS, AND SO WE ARE NOT  
3 ABLE TO PROVIDE CERTIFICATION FOR YOU, IF AN AGENCY DID  
4 THAT, YOU THINK THAT WOULD BE A VIOLATION OF DHS  
5 EXPECTATIONS?

6 A. IF THE AGENCY WAS TO DO THAT, THE AGENCY ALSO  
7 NEEDS TO ASK THE FOSTER PARENT WHAT IS HIS OR HER CHOICE  
8 AND ALLOW THE FOSTER PARENT TO MAKE THAT DECISION.

9 Q. IF THE FOSTER PARENT WANTED TO WORK WITH AN  
10 AGENCY AND THOUGHT THAT THE AGENCY COULD NOT MEET THEIR  
11 NEEDS AND THE AGENCY SAID, WE DON'T THINK WE ARE ABLE TO  
12 MEET THEIR LANGUAGE NEEDS, BUT WE CAN SEND YOU TO  
13 ANOTHER AGENCY THAT DOES, AFTER EXPLAINING TO THE FAMILY  
14 WHY THAT WAS THE CASE, THAT WOULD BE APPROPRIATE, RIGHT?

15 MS. OLIVER: OBJECTION, YOUR HONOR. I  
16 BELIEVE THAT THIS LINE OF QUESTIONING HAS BEEN ASKED AND  
17 ANSWERED NUMEROUS TIMES.

18 THE COURT: SUSTAINED. SUSTAINED.

19 BY MS. BARCLAY:

20 Q. FEDERAL LAW REQUIRES THAT NATIVE AMERICAN  
21 CHILDREN GENERALLY BE PLACED WITH THE TRIBAL MEMBERS OR  
22 INDIVIDUALS OF NATIVE AMERICAN ANCESTRY, RIGHT?

23 MS. OLIVER: OBJECTION AS TO WHAT FEDERAL  
24 LAW REQUIRES.

25 MS. BARCLAY: THE WITNESS'S KNOWLEDGE

1 ABOUT WHETHER OR NOT IT'S APPROPRIATE TO SEND A FOSTER  
2 FAMILY TO A DIFFERENT AGENCY IS RELEVANT, YOUR HONOR.

3 THE COURT: OVERRULED. SHE CAN ANSWER.

4 THE WITNESS: REPEAT THE QUESTION,  
5 PLEASE.

6 BY MS. BARCLAY:

7 Q. FEDERAL LAW REQUIRES NATIVE AMERICAN CHILDREN  
8 GENERALLY TO BE PLACED WITH TRIBAL MEMBERS OR  
9 INDIVIDUALS WITH NATIVE AMERICAN ANCESTRY, RIGHT?

10 A. YES.

11 Q. SOME AGENCIES IN PENNSYLVANIA SPECIALIZE IN  
12 PLACING NATIVE AMERICAN CHILDREN, RIGHT?

13 A. I CAN ONLY SPEAK TO PHILADELPHIA.

14 Q. YOU ARE NOT AWARE OF OTHER AGENCIES THAT HAVE  
15 THAT SPECIALTY?

16 A. NOT IN PHILADELPHIA.

17 Q. ARE THERE ANY SUCH AGENCIES IN PHILADELPHIA,  
18 THAT YOU ARE AWARE OF?

19 A. NO. THERE AREN'T ANY, THAT I AM AWARE OF.

20 Q. SO IF A NON-NATIVE AMERICAN FAMILY WENT TO AN  
21 AGENCY IN PHILADELPHIA WANTING TO FOSTER A NATIVE  
22 AMERICAN CHILD, THEY WOULD BE UNABLE TO DO SO, CORRECT?

23 A. REPEAT THE QUESTION.

24 MS. OLIVER: OBJECTION; CALLS FOR  
25 SPECULATION.

1 THE COURT: SUSTAINED.

2 BY MS. BARCLAY:

3 Q. DHS GUIDELINES EMPHASIZE THE IMPORTANCE OF  
4 GEOGRAPHIC PROXIMITY FOR FOSTER CARE PLACEMENTS,  
5 CORRECT?

6 A. REPEAT THAT.

7 Q. DHS GUIDELINES EMPHASIZE THE IMPORTANCE OF  
8 GEOGRAPHIC PROXIMITY FOR FOSTER CARE PLACEMENTS,  
9 CORRECT?

10 A. I AM TRYING TO DETERMINE WHAT ARE YOU SAYING.  
11 WHAT ARE YOU CITING?

12 Q. YOU SAID EARLIER IN YOUR TESTIMONY THAT  
13 GEOGRAPHY IS IMPORTANT FOR CONSIDERATION OF THE  
14 PLACEMENT OF THE CHILD BECAUSE YOU WANT TO KEEP THE  
15 CHILD IN THEIR COMMUNITY, CORRECT?

16 A. YES. HOWEVER, I ALSO TESTIFIED THAT IF, IN  
17 FACT, THERE WAS A BETTER FIT OUTSIDE OF THE COMMUNITY,  
18 THAT WE WOULD PLACE THE CHILD OUTSIDE OF THEIR  
19 COMMUNITY. AND THEN IT WOULD BE THE CORE CASE MANAGER'S  
20 RESPONSIBILITY TO ENSURE THAT THE CHILD MAINTAINED  
21 EDUCATIONAL STABILITY AS WELL AS BEHAVIORAL HEALTH AND  
22 MEDICAL STABILITY.

23 Q. YOU SAID THAT 52 PERCENT OF CHILDREN ARE WITHIN  
24 5 MILES OF THEIR ORIGINAL HOME, RIGHT?

25 A. YES.

1 Q. AND SO SOMETIMES REFERRALS CAN BE MADE OR  
2 FAMILIES ARE SENT TO OTHER AGENCIES WHERE IT WILL BE  
3 CLOSER TO THE CHILD'S HOME, IF THAT WOULD BE IN THE  
4 CHILD'S BEST INTEREST, RIGHT?

5 A. NO.

6 Q. YOU ARE NOT AWARE OF ANY SUCH REFERRALS FOR  
7 GEOGRAPHIC REASONS?

8 A. NO. WE DON'T DO REFERRALS FOR GEOGRAPHIC  
9 REASONS. OUR FOSTER CARE PROVIDER AGENCIES ARE  
10 CITYWIDE. SO IF AFTER THE CENTRAL REFERRAL UNIT  
11 SENDS -- OR MAKES A LEVEL OF CARE DECISION AND SENDS  
12 OVER THE REFERRAL TO ALL OF THE FOSTER CARE AGENCIES  
13 THAT PROVIDE THAT LEVEL OF SERVICE, THE FOSTER CARE  
14 PROVIDER AGENCIES WILL DETERMINE THE BEST FIT FOR THE  
15 MOST APPROPRIATE -- THE MOST APPROPRIATE FOSTER PARENT  
16 FOR THAT PARTICULAR CHILD.

17 SO WE WILL NOT -- IF THE FOSTER PARENT IS  
18 AN APPROPRIATE PLACEMENT, THEN WE WILL PLACE THAT CHILD  
19 WITH THEIR FOSTER PARENT AND, AGAIN, EXPECT THAT THE  
20 SERVICES THAT THE CHILD RECEIVE IN THEIR COMMUNITY,  
21 WHICH IS PRIMARILY THEIR EDUCATIONAL NEEDS, TO ENSURE  
22 THAT THAT CHILD STAYS IN THEIR SCHOOL, WE CALL THEIR  
23 SCHOOL OF ORIGIN.

24 Q. IF A FAMILY WANTED TO FOSTER A CHILD IN THEIR  
25 OWN NEIGHBORHOOD, BUT THEY APPROACHED A FOSTER AGENCY ON

1 THE OTHER SIDE OF THE CITY, WOULD IT EVER BE APPROPRIATE  
2 FOR THE FOSTER AGENCIES THEY APPROACHED TO SEND THEM TO  
3 AN AGENCY THAT IS CLOSER TO THEIR OWN NEIGHBORHOOD?

4 A. SO WHAT I WOULD SAY IN RESPONSE TO THAT IS THAT  
5 FOSTER CARE PROVIDERS WANT TO INCREASE THEIR CAPACITY  
6 WITH RESOURCE EXPERIENCE WITH FOSTER PARENTS.  
7 THEREFORE, THE FOSTER CARE PROVIDER WOULD TRY TO  
8 ACCOMMODATE THEIR FOSTER PARENT. THEY JUST WOULD NOT  
9 REFER THEM TO ANOTHER AGENCY THAT IS CLOSER.

10 WHAT I MEAN BY ACCOMMODATING, THEY WOULD,  
11 IF POSSIBLE, PROVIDE THE TRAINING THAT THE FOSTER PARENT  
12 NEEDS IN THEIR OWN HOME AS OPPOSED TO HAVING THE FOSTER  
13 PARENT TRAVEL ACROSS THE CITY. IF IT IS THE FOSTER  
14 PARENT'S DESIRE, THEN THAT'S ANOTHER QUESTION.

15 MS. BARCLAY: ONE MOMENT, YOUR HONOR.

16 BY MS. BARCLAY:

17 Q. YOU HAVE REPRESENTED TO THIS COURT THAT YOU'RE  
18 COMMITTED TO ENSURING PLACEMENT IN A CHILD'S BEST  
19 INTEREST, CORRECT?

20 A. YES.

21 Q. AND DHS LEADERSHIP HAS SAID THAT THEY WILL  
22 CONTINUE TO CONSIDER ANY REQUESTS INDICATING THAT A  
23 PLACEMENT WITH CATHOLIC IS NOT IN A CHILD'S PARTICULAR  
24 BEST INTEREST?

25 A. YES.

1 Q. THIS WOULD INCLUDE PLACING A CHILD WITH A FOSTER  
2 FAMILY WITH CATHOLIC, WHICH HAS ALREADY CARED FOR THE  
3 REST OF THE CHILD'S FAMILY?

4 A. YES.

5 Q. THIS COULD ALSO INCLUDE PLACING THE SIBLINGS OF  
6 A CATHOLIC FAMILY THAT HAS A PREEXISTING RELATIONSHIP  
7 WITH A CHILD?

8 A. YES.

9 Q. YOU HAVE NEVER COMMUNICATED IN WRITING TO OTHER  
10 CUA'S THAT THEY ARE ALLOWED TO REFER CHILDREN TO  
11 CATHOLIC IN THESE INSTANCES, HAVE YOU?

12 MS. OLIVER: OBJECTION.

13 THE COURT: OVERRULED.

14 THE WITNESS: THE CUA'S DO NOT MAKE  
15 REFERRALS TO OTHER FOSTER CARE AGENCIES. THOSE  
16 REFERRALS ARE MADE BY WAY OF THE CENTRAL REFERRAL UNIT.  
17 BY MS. BARCLAY:

18 Q. BUT CUA'S DO PROVIDE INPUT FROM THE CENTRAL  
19 REFERRAL UNIT.

20 A. THEY PROVIDE INPUT BASED ON THE NEEDS OF THE  
21 PARTICULAR CHILD.

22 Q. RIGHT.

23 A. THEY PROVIDE INPUT ABOUT THE CHILD.

24 Q. THEY PROVIDE INPUT ABOUT WHAT PLACEMENT IT WOULD  
25 BE IN THE BEST INTEREST OF THE CHILD, CORRECT?

1 A. WHO PROVIDES INFORMATION -- THE CUA CASE  
2 MANAGERS PROVIDE INPUT ABOUT THE CHILD'S NEEDS. THE  
3 CENTRAL REFERRAL UNIT IN CONCERT WITH COMMUNITY  
4 BEHAVIORAL HEALTH, WHICH IS THE MANAGED CARE  
5 ORGANIZATIONS, ARE THE INDIVIDUALS WHO DETERMINE THE  
6 APPROPRIATE LEVEL OF SERVICE FOR THE PARTICULAR CHILD.

7 Q. AND YOU HAVE NOT COMMUNICATED TO THOSE CUA'S  
8 THAT DHS WILL BE CONSIDERING STILL MAKING PLACEMENTS  
9 WITH CATHOLIC IF THAT PLACEMENT IS IN THE BEST INTEREST  
10 OF THE CHILD IN WRITING, HAVE YOU?

11 A. WHAT WE HAVE COMMUNICATED --

12 Q. I AM NOT ASKING WHAT YOU HAVE --

13 A. YES, WE HAVE.

14 Q. WHAT HAVE YOU COMMUNICATED IN WRITING?

15 A. SO WE COMMUNICATED TO THE CUA'S AROUND, I  
16 BELIEVE, MARCH THE 26 OR MARCH THE 27 -- I CAN'T  
17 REMEMBER OFFHAND -- THAT WE DID NOT WANT TO SEE ANY  
18 PLACEMENT DISRUPTIONS OF YOUNG PEOPLE. AND THERE WAS  
19 SOME OTHER POINTERS, SOME OTHER -- SO WE DID.

20 Q. YOU COMMUNICATED TO THE CUA'S, WE ARE ASKING  
21 THAT YOU REFRAIN FROM MAKING ANY FOSTER CARE REFERRALS  
22 TO BETHANY CHRISTIAN SERVICES AND CATHOLIC SOCIAL  
23 SERVICES, RIGHT? THAT WAS IN YOUR COMMUNICATION TO  
24 THEM.

25 A. THAT WAS PART OF IT. SOME ADDITIONAL LANGUAGE.

1 Q. THAT WAS A QUOTE FROM YOUR COMMUNICATION TO  
2 THEM.

3 A. AND SOME ADDITIONAL LANGUAGE, YES.

4 Q. THE E-MAIL ALSO STATED: PLEASE FORWARD THIS  
5 E-MAIL TO YOUR STAFF, PARTICULARLY STAFF WITH THE  
6 RESPONSIBILITY TO IDENTIFY PLACEMENT, CORRECT?

7 A. YES.

8 Q. YOU DID NOT SAY ANYTHING IN THIS E-MAIL ABOUT  
9 ENSURING THAT ADDITIONAL PLACEMENTS WERE GOING TO BE  
10 WITH CATHOLIC IF IT WOULD BE IN THE BEST INTEREST OF THE  
11 CHILD.

12 A. NO. BECAUSE THAT INFORMATION WAS COMMUNICATED  
13 TO CATHOLIC --

14 Q. BUT --

15 A. -- TO KEEP IT CENTRALIZED.

16 Q. -- YOU COMMUNICATED THAT TO OTHER CUA EXECUTIVE  
17 LEADERSHIP.

18 A. NO. AND WE WOULDN'T HAVE.

19 Q. AND YOU HAVE NOT COMMUNICATED THAT TO DHS STAFF  
20 IN WRITING, HAVE YOU?

21 A. NO.

22 Q. YOU HAVE NOT COMMUNICATED TO ANY STAFF IN THE  
23 CENTRAL REFERRAL UNITS THAT THEY CAN REFER CHILDREN TO  
24 CATHOLIC IF IT WOULD BE IN THEIR BEST INTEREST, HAVE  
25 YOU?



1 A. WHAT WAS COMMUNICATED TO THE --

2 Q. YOU HAVE NOT COMMUNICATED IN WRITING TO THE  
3 CENTRAL REFERRAL UNIT STAFF THAT THEY CAN MAKE REFERRALS  
4 TO CATHOLIC IF IT WOULD BE IN THE BEST INTEREST OF  
5 CHILDREN?

6 A. NO.

7 Q. AND YOU DIDN'T SAY ANYTHING IN THIS E-MAIL ABOUT  
8 ENSURING THAT CHILDREN WOULD BE PLACED WITH SIBLING  
9 GROUPS, DID YOU?

10 A. NO.

11 Q. YOU DIDN'T SAY ANYTHING IN THIS E-MAIL ABOUT  
12 ENSURING THAT CHILDREN COULD BE PLACED WITH FAMILIES  
13 WITH PREEXISTING RELATIONSHIPS?

14 A. NO.

15 Q. THIS E-MAIL -- AND THIS IS ECF 13, EXHIBIT 1,  
16 ATTACHED E, THIS WAS SENT OUT ON MARCH 27, CORRECT?

17 A. DO I HAVE IT HERE?

18 MS. BARCLAY: PERMISSION TO APPROACH THE  
19 WITNESS, YOUR HONOR?

20 THE COURT: YES.

21 MS. BARCLAY: YOUR HONOR, I AM  
22 APPROACHING THE WITNESS WITH ECF 13-6. IT'S  
23 ATTACHMENT E. IT'S ALREADY BEEN ADMITTED.

24 THE COURT: WHAT IS YOUR QUESTION?  
25

1 BY MS. BARCLAY:

2 Q. MS. ALI, YOU SENT THIS E-MAIL OUT ON MARCH 26,  
3 CORRECT?

4 A. YES.

5 Q. AND THIS E-MAIL WAS FORWARDED ON MARCH 27TH TO  
6 STAFF BY STACEY BOYD?

7 A. YES.

8 Q. AND STACEY BOYD REPORTS TO YOU, CORRECT?

9 A. YES, SHE DOES.

10 Q. AND SHE ALSO WORKS FOR DHS?

11 A. YES, SHE DOES.

12 Q. AND IN HER FOLLOW-UP E-MAIL, SHE SAID: GOOD  
13 AFTERNOON, EXECUTIVE LEADERSHIP. PLEASE SEE BELOW. THE  
14 INFORMATION MUST BE COMMUNICATED TO YOUR RESPECTIVE  
15 STAFF IN ORDER TO ENSURE THAT -- ALL CAPS -- NO  
16 REFERRALS ARE SENT TO THESE TWO PROVIDERS EFFECTIVE  
17 IMMEDIATELY.

18 DID I READ THAT RIGHT?

19 A. YES.

20 Q. SHE DID NOT SAY ANYTHING ABOUT ENSURING  
21 ADDITIONAL PLACEMENTS FOR THE BEST INTEREST OF THE  
22 CHILD.

23 A. NO.

24 Q. SHE DID NOT SAY ANYTHING ABOUT INSTRUCTING THE  
25 CHILDREN COULD BE PLACED WITH SIBLING GROUPS.

1 A. NO.

2 Q. SHE DID NOT SAY ANYTHING ABOUT INSTRUCTING THE  
3 CHILDREN COULD STILL BE PLACED WITH FAMILIES WITH A  
4 PREEXISTING RELATIONSHIP.

5 A. NO.

6 Q. NOW, THE EVENT THAT PRECIPITATED THIS E-MAIL IS  
7 THAT ON MARCH 24TH, CATHOLIC LET THE COMMISSIONER KNOW  
8 THAT THEY HAD ACCEPTED A REFERRAL FOR A CHILD.

9 A. I AM NOT SURE.

10 MS. OLIVER: OBJECTION. YOUR HONOR, CAN  
11 COUNSEL CLARIFY THAT QUESTION OR REPEAT THE QUESTION?

12 BY MS. BARCLAY:

13 Q. YOU WERE DISCUSSING THIS ISSUE WITH COMMISSIONER  
14 FIGUEROA BEFORE YOU SENT OUT YOUR E-MAIL ON MARCH 26,  
15 CORRECT?

16 THE COURT: DO YOU UNDERSTAND?

17 MS. OLIVER: OBJECTION AS TO THIS ISSUE.  
18 IT'S VAGUE, YOUR HONOR.

19 THE COURT: YES. GO BACK A COUPLE OF  
20 STEPS, PLEASE.

21 BY MS. BARCLAY:

22 Q. BEFORE YOU SENT OUT YOUR E-MAIL ON MARCH 26, DID  
23 YOU DISCUSS THAT E-MAIL WITH COMMISSIONER FIGUEROA?

24 THE COURT: THE ONE THAT SHE WAS GOING TO  
25 SEND OUT ON MARCH 26?

1 MS. BARCLAY: YES.

2 BY MS. BARCLAY:

3 Q. SO THE E-MAIL THAT YOU WERE GOING TO SEND OUT ON  
4 MARCH 26, DID YOU DISCUSS THAT WITH COMMISSIONER  
5 FIGUEROA?

6 A. YES.

7 Q. AND DID YOU UNDERSTAND THAT COMMISSIONER  
8 FIGUEROA HAD BEEN NOTIFIED THAT CATHOLIC SOCIAL SERVICES  
9 RECEIVED A REFERRAL FROM A CHILD ON MARCH 24?

10 MS. OLIVER: OBJECTION. YOUR HONOR, LACK  
11 OF FOUNDATION.

12 THE COURT: WELL, OVERRULED.

13 IF YOU KNOW.

14 THE WITNESS: CAN I TELL YOU WHAT -- I  
15 DON'T KNOW THE SPECIFICS IN TERMS OF A CHILD THAT WAS  
16 SPOKEN ABOUT. I DO KNOW THAT -- THE SITUATION I KNEW OF  
17 WAS ANOTHER PROVIDER AGENCY -- IF I CAN SAY THE AGENCY  
18 WAS BETHANY -- ACCEPTED, WAS GOING TO ACCEPT THE  
19 REFERRAL FROM ANOTHER FOSTER CARE AGENCY. AS I  
20 TESTIFIED, FOSTER CARE AGENCIES CANNOT REFER OUTSIDE OF  
21 THEIR PARTICULAR ORGANIZATION. THEREFORE, THIS E-MAIL  
22 WAS SENT OUT BECAUSE OF THAT.

23 BY MS. BARCLAY:

24 Q. I WANT TO TAKE YOU TO THE EVENING OF MAY 25,  
25 2018. YOU COMMUNICATED WITH JIM BLACK REGARDING DOE

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 | RECROSS |
|----|------------------|--------|-------|----------|---------|
| 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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1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF PENNSYLVANIA

3 - - -

4 SHARONELL FULTON, ET AL : CIVIL DOCKET FOR CASE  
: NO. 18-2075  
5 -VS- :  
:   
6 CITY OF PHILADELPHIA, ET AL :

7 - - -

8 PHILADELPHIA, PA.

9 JUNE 19, 2018

10 BEFORE HONORABLE JUDGE PETRESE B. TUCKER

11 TEMPORARY RESTRAINING ORDER

12 DAY 2

13 APPEARANCES:

14 FOR THE PLAINTIFF: BECKET FUND FOR RELIGIOUS LIBERTY  
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21  
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**FOR THE DEFENDANTS: MARSHALL DENNEHEY WARNER COLEMAN &  
GOGGIN  
BY: DIANA P. CORTES, ESQ.  
2000 MARKET STREET, SUITE 2300  
PHILADELPHIA, PA 19103**

1 THE COURT: GOOD AFTERNOON.

2 ALL COUNSEL: GOOD AFTERNOON, YOUR HONOR.

3 THE COURT: YOU MAY BE SEATED.

4 CAN THE WITNESS TAKE THE STAND, MS. ALI.

5 (MS. ALI RETAKES THE STAND.)

6 THE COURT: OKAY. YOU MAY CONTINUE.

7 MS. BARCLAY: THANK YOU, YOUR HONOR.

8 CONTINUED CROSS EXAMINATION

9 BY MS. BARCLAY:

10 Q. MS. ALI, YOU REMEMBER THAT YOU GAVE TESTIMONY  
11 YESTERDAY?

12 A. YES.

13 Q. AND IS THERE ANY OF THAT TESTIMONY YOU WANT TO  
14 CHANGE AT THIS POINT?

15 A. NO.

16 Q. YOU STILL STAND BY YESTERDAY'S TESTIMONY?

17 A. YES.

18 Q. AND DO YOU UNDERSTAND THAT YOU ARE STILL UNDER  
19 OATH TODAY?

20 A. YES.

21 Q. YOU REPORT TO COMMISSIONER FIGUEROA, CORRECT?

22 A. YES.

23 Q. YESTERDAY WE DISCUSSED AN E-MAIL THAT YOU SENT  
24 ON MARCH 26TH.

25 A. YES.

1 Q. YOU CONSULTED WITH COMMISSIONER FIGUEROA BEFORE  
2 SEEING THAT E-MAIL, CORRECT?

3 A. YES.

4 Q. ON MARCH 24 CATHOLIC NOTIFIED DHS THAT IT HAD  
5 ACCEPTED A PLACEMENT TO REUNITE A CHILD WITH ITS  
6 SIBLING. YOU DISCUSSED THAT SITUATION WITH COMMISSIONER  
7 FIGUEROA, CORRECT?

8 A. I DISCUSSED FOUR CASES WITH COMMISSIONER  
9 FIGUEROA OVER THE COURSE. I DON'T KNOW SPECIFICALLY IN  
10 WHAT ORDER.

11 Q. I AM NOT ASKING WHICH ORDER. I JUST WANT TO  
12 KNOW, IS IT CORRECT THAT YOU DID DISCUSS THIS CASE WITH  
13 COMMISSIONER FIGUEROA?

14 A. CAN YOU CLARIFY WHAT "THIS CASE" IS.

15 Q. ON MARCH 24TH, CATHOLIC NOTIFIED DHS THAT IT HAD  
16 ACCEPTED A PLACEMENT, AND I CAN TELL YOU THE NAME OF THE  
17 CHILD, TO REUNITE THAT CHILD WITH ITS SIBLINGS. DO YOU  
18 RECALL DISCUSSING THAT SITUATION WITH COMMISSIONER  
19 FIGUEROA?

20 A. YES.

21 Q. DID YOU DISCUSS THAT ON MARCH 24TH?

22 A. I AM NOT SURE IF IT WAS ON MARCH THE 24TH.

23 Q. WOULD IT HAVE BEEN NEARLY THEREAFTER IF NOT ON  
24 MARCH 24TH?

25 A. YES.



1 Q. ONE THING YOU TOLD ME YESTERDAY WAS THAT THE  
2 REASON FOR YOUR MARCH 26 TO 27 E-MAIL TO CUA LEADERSHIP  
3 WAS A NEED TO REITERATE THE RULE THAT NO AGENCIES SHOULD  
4 BE MAKING REFERRALS, IS THAT CORRECT?

5 A. REFERRALS TO OUTSIDE AGENCIES, YES.

6 Q. YOUR E-MAIL ON MARCH 26 DOES NOT SAY THAT IN  
7 THOSE TERMS. CORRECT?

8 A. CAN YOU SHOW ME A COPY OF THE E-MAIL.

9 Q. ABSOLUTELY.

10 MS. BARCLAY: PERMISSION TO APPROACH THE  
11 WITNESS, YOUR HONOR.

12 THE COURT: YES.

13 BY MS. BARCLAY:

14 Q. MS. ALI, I AM APPROACHING YOU WITH WHAT HAS BEEN  
15 MARKED AS PLAINTIFF'S EXHIBIT NUMBER 3.

16 YOUR E-MAIL DOES NOT JUST REITERATE A  
17 GENERAL RULE THAT NO AGENCY SHOULD BE MAKING REFERRALS,  
18 DOES IT?

19 A. NO.

20 Q. YOUR E-MAIL TARGETS JUST TWO AGENCIES, DOESN'T  
21 IT?

22 MS. OLIVER: OBJECTION TO THE  
23 CHARACTERIZATION OF "TARGET."

24 THE COURT: SUSTAINED.

25 BY MS. BARCLAY:

1 Q. YOUR AGENCY IS DISCUSSING JUST TWO AGENCIES.

2 YOUR E-MAIL IS DISCUSSING JUST TWO  
3 AGENCIES, CORRECT?

4 A. TWO AGENCIES WITH AN INTAKE CLOSURE.

5 Q. SO IT'S CORRECT THAT YOUR E-MAIL IS JUST  
6 DISCUSSING TWO AGENCIES WITH AN INTAKE CLOSURE?

7 A. YES.

8 Q. IN FACT, THE SUBJECT LINE OF YOUR E-MAIL SAYS:  
9 INTAKE CLOSURE FOR BETHANY AND CATHOLIC SOCIAL SERVICES  
10 FOSTER-CARE PROGRAM, CORRECT?

11 A. YES.

12 Q. YOU DIDN'T SEND ANOTHER E-MAIL TELLING CUA'S NOT  
13 TO MAKE REFERRALS TO THE OTHER 28 AGENCIES, DID YOU?

14 A. I WOULD NOT HAVE DONE THAT.

15 Q. AND YOU DIDN'T DO THAT, RIGHT?

16 A. I WOULD NOT HAVE DONE THAT. BECAUSE CUA MAKES  
17 REFERRALS.

18 Q. RIGHT. AND I AM TRYING TO CONFIRM YOU DID NOT  
19 SEND ANOTHER E-MAIL REMINDING CUA NOT TO MAKE REFERRALS  
20 TO ANY OTHER AGENCY BECAUSE CUA MAKES REFERRALS. YOU  
21 DIDN'T SEND ANOTHER E-MAIL?

22 A. NO.

23 Q. YOU ASKED FOR CONFIRMATION THAT THE E-MAIL WAS  
24 SENT TO ANYONE WHO COULD, QUOTE, GENERATE, APPROVE OR  
25 SUBMIT A REFERRAL TO -- AND THEN CATHOLIC OR BETHANY ARE

1 THE TWO AGENCIES YOU ARE REFERRING TO, CORRECT?

2 A. MY E-MAIL DOES NOT SAY THAT.

3 Q. I APOLOGIZE. THAT'S THE E-MAIL OF MS. STACY  
4 BOYD WHO REPORTS TO YOU, CORRECT? AND HER E-MAIL SAYS:  
5 PROVIDE CONFIRMATION THAT THE E-MAIL WOULD BE SENT TO  
6 ANYONE WHO WOULD, QUOTE, GENERATE, APPROVE OR SUBMIT A  
7 REFERRAL TO CATHOLIC OR BETHANY, CORRECT?

8 A. YES.

9 Q. AND HER E-MAIL DOES NOT ASK ABOUT THAT SORT OF  
10 CONFIRMATION FOR THE OTHER 28 AGENCIES, DOES IT?

11 A. SHE DIDN'T SEND THE E-MAIL TO THE OTHER 28  
12 AGENCIES. HER E-MAIL JUST WENT TO CUA LEADERSHIP.

13 Q. BUT MY QUESTION IS WHEN SHE IS SAYING, PLEASE  
14 REPLY SEPARATELY TO ME CONFIRMING THAT YOU HAVE SHARED  
15 THIS INFORMATION TO THOSE THAT COULD POTENTIALLY  
16 GENERATE, APPROVE OR SUBMIT A REFERRAL TO THESE  
17 PROVIDERS, SHE IS REFERRING TO BETHANY AND CATHOLIC,  
18 CORRECT?

19 MS. OLIVER: OBJECTION, YOUR HONOR.

20 THE COURT: OVERRULED.

21 THE WITNESS: REPEAT THE QUESTION. I AM NOT  
22 SURE IF I UNDERSTAND IT.

23 BY MS. BARCLAY:

24 Q. LET ME READ YOU THE SENTENCE IN HER E-MAIL.

25 A. YES.

1 Q. SHE SAYS: PLEASE REPLY SEPARATELY TO ME  
2 CONFIRMING THAT YOU HAVE SHARED THIS INFORMATION TO  
3 THOSE THAT COULD POTENTIALLY GENERATE, APPROVE OR SUBMIT  
4 A REFERRAL TO THESE PROVIDERS. AND I JUST WANT TO  
5 CONFIRM THAT WHEN SHE SAYS "THESE PROVIDERS," SHE IS  
6 REFERRING TO CATHOLIC AND BETHANY, CORRECT?

7 A. YES.

8 Q. AND SHE DID NOT SEND AN E-MAIL OR SAY IN THIS  
9 E-MAIL THAT SHE NEEDED THAT SORT OF CONFIRMATION FOR  
10 REFERRAL TO ANY OF THE OTHER 28 AGENCIES, DID SHE?

11 A. NO. THAT'S WHEN THE OTHER AGENCIES ARE OPEN,  
12 THEIR INTAKE WAS NOT CLOSED.

13 Q. THANK YOU.

14 I WANT TO TAKE YOU TO THE EVENING OF MAY 25.  
15 YOU RECEIVED TEXTS FROM JIM BLACK REGARDING DOE FOSTER CHILD  
16 NUMBER 1.

17 A. CORRECT.

18 Q. AND YOU AND MR. BLACK COMMUNICATED ABOUT THIS  
19 SITUATION?

20 A. VIA TEXT AS WELL AS TELEPHONE.

21 Q. BEYOND YOUR COMMUNICATION WITH MR. BLACK, DID  
22 YOU RECEIVE ANY OTHER COMMUNICATION THAT EVENING ABOUT  
23 DOE FOSTER CHILD?

24 A. YOU SAID BESIDES MR. BLACK?

25 Q. BESIDES MR. BLACK?

1 A. NO.

2 Q. SO YOUR DHS STAFF NEVER CALLED YOU THAT NIGHT  
3 REGARDING DOE FOSTER CHILD'S PLACEMENT, DID THEY?

4 A. NO.

5 Q. AND YOU DIDN'T KNOW WHY STAFF DENIED THE  
6 PLACEMENT WITH DOE FOSTER CHILD -- YOU DIDN'T THAT  
7 NIGHT --

8 MS. OLIVER: OBJECTION, YOUR HONOR, BEYOND  
9 THE SCOPE OF DIRECT.

10 THE COURT: OVERRULED.

11 THE WITNESS: REPEAT THE QUESTION. I'M  
12 SORRY.

13 BY MS. BARCLAY:

14 Q. YOU DON'T KNOW WHY YOUR STAFF DENIED THE  
15 PLACEMENT WITH DOE FOSTER CHILD'S FORMER FOSTER MOTHER.

16 A. I DON'T BECAUSE I HAVE NOT HAD A CONVERSATION  
17 WITH THE STAFF.

18 Q. IT'S POSSIBLE THAT DHS STAFF DENIED THIS  
19 REFERRAL SOLELY BECAUSE OF THE ONGOING CASE AND REFERRAL  
20 FOR USE WITH CATHOLIC, ISN'T IT?

21 MS. OLIVER: OBJECTION, CALLS FOR  
22 SPECULATION.

23 THE COURT: SUSTAINED.

24 BY MS. BARCLAY:

25 Q. IF DHS STAFF HAD DENIED THIS REFERRAL SOLELY

1 BECAUSE OF THE ONGOING CASE AND REFERRAL FOR USE WITH  
2 CATHOLIC, WHAT WOULD BE YOUR POSITION ON THAT DENIAL BY  
3 DHS STAFF?

4 MS. OLIVER: OBJECTION, CALLS FOR  
5 SPECULATION.

6 THE COURT: SUSTAINED.

7 MS. BARCLAY: YOUR HONOR, I AM NOT ASKING IF  
8 SHE KNOWS WHAT HER STAFF DID. I'M ASKING WHAT HER POSITION  
9 WOULD BE ON THE DENIAL IF THAT WAS THE CIRCUMSTANCES OF THE  
10 DENIAL.

11 THE COURT: THAT IS SPECULATIVE, SO I AM  
12 GOING TO SUSTAIN THE OBJECTION.

13 BY MS. BARCLAY:

14 Q. DHS STAFF DID NOT COMMUNICATE TO YOU THAT NIGHT  
15 THAT DOE FOSTER MOTHER WAS WILLING TO ADOPT DOE FOSTER  
16 CHILD, DID THEY?

17 A. NO.

18 Q. IN FACT, YOUR PREVIOUS TESTIMONY IS THAT YOU  
19 LEARNED THROUGH LITIGATION THAT THIS FOSTER MOTHER WAS  
20 WILLING TO ADOPT?

21 A. THAT IS CORRECT.

22 Q. IF THIS SITUATION WERE NOT BROUGHT TO YOUR  
23 ATTENTION BY CATHOLIC, YOU MAY HAVE NEVER LEARNED ABOUT  
24 IT?

25 MS. OLIVER: OBJECTION.

1 THE COURT: SUSTAINED.

2 BY MS. BARCLAY:

3 Q. YOU HAVE NOT ASKED CUA TO REPORT TO YOU ABOUT  
4 SIMILAR SITUATIONS, HAVE YOU?

5 MS. OLIVER: OBJECTION.

6 THE COURT: THAT HAS BEEN ASKED AND ANSWERED.  
7 SUSTAINED.

8 BY MS. BARCLAY:

9 Q. YOU HAVE NOT ASKED YOUR OWN DHS STAFF TO REPORT  
10 TO YOU ABOUT THIS SORT OF SITUATION IN THE FUTURE, HAVE  
11 YOU?

12 THE COURT: WHAT SORT OF SITUATION?

13 MS. BARCLAY: THE DOE FOSTER CHILD SITUATION  
14 WHERE THE DOE FOSTER MOTHER WAS WILLING TO ADOPT THE CHILD.

15 THE WITNESS: I AM NOT SURE WHAT THE QUESTION  
16 IS. I'M SORRY, REPEAT IT AGAIN.

17 BY MS. BARCLAY:

18 Q. SINCE MAY 25, YOU HAVE NOT COMMUNICATED IN  
19 WRITING TO DHS STAFF THAT THEY SHOULD NOTIFY YOU IF  
20 THERE IS A POTENTIAL REFERRAL WITH A CHILD TO CATHOLIC  
21 WHERE THAT CHILD WOULD BE REUNITED WITH A FAMILY WITH A  
22 FORMER RELATIONSHIP?

23 A. NO.

24 Q. BUT THERE HAS BEEN SOME CONFUSION ON THE GROUND  
25 FROM LOWER LEVEL DHS WORKERS ABOUT WHEN REFERRALS TO

1 CATHOLIC ARE ALLOWED, ISN'T IT?

2 MS. OLIVER: OBJECTION.

3 THE COURT: SUSTAINED.

4 MS. BARCLAY: YOUR HONOR, THIS IS A STATEMENT  
5 IN THE BRIEF BY MS. ALI'S ATTORNEYS, SO I AM NOT SURE WHAT  
6 THE OBJECTION IS. BUT I AM QUOTING FROM THEIR BRIEF.

7 THE COURT: I AM NOT SURE WHAT THE RELEVANCE  
8 IS SO I AM GOING TO SUSTAIN THE OBJECTION.

9 MS. BARCLAY: MAY I EXPLAIN THE RELEVANCE OF  
10 THIS STATEMENT, YOUR HONOR?

11 THE COURT: NO. LET'S MOVE ON.

12 BY MS. BARCLAY:

13 Q. YOU HAVE BEEN DOING FOSTER-CARE WORK FOR ABOUT  
14 18 YEARS?

15 A. YES.

16 Q. WHAT MOTIVATED YOU TO DO THIS TYPE OF WORK?

17 A. MINISTRY.

18 Q. WHAT DO YOU MEAN BY "MINISTRY"?

19 A. WHAT I MEAN BY MINISTRY IS WHEN I WORK AS AN  
20 SOCIAL WORKER IS -- I BELIEVE IS A CALLING SO I DO IT  
21 BECAUSE OF MINISTRY AND I ALSO DO IT BECAUSE OF MY  
22 EDUCATIONAL BACKGROUND TO HELP PEOPLE.

23 Q. WELL, FIRST, LET ME SAY THANK YOU FOR YOUR  
24 MINISTRY AND YOUR SERVICE TO THESE CHILDREN AND I DO  
25 THINK THAT IS VERY ADMIRABLE. IS IT SAFE TO SAY YOU ARE



1 NOT IN THIS LINE OF WORK FOR THE MONEY?

2 A. ABSOLUTELY. YES, IT IS SAFE TO SAY THAT.

3 Q. I THOUGHT THAT MIGHT BE A FAIR ASSUMPTION.

4 SO YOU DON'T THINK OF FOSTER-CARE WORK AS  
5 A BUSINESS, DO YOU?

6 MS. OLIVER: OBJECTION.

7 THE COURT: SUSTAINED.

8 BY MS. BARCLAY:

9 Q. DO YOU CONSIDER FOSTER-CARE TO BE SOMETHING THAT  
10 IS OFFERED AS A BUSINESS?

11 MS. OLIVER: OBJECTION.

12 MS. BARCLAY: I AM STILL NOT SURE WHAT THE  
13 OBJECTION IS, YOUR HONOR.

14 THE COURT: I AM GOING TO SUSTAIN THE  
15 OBJECTION.

16 BY MS. BARCLAY:

17 Q. DO YOU THINK FOSTER-CARE AGENCIES ARE  
18 BUSINESSES?

19 MS. OLIVER: OBJECTION, RELEVANCE, YOUR  
20 HONOR.

21 MS. BARCLAY: THE RELEVANCE IS, YOUR HONOR,  
22 THAT IN OPENING ARGUMENT THAT MS. ALI'S ATTORNEY SPENT SOME  
23 OF HIS TIME DESCRIBING FOSTER-CARE AGENCIES AS BUSINESSES,  
24 AND I WANT TO UNDERSTAND IF THAT IS A POSITION THAT MS. ALI  
25 ALSO TAKES. THIS IS AN ISSUE THAT THE ATTORNEYS FOR MS. ALI

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 CATHOLIC COMMUNITY SERVICES AND WHETHER OR NOT THEIR  
2 FOSTER PARENT WOULD BE WILLING TO ALLOW THE SIBLINGS TO  
3 BE REUNITED IN THEIR FOSTER HOME. WE ALSO MAKE  
4 EXCEPTIONS WHEN A CHILD OR YOUTH WAS PREVIOUSLY PLACED  
5 IN A CATHOLIC COMMUNITY SERVICES FOSTER HOME, WE WOULD  
6 WANT TO ASK THAT FOSTER PARENT WOULD THEY BE WILLING TO  
7 RESUME AND ALLOW THE CHILD TO RETURN BACK TO THEIR HOME  
8 FOR FOSTER-CARE.

9 Q. AND HOW WOULD THOSE EXCEPTIONS BECOME KNOWN?

10 A. THE EXCEPTIONS WOULD BECOME KNOWN TO MYSELF OR  
11 COMMISSIONER FIGUEROA BY WAY OF THE CUA LEADERSHIP.  
12 THEY WOULD EITHER SEND AN E-MAIL, A TELEPHONE CALL, OR  
13 EVEN A TEXT MESSAGE TO MYSELF OR COMMISSIONER FIGUEROA.

14 Q. AND SINCE THE INTAKE CLOSURE, HAS DHS IN FACT,  
15 EITHER YOU OR THE COMMISSIONER, RECEIVED REQUESTS FROM  
16 CATHOLIC SOCIAL SERVICES LEADERSHIP WITH RESPECT TO  
17 EXCEPTIONS?

18 A. YES.

19 Q. AND HAVE ANY OF THOSE EXCEPTIONS BEEN GRANTED?

20 A. ALL OF THEM.

21 Q. AND HOW MANY HAVE THERE BEEN?

22 A. A TOTAL OF FOUR.

23 Q. AND IN ADDITION TO THE EXCEPTIONS COMING TO YOUR  
24 KNOWLEDGE BY WAY OF CATHOLIC LEADERSHIP, WOULD -- IS  
25 THERE -- ARE THERE ANY INSTANCES WHERE DHS WOULD KNOW OF

1 SUCH EXCEPTIONS?

2 A. THERE ARE INSTANCES IN WHICH DHS WOULD KNOW OF  
3 EXCEPTIONS.

4 Q. AND ARE YOU ABLE TO PROVIDE -- EXPLAIN TO THE  
5 COURT HOW DHS WOULD KNOW?

6 A. IF THE INFORMATION WAS BROUGHT TO DHS BY WAY OF  
7 A CUA CASE MANAGER OR A DHS SOCIAL WORKER, THEN THE DHS  
8 SOCIAL WORKER WOULD ASK OR TRY TO DETERMINE WHETHER OR  
9 NOT THEY CAN GET AN EXCEPTION TO THE RULE.

10 Q. AND AGAIN THE EXCEPTION IS PRESENTED TO YOU?

11 A. YES.

12 Q. ADDITIONALLY, TURNING YOUR ATTENTION TO FOSTER  
13 -- PROSPECTIVE FOSTER PARENTS AND THEIR DESIRE TO WORK  
14 WITH PARTICULAR AGENCIES. FIRST OF ALL, CAN FOSTER-CARE  
15 AGENCIES -- DO YOU BELIEVE IT'S APPROPRIATE FOR  
16 FOSTER-CARE AGENCIES TO INFORM PROSPECTIVE FOSTER  
17 PARENTS ABOUT THE SERVICES THAT MAY BE OFFERED BY OTHER  
18 FOSTER-CARE AGENCIES?

19 A. ONLY AT THE REQUEST OF THE FOSTER PARENT, THE  
20 POTENTIAL FOSTER PARENT.

21 Q. AND DO YOU BELIEVE THAT -- I BELIEVE YOU HAVE  
22 ALREADY TESTIFIED THAT FOSTER PARENTS -- IT'S THEIR  
23 CHOICE TO CHOOSE WHICH AGENCY WITH WHICH THEY WOULD LIKE  
24 TO WORK?

25 A. YES.

1 Q. DO YOU ALSO BELIEVE IT'S APPROPRIATE FOR A  
2 FOSTER-CARE AGENCY TO REFUSE TO EVALUATE A FAMILY?

3 A. NO.

4 MS. OLIVER: YOUR HONOR, I HAVE NO FURTHER  
5 QUESTIONS OF MS. ALI.

6 THE COURT: ALL RIGHT. ANY OTHER QUESTIONS?

7 MS. BARCLAY: YES, YOUR HONOR, BUT I WILL BE  
8 BRIEF.

9 RECROSS EXAMINATION

10 BY MS. BARCLAY:

11 Q. YOU JUST SPOKE ABOUT EXCEPTIONS TO THE REFERRAL  
12 FREEZE, AND I BELIEVE YOU SAID FOR REUNITING SIBLINGS OR  
13 FOR FAMILIES WITH PREEXISTING RELATIONSHIPS. DID I GET  
14 THAT RIGHT?

15 A. YES.

16 Q. ANY OTHER BASIS FOR AN EXCEPTION?

17 A. IT COULD BE. I CAN'T THINK OF ANY OFFHAND.

18 Q. SURE.

19 A. THE MOST IMPORTANT THING WE WOULD DO IS -- I  
20 WOULD DO IS HAVE A CONVERSATION WITH THE CUA LEADERSHIP  
21 TO DETERMINE WHY AN EXCEPTION SHOULD BE GRANTED.

22 Q. WHEN WAS THE FIRST TIME YOU COMMUNICATED THIS  
23 POLICY OF GRANTING EXCEPTIONS?

24 A. I DIDN'T COMMUNICATE THIS. COMMISSIONER  
25 FIGUEROA COMMUNICATED THAT TO CATHOLIC COMMUNITY

1 SERVICES -- CATHOLIC SOCIAL SERVICES.

2 Q. WHEN IS YOUR UNDERSTANDING THAT THAT WAS  
3 COMMUNICATED?

4 A. AROUND THE TIME THE INTAKE WAS CLOSED.

5 Q. WHEN INTAKE WAS CLOSED, THAT'S YOUR  
6 UNDERSTANDING?

7 A. ON OR ABOUT.

8 Q. AND WHEN WAS THAT POLICY GRANTING EXCEPTIONS  
9 COMMUNICATED -- WELL, LET ME BACK UP A LITTLE BIT. YOU  
10 SAID THAT ONE OF THE WAYS THAT THESE SITUATIONS WILL  
11 BECOME KNOWN TO YOU IS THROUGH CUA LEADERSHIP?

12 A. YES.

13 Q. AND IT'S POSSIBLE THAT IF CUA LEADERSHIP DOES  
14 NOT NOTIFY YOU, YOU WON'T KNOW ABOUT THE NEED TO GRANT  
15 AN EXCEPTION?

16 A. THAT'S POSSIBLE.

17 Q. AND YOU HAVE NOT REQUESTED CUA LEADERSHIP TO  
18 BRING ANY OF THESE SITUATIONS TO YOUR ATTENTION, HAVE  
19 YOU?

20 A. I HAVE.

21 Q. HAVE YOU REQUESTED IN WRITING THAT ALL CUA  
22 LEADERSHIP BRING TO YOUR ATTENTION SITUATIONS WHERE A  
23 REFERRAL MAY NEED TO BE MADE TO CATHOLIC TO REUNITE  
24 SIBLINGS OR FAMILIES WITH PREEXISTING RELATIONSHIP?

25 A. I HAVE NOT TO ALL CUA LEADERSHIP. HOWEVER, IN



1 CONVERSATIONS WITH JIM AMATO AND JIM BLACK, I ALWAYS SAY  
2 IF THERE IS ANY ADDITIONAL, IF THERE IS ANY OTHER CASES  
3 THAT I NEED TO CONSIDER, JUST LET ME KNOW.

4 Q. BUT YOU HAVE NOT COMMUNICATED THIS TO LEADERS OF  
5 OTHER CUA'S, HAVE YOU?

6 MS. OLIVER: OBJECTION.

7 THE COURT: SUSTAINED.

8 MS. BARCLAY: YOUR HONOR, MAY I UNDERSTAND  
9 THE BASIS FOR THE OBJECTION?

10 THE COURT: SUSTAINED.

11 BY MS. BARCLAY:

12 Q. YOU SAID THAT THERE HYPOTHETICALLY COULD BE  
13 INSTANCES WHERE DHS STAFF WOULD BRING THESE SORTS OF  
14 SITUATIONS TO YOUR ATTENTION?

15 A. IT COULD BE.

16 Q. BUT THAT'S NEVER ACTUALLY HAPPENED SO FAR, HAS  
17 IT?

18 A. NOT FOR CATHOLIC, BUT FOR OTHER SITUATIONS, YES.

19 Q. SINCE THIS LITIGATION HAS STARTED, DHS HAS NOT  
20 BROUGHT TO YOUR ATTENTION ANY NEEDS FOR AN EXCEPTION  
21 BASED ON THIS POLICY YOU DESCRIBED, CORRECT?

22 A. YES, THEY HAVE.

23 Q. IN WHAT INSTANCES HAVE DHS STAFF BROUGHT TO YOUR  
24 ATTENTION THE NEED TO GRANT AN EXCEPTION?

25 A. SO WE CURRENTLY HAVE A GROUP HOME PROVIDER IN

1 WHICH THEIR INTAKE IS CLOSED. IT WAS A YOUNG PERSON WHO  
2 WAS PLACED AT THAT GROUP HOME PREVIOUSLY. I GRANTED THE  
3 EXCEPTION FOR THAT YOUNG PERSON TO BE PLACED BACK AT  
4 THAT GROUP HOME.

5 Q. DHS STAFF HAS NEVER BROUGHT TO YOUR ATTENTION  
6 SITUATIONS WHERE A CHILD NEEDED TO BE REFERRED TO  
7 CATHOLIC, HAVE THEY?

8 MS. OLIVER: OBJECTION, ASKED AND ANSWERED,  
9 YOUR HONOR.

10 MS. BARCLAY: THIS IS NOT SOMETHING THAT SHE  
11 ANSWERED YET, YOUR HONOR. I AM ASKING SPECIFICALLY --

12 THE COURT: ASK IT AGAIN BECAUSE I THOUGHT IT  
13 HAD BEEN ASKED AND ANSWERED.

14 BY MS. BARCLAY:

15 Q. DHS STAFF, SINCE THE BEGINNING OF THIS  
16 LITIGATION, HAS NOT BROUGHT TO YOUR ATTENTION A  
17 SITUATION WHERE IT WOULD BE IN THE BEST INTEREST OF THE  
18 CHILD TO BE REFERRED TO CATHOLIC SOCIAL SERVICES?

19 A. NO.

20 Q. YOU SAID THAT -- WHEN ASKED WOULD IT BE  
21 APPROPRIATE FOR A FOSTER AGENCY TO INFORM A FAMILY ABOUT  
22 OTHER SERVICES OFFERED, YOU SAID ONLY AT THE REQUEST OF  
23 THAT FOSTER PARENT, CORRECT?

24 A. YES.

25 Q. SO IT WOULD BE INAPPROPRIATE FOR AN AGENCY TO

1 NOTIFY A FAMILY ABOUT, FOR EXAMPLE, LANGUAGE SERVICES OF  
2 ANOTHER AGENCY IF THE FOSTER FAMILY DID NOT SPECIFICALLY  
3 ASK ABOUT THAT?

4 A. YES. I WOULD EXPECT THAT FOSTER-CARE AGENCY TO  
5 TELL THEM WHAT TYPE OF SERVICES THEY OFFER AT THEIR  
6 PARTICULAR AGENCY, KNOWING THAT OUR CHILDREN ARE  
7 ASSIGNED TO AND FAMILIES ARE ASSIGNED TO ALL TEN CUA'S,  
8 SO THE --

9 Q. I AM NOT TALKING ABOUT CUA'S. I'M TALKING ABOUT  
10 FOSTER AGENCIES.

11 A. IN ALL FOSTER-CARE AGENCIES. SO WE WOULD EXPECT  
12 THE FOSTER-CARE AGENCY TO BE ABLE TO PROVIDE LANGUAGE  
13 SERVICES TO CHILDREN OR YOUTH WHO ARE PLACED IN THEIR  
14 FOSTER-CARE AS WELL AS THE PARENTS.

15 Q. IS IT A REQUIREMENT OF THE CONTRACT THAT ALL  
16 FOSTER AGENCIES PROVIDE LANGUAGE SERVICES?

17 A. I AM UNSURE.

18 Q. SO A FOSTER AGENCY WOULD NEED TO FIRST LET A  
19 FAMILY KNOW ABOUT ANY LANGUAGE SERVICES, IF ANY, THAT  
20 THAT FOSTER AGENCY ITSELF OFFERED, RIGHT?

21 A. IF THAT WAS THE QUESTION.

22 Q. WELL, IF A FAMILY -- SAY A LATINO FAMILY  
23 APPROACHED AN AGENCY, THAT FOSTER AGENCY WOULD,  
24 ACCORDING TO YOU, FIRST NEED TO NOTIFY THE LATINO FAMILY  
25 ABOUT ANY LANGUAGE SERVICES THAT FOSTER AGENCY PROVIDED,

1 CORRECT?

2 A. YES.

3 Q. AND THE AGENCY COULD NOT NOTIFY THEM ABOUT  
4 SERVICES OFFERED BY OTHER AGENCIES UNLESS THE FAMILY  
5 SPECIFICALLY ASKED FOR INFORMATION ABOUT OTHER AGENCIES?

6 MS. OLIVER: OBJECTION.

7 THE COURT: SUSTAINED. I THINK WE HAVE GONE  
8 FAR AFIELD TO THE RECROSS.

9 BY MS. BARCLAY:

10 Q. YOU SPOKE IN YOUR TESTIMONY ABOUT THE IMPORTANCE  
11 OF LETTING FAMILIES CHOOSE THE AGENCY THAT THEY WANT TO  
12 WORK WITH, CORRECT?

13 A. YES.

14 Q. AND DO YOU BELIEVE THAT IT'S ALSO IMPORTANT FOR  
15 MRS. PAUL AND MS. FULTON AND MS. TONI SIMMS-BUSCH TO BE  
16 ABLE TO CHOOSE THE AGENCY THEY WANT TO WORK WITH?

17 A. YES.

18 MS. BARCLAY: THANK YOU. NO FURTHER  
19 QUESTIONS.

20 THE COURT:

21 MS. OLIVER: YOUR HONOR, I HAVE NO REDIRECT.  
22 HOWEVER, I'D ASK TO RESERVE THE RIGHT TO RECALL MS. ALI  
23 AFTER THE PLAINTIFFS REST.

24 THE COURT: YES.

25 YOU MAY STEP DOWN.

1 THE WITNESS: THANK YOU.

2 (WITNESS EXCUSED.)

3 THE COURT: YOU MAY CALL YOUR WITNESS.

4 MR. RIENZI: YOUR HONOR, ARE YOU ASKING FOR  
5 PLAINTIFFS TO PRESENT THEIR NEXT WITNESS?

6 THE COURT: YES.

7 MS. BARCLAY: YOUR HONOR, THE PLAINTIFFS  
8 WOULD LIKE TO CALL MR. JAMES AMATO TO THE STAND.

9 MS. WINDHAM: YOUR HONOR, IF I MAY, WE ARE  
10 CALLING MR. AMATO TO THE STAND TODAY. THERE WAS DISCUSSION  
11 YESTERDAY ABOUT THE DECLARATIONS OF BISHOP MCINTYRE AND  
12 JAMES BLACK. WE BELIEVE THAT MR. AMATO'S TESTIMONY TODAY  
13 WILL BE ABLE TO COVER THE RELEVANT PORTIONS OF THE TESTIMONY  
14 OF BISHOP MCINTYRE AND JAMES BLACK.

15 I WOULD ALSO NOTE FOR THE COURT THAT MR.  
16 AMATO'S DECLARATION ALREADY AUTHENTICATED A NUMBER OF  
17 DOCUMENTS WHICH WERE ATTACHED TO PLAINTIFF'S MOTION.

18 THE COURT: OKAY. IT'S NOTED.

19 (WITNESS SWORN.)

20 THE CLERK: STATE AND SPELL YOUR NAME FOR THE  
21 RECORD, PLEASE.

22 THE WITNESS: JAMES AMATO, A-M-A-T-O.

23 DIRECT EXAMINATION

24 BY MS. BARCLAY:

25 Q. GOOD AFTERNOON, MR. AMATO.

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 FOSTER-CARE PROGRAM. WHAT WOULD YOU DESCRIBE AS SOME OF  
2 THE STRENGTHS AND UNIQUE ASPECTS OF YOUR PROGRAM?

3 A. I THINK THE KEY STRENGTH IS THE ACCUMULATED  
4 KNOWLEDGE AFTER DOING IT FOR 100 YEARS. THE STAFF, OUR  
5 TURNOVER IS VERY, VERY LOW. THE STAFF HAS EXCELLENT  
6 RELATIONSHIPS WITH THE FOSTER PARENTS AND I THINK THAT  
7 LEADS TO -- WE KEEP OUR CASE LOADS LOW SO THAT WE CAN  
8 CONTINUE TO PROVIDE ADEQUATE SUPPORT, AND I THINK THAT  
9 KIND OF RESULTS IN SOME OF THE THINGS THAT WE HEARD  
10 YESTERDAY.

11 Q. IT IS YOUR UNDERSTANDING THAT YOUR CASE LOADS  
12 ARE DELIBERATELY LOWER THAN MANY OTHER AGENCIES?

13 A. ABSOLUTELY, PARTICULARLY NOW WITH THE NEW  
14 STANDARDS THAT COME WITH THE CUA.

15 Q. HOW LONG HAS YOUR LONGEST STAFF MEMBER BEEN  
16 THERE?

17 A. OVER 35 YEARS.

18 Q. HOW DO YOU THINK THE CONTINUITY WITH YOUR STAFF  
19 IMPACTS THE CHILDREN THAT YOU SERVE?

20 A. WHAT I HAVE HEARD AND WITNESSED IS OUR FOSTER  
21 PARENTS CAN CALL AT ANY TIME AND GET ACCESS TO OUR  
22 SOCIAL WORKERS. BUT IF THEY CAN'T, WE HAVE BOB MONTORO  
23 RUNNING IT WHO HAS BEEN THERE FOR MANY YEARS. WE HAVE  
24 CHRISTY REED, THE SUPERVISOR, WHO HAS BEEN THERE FOR  
25 MANY YEARS. AND WE HAVE AN EILEEN MULLEN WHO IS A CASE

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 CONGREGATE CARE SHELTER, WHICH NOW BEST PRACTICE SAYS IS  
2 NOT THE BEST WAY TO GO. SO THOSE WOULD BE JUST TWO OF  
3 THE THINGS THAT WOULD COME TO MIND.

4 MS. BARCLAY: PERMISSION TO APPROACH THE  
5 WITNESS, YOUR HONOR?

6 THE COURT: YES.

7 BY MS. BARCLAY:

8 Q. MR. AMATO, I AM APPROACHING YOU WITH WHAT HAS  
9 BEEN MARKED AS PLAINTIFF'S EXHIBIT NUMBER 5.

10 MR. FIELD: YOUR HONOR, MAY WE HAVE A MOMENT  
11 TO REVIEW THIS EXHIBIT? WE HAVE NOT SEEN THIS DOCUMENT  
12 BEFORE.

13 THE COURT: OKAY. I AM GOING TO TAKE A BRIEF  
14 RECESS. I HAVE ANOTHER MATTER I HAVE TO HANDLE. I WILL BE  
15 ABOUT TEN MINUTES.

16 THE CLERK: ALL RISE.

17 (BRIEF RECESS.)

18 THE COURT: OKAY. YOU MAY BE SEATED.

19 MS. BARCLAY: MAY WE RESUME?

20 MR. FIELD: YOUR HONOR, I WOULD ASK AN OFFER  
21 OF PROOF ON THIS EXHIBIT, IS IT P-5?

22 THE COURT: YES.

23 MS. BARCLAY, CAN YOU IDENTIFY IT FIRST FOR  
24 THE RECORD.

25 MS. BARCLAY: THIS IS THE CERTIFICATE GRANTED

1 TO PHILADELPHIA DHS TO OPERATE PHILADELPHIA COUNTY CHILDREN  
2 AND YOUTH SERVICES AND DISCUSSES SOME OF THE ISSUES THAT DHS  
3 WAS FACING WITH REGARD TO BEING ABLE TO HAVE ENOUGH HOMES TO  
4 PLACE CHILDREN. AND IT IS RELEVANT TO ANOTHER DOCUMENT THAT  
5 WE WILL BE DISCUSSING THAT CATHOLIC SOCIAL SERVICES PROVIDED  
6 TO DHS TO TRY AND ASSIST WITH THIS PROBLEM.

7 THE COURT: OKAY.

8 MR. FIELD: YOUR HONOR, I APOLOGIZE. DHS IS  
9 A LARGE ORGANIZATION WITH A LONG HISTORY. THIS IS A  
10 DOCUMENT FROM 2016. I AM NOT CLEAR ON THE RELEVANCE OF THE  
11 ENTIRETY OF DHS'S HISTORY OF THE CARE WITH CHILDREN. THIS  
12 LITIGATION, WHICH I UNDERSTAND TO BE ABOUT THIS ALLEGED  
13 RELIGIOUS BURDEN AND THE HARMS THAT FLOW THEREFROM. I  
14 RESPECTFULLY SUBMIT WE WILL BE HERE A LONG TIME IF WE ARE  
15 GOING INTO THE ENTIRETY OF DHS'S CARE -- EVEN RECENT YEARS.

16 MS. BARCLAY: YOUR HONOR, THERE'S ONLY ONE  
17 PARAGRAPH THAT I WILL JUST BRIEFLY READ AND THEN --

18 THE COURT: I AM GOING TO OVERRULE THE  
19 OBJECTION.

20 BY MS. BARCLAY:

21 Q. MR. AMATO, IF YOU CAN TURN WITH ME TO THE PAGE  
22 THAT IS TABBED, AND I AM JUST GOING TO READ TO YOU. IT  
23 SAYS: CHILDREN ARE STAYING AT DHS OVERNIGHT IN THE  
24 CHILDCARE ROOM AND AT THE CUA WITHOUT ADEQUATE AND  
25 TIMELY PLACEMENT. THE REPORTED NUMBER OF CHILDREN

1 STAYING OVERNIGHT AT DHS AND CUA COMBINED DURING  
2 CALENDAR YEAR 2015 WAS 84. THIS NUMBER IS PROBABLY  
3 HIGHER AS SOME CUA'S DID NOT MAINTAIN RECORDS OF WHICH  
4 CHILDREN STAYED OVERNIGHT AND WHEN THEY STAYED  
5 OVERNIGHT. THIS IS AN UNACCEPTABLE PRACTICE AND AT THE  
6 STATE'S REQUEST DHS HAS SUBMITTED A PLAN TO ALLEVIATE  
7 THIS CONCERNING ISSUE.

8 NOW, BEFORE WE RECESSED, YOU WERE  
9 DISCUSSING THE ISSUE OF WHEN CHILDREN STAY OVERNIGHT AT  
10 THE CHILDCARE ROOM. AND AROUND THIS TIME WAS THERE  
11 ANYTHING THAT CATHOLIC SOCIAL SERVICES DID TO TRY AND  
12 ASSIST DHS WITH THIS ISSUE?

13 A. ACTING COMMISSIONER JESSICA SHAPIRO AT THAT TIME  
14 APPROACHED ME, KNOWING OUR HISTORY IN PROVIDING  
15 EMERGENCY SHELTER FOR CHILDREN, AND ASKED ME FOR A  
16 PROPOSAL TO RESUME THAT SHELTER.

17 MS. BARCLAY: YOUR HONOR, PERMISSION TO  
18 APPROACH THE WITNESS.

19 THE COURT: YES.

20 BY MS. BARCLAY:

21 Q. MR. AMATO, I AM APPROACHING YOU WITH WHAT HAS  
22 BEEN MARKED AS PLAINTIFF'S EXHIBIT NUMBER 6.

23 A. YES.

24 Q. WHAT IS THIS DOCUMENT, MR. AMATO?

25 A. THIS IS THE COVER LETTER THAT ACCOMPANIED THE

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 THAT SPECIALIZE IN FOSTER HOMES FOR TEEN PREGNANT GIRLS  
2 AND TEEN MOTHER/BABIES. FURTHER THERE ARE AGENCIES WHO  
3 SPECIALIZE, AND ONE IS IN SUBURBAN PHILADELPHIA, IN HOME  
4 STUDIES FOR LGBTQ INDIVIDUALS AND COUPLES. AND FINALLY  
5 THERE ARE AGENCIES WHO SPECIALIZE IN PROVIDING FOSTER  
6 HOMES FOR NATIVE AMERICAN CHILDREN SO THEY ARE PLACED  
7 WITH NATIVE AMERICAN FAMILIES.

8 Q. ARE THERE ALSO AGENCIES WHO HAVE SPECIALTY IN,  
9 FOR EXAMPLE, OUTREACH TO THE LATIN AMERICAN COMMUNITY?

10 A. YES. AND THE TWO THAT COME IMMEDIATELY TO MIND  
11 ARE CONCILIO AND APM, WHICH HAVE A DEEP-ROOTED HISTORY  
12 IN THE LATINO COMMUNITY. ALMOST ALL STAFF -- I WOULD  
13 ASSUME, I THINK ALL, ARE BILINGUAL AND HAVE -- BOTH HAVE  
14 QUALITY FOSTER -- AND RECOGNIZED FOSTER-CARE PROGRAMS.

15 MS. BARCLAY: PERMISSION TO APPROACH THE  
16 WITNESS, YOUR HONOR.

17 THE COURT: YES.

18 BY MS. BARCLAY:

19 Q. MR. AMATO, I AM APPROACHING YOU WITH WHAT HAS  
20 BEEN MARKED AS PLAINTIFF'S EXHIBIT NUMBER 7. THIS IS A  
21 DOCUMENT FROM CONCILIO'S WEBSITE. IT SAYS THAT: THE  
22 PURPOSE OF THIS AGENCY IS TO PROVIDE SOCIAL,  
23 EDUCATIONAL, CULTURAL PREVENTION AND INTERVENTION  
24 SERVICES AND PROGRAMS TO UNDERSERVED YOUNG PEOPLE AND  
25 FAMILIES IN THE PHILADELPHIA REGION AND TO SERVE AS A

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 AGENCY?

2 A. A DHS REFERRAL IS FOR A PARTICULAR HARD SERVICE,  
3 FOSTER-CARE, GROUP HOME, THAT KIND OF THING. THE OTHER  
4 ONE IS MORE OF A QUERY ABOUT WHERE WILL I BE BEST  
5 SERVED.

6 Q. I WANT TO TALK TO YOU NOW ABOUT THIS PARTICULAR  
7 LITIGATION, MR. AMATO. WHEN DID YOU FIRST LEARN THAT  
8 THE CITY HAD CONCERNS ABOUT CATHOLIC SOCIAL SERVICES'  
9 RELIGIOUS BELIEFS?

10 THE COURT: I DON'T KNOW THAT THAT IS  
11 PROPERLY PHRASED.

12 MS. BARCLAY: I CAN REPHRASE IT, YOUR HONOR.

13 THE COURT: OKAY.

14 BY MS. BARCLAY:

15 Q. WHEN DID YOU FIRST LEARN THAT THE CITY HAD  
16 CONCERNS ABOUT CATHOLIC SOCIAL SERVICES' RELIGIOUS  
17 BELIEFS WITH RESPECT TO WRITTEN CERTIFICATIONS THAT CAN  
18 PROVIDE TO SAME-SEX COUPLES?

19 MR. FIELD: OBJECTION, YOUR HONOR.

20 THE COURT: AGAIN, YOU ARE PUTTING IN THERE  
21 "RELIGIOUS BELIEFS." I DON'T THINK THAT THAT IS THE ISSUE.  
22 THE ISSUE IS WHETHER OR NOT THEY WERE GOING TO BE CERTIFIED.

23 MS. BARCLAY: I CAN REPHRASE IT AGAIN, YOUR  
24 HONOR.

25 THE COURT: YES.

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 THAT COUPLE TO ONE OF THE OTHER 28 OR SO AGENCIES WHO  
2 WOULD COMPLETE SUCH A HOME STUDY.

3 Q. WHEN DID YOU FIRST LEARN THAT EXCEPTIONS MIGHT  
4 BE GRANTED FOR CHILDREN TO BE PLACED WITH CATHOLIC  
5 SOCIAL SERVICES IN THE BEST INTEREST OF THE CHILD?

6 A. I AM GOING TO SAY ROUGHLY AROUND MARCH 25 A  
7 REFERRAL CAME TO OUR FOSTER-CARE DEPARTMENT, AND I WAS  
8 IMMEDIATELY NOTIFIED THAT REFERRAL IS FROM A CUA. I  
9 BELIEVE IT WAS AN EMERGENCY SITUATION WHERE A SIBLING OF  
10 TWO CHILDREN BEING IN A CATHOLIC SOCIAL SERVICES HOME  
11 NEEDED TO BE PLACED, AND IT WAS THAT THEY -- THE REQUEST  
12 WAS THAT HE BE PLACED WITH HIS SIBLINGS AT OUR  
13 CSS-APPROVED HOME.

14 MS. BARCLAY: JUST ONE MOMENT, YOUR HONOR.  
15 PERMISSION TO APPROACH THE WITNESS, YOUR  
16 HONOR.

17 THE COURT: YES.

18 BY MS. BARCLAY:

19 Q. MR. AMATO, I AM APPROACHING YOU WITH WHAT HAS  
20 BEEN MARKED AS PLAINTIFF'S EXHIBIT NUMBER 8. CAN YOU  
21 TELL US WHAT THIS DOCUMENT IS?

22 A. I DIDN'T HEAR YOU.

23 Q. CAN YOU TELL US WHAT THIS DOCUMENT IS?

24 A. IT'S AN E-MAIL FROM ME TO COMMISSIONER FIGUEROA,  
25 ADVISING HER THAT THE REFERRAL WAS MADE FOR ELIJAH

1 JACKSON TO BE PLACED IN A CSS FOSTER HOME THAT NOW HAS  
2 HIS SIBLINGS.

3 MR. FIELD: OBJECTION. YOUR HONOR, THEY ARE  
4 TALKING ABOUT THE NAME OF THE CHILDREN WHO ARE IN THE CITY'S  
5 FOSTER-CARE. I'D ASK THAT THE EXHIBIT BE WITHDRAWN FROM THE  
6 RECORD.

7 THE COURT: WE WILL REDACT IT.

8 MR. FIELD: AND STRICKEN.

9 MS. BARCLAY: NO OBJECTION, YOUR HONOR?

10 BY MS. BARCLAY:

11 Q. TO THE EXTENT YOU ARE DESCRIBING THIS CHILD,  
12 WOULD YOU REFER TO THE CHILD AS DOE FOSTER CHILD NUMBER  
13 2?

14 A. I WILL.

15 Q. WILL YOU DESCRIBE AGAIN WHAT THIS DOCUMENT IS?

16 A. AN E-MAIL TO THE COMMISSIONER INDICATING THAT IT  
17 RECEIVED A NET CUA REFERRAL ON DOE CHILD 2 TO BE  
18 REUNITED WITH HIS SIBLINGS WHO ARE IN A CSS FOSTER HOME  
19 AND THAT DOE CHILD 2 NEEDED AN EMERGENCY PLACEMENT, WITH  
20 MY UNDERSTANDING. I INDICATED THAT WE ACCEPTED THE  
21 REFERRAL AS -- WITH THE IDEA THAT IT'S IN THE BEST  
22 INTEREST OF THE CHILD TO BE WITH HIS SIBLINGS AND ASKED  
23 IF SHE HAD ANY QUESTIONS.

24 Q. NOW, A FEW DAYS LATER IN MARCH, THERE WAS  
25 ANOTHER E-MAIL FROM COMMISSIONER ALI. WERE YOU A

1 RECIPIENT OF THAT E-MAIL?

2 A. I WAS.

3 Q. WHAT DID YOU UNDERSTAND TO BE THE MEANING OF  
4 THAT E-MAIL?

5 A. MY UNDERSTANDING WAS IT WAS A CLEAR AND CONCISE  
6 AND DIRECT ORDER TO ALL OF THE CUA'S TO CEASE AND DESIST  
7 ANY REFERRALS TO CATHOLIC OR BETHANY.

8 Q. NOW WHO MADE THIS REFERRAL FOR DOE FOSTER CHILD  
9 NUMBER 2 TO CATHOLIC SOCIAL SERVICES?

10 A. MY UNDERSTANDING IS THE INQUIRY WAS MADE BY THE  
11 NET OR NORTHEAST TREATMENT CUA TO US, AND THAT THE  
12 NECESSARY -- AND THIS IS SPECULATION -- AND THAT THE  
13 CENTRAL REFERRAL UNIT OF THE CITY APPROVED OF THIS  
14 PLACEMENT.

15 Q. I JUST WANT TO MAKE SURE SOMETHING THAT YOU SAID  
16 EARLIER. YOU TALKED ABOUT THE REASON FOR THE REFERRAL  
17 FREEZE AND WHAT CATHOLIC SOCIAL SERVICES' RELIGIOUS  
18 OBJECTIONS WERE, RIGHT? DOES CATHOLIC SOCIAL SERVICES  
19 PLACE CHILDREN WITH INDIVIDUALS AND PROVIDE HOME STUDY  
20 FOR JUST SINGLE PARENT?

21 A. FOR ANY FAMILY WHO APPROACHES US FOR --

22 Q. FOR A SINGLE PARENT, COULD THEY HAVE A HOME  
23 STUDY PERFORMED?

24 A. YES.

25 Q. DOES IT MATTER WHAT THE SEXUAL ORIENTATION IS OF

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 Q. WELL, WHAT WERE SOME OF THE THINGS THAT YOU DID  
2 BEFORE FILING THE LAWSUIT TO SEE IF YOU COULD WORK THIS  
3 OUT, AS YOU SAID?

4 A. WELL, WE SHOWED AN INTEREST IN FINDING SOME KIND  
5 OF MIDDLE GROUND. WE WORKED WITH BECKET TO SHOW THAT  
6 INTEREST, AND THERE WAS AN E-MAIL TO THE CITY INDICATING  
7 THAT WE WOULD LIKE TO HAVE A MEETING TO SEE IF SOME SORT  
8 OF ACCOMMODATION COULD BE WORKED OUT, BUT THE ANSWER WAS  
9 CLEAR AND CRISP. AND THE ANSWER WAS NO, THERE IS NO  
10 REASON FOR A MEETING, EITHER DO THE HOME STUDIES OR WE  
11 WILL BE TRANSITIONING YOU GRADUALLY OUT OF FOSTER-CARE.

12 Q. DID YOU ASK FOR MULTIPLE MEETINGS WITH DHS?

13 A. NO.

14 Q. DID YOU ASK ON MORE THAN ONE OCCASION FOR  
15 MEETINGS WITH DHS?

16 A. NOT TO MY RECOLLECTION.

17 Q. YOU DON'T RECALL?

18 A. NO, I DON'T RECALL THAT.

19 MS. BARCLAY: PERMISSION TO APPROACH THE  
20 WITNESS, YOUR HONOR.

21 THE COURT: YES.

22 BY MS. BARCLAY:

23 Q. MR. AMATO, I AM APPROACHING WITH YOU WHAT HAS  
24 BEEN MARKED AS PLAINTIFF'S EXHIBIT NUMBER 9. DO YOU  
25 RECOGNIZE THIS DOCUMENT, MR. AMATO?

1 A. I DO.

2 Q. WHAT IS THE DATE OF THIS DOCUMENT?

3 A. MAY 7, 2018.

4 Q. WAS THERE SOMETHING ABOUT THIS DOCUMENT IN  
5 PARTICULAR THAT MADE YOU DECIDE THAT CATHOLIC SOCIAL  
6 SERVICES WOULD NEED TO FILE A LAWSUIT?

7 A. WELL, WHAT I RECALL OF THIS DOCUMENT IS  
8 SOMEWHERE IN THE -- IN THE DOCUMENT IS MR. RIENZI ASKING  
9 THE CITY FOR A MEETING TO SEE IF WE CAN COME UP WITH A  
10 SOLUTION, AND -- IF I AM RECALLING THIS AS THE CORRECT  
11 LETTER.

12 Q. LET ME PAUSE YOU THERE. THIS DOCUMENT IS NOT  
13 WRITTEN BY MR. RIENZI. IT'S WRITTEN TO MR. RIENZI BY  
14 THE CITY OF PHILADELPHIA. DO YOU RECALL ANY DISCUSSION  
15 IN THIS LETTER ABOUT SUBPOENAS?

16 A. ABOUT WHAT?

17 Q. SUBPOENAS FROM THE CITY.

18 A. WHAT I RECALL FROM THIS LETTER IS, IT WAS -- IT  
19 WAS A RESPONSE TO MR. RIENZI'S CALL FOR A MEETING TO  
20 COME UP WITH AN ALTERNATE SOLUTION, AND THE LETTER  
21 INDICATED THAT THERE IS NO SOLUTION THAT CAN BE HAD  
22 OTHER THAN COMPLETE THE HOME STUDIES AS WE HAVE MANDATED  
23 OR SUBPOENAS WILL BE FORTHCOMING. SO AT THAT POINT, OUR  
24 BEST RECOURSE AND ONLY RECOURSE WAS A FEDERAL LAWSUIT.

25 Q. I WANT TO DIRECT YOUR ATTENTION TO THE LAST

1 SENTENCE OF THIS LETTER BEFORE THE SIGNATURE. IT SAYS:  
2 THEREFORE WE REITERATE THE REQUEST FOR INFORMATION SET  
3 FORTH IN THAT LETTER AND WE ASK YOU TO RESPOND WITHIN  
4 TEN DAYS OF THIS LETTER TO AVOID THE ISSUANCE OF A  
5 SUBPOENA.

6 DID I READ THAT CORRECTLY?

7 A. YES.

8 Q. SO HOW LONG AFTER MAY 7 WAS IT APPROXIMATELY  
9 THAT YOU FILED YOUR LAWSUIT?

10 A. MY RECOLLECTION IS ABOUT NINE DAYS LATER.

11 Q. NOW, THE ATTORNEYS FOR THE CITY HAVE ACCUSED YOU  
12 OF NEEDLESSLY MAKING --

13 MR. FIELD: OBJECTION, YOUR HONOR.

14 THE COURT: TO THE TERM "ACCUSE."

15 MS. BARCLAY: YES, YOUR HONOR.

16 BY MS. BARCLAY:

17 Q. MR. AMATO, LET ME REPHRASE MY QUESTION. THE  
18 ATTORNEYS FOR THE CITY HAVE STATED THAT YOU NEEDLESSLY  
19 MADE THE DOE FOSTER CHILD NUMBER 1 SITUATION PART OF  
20 THIS LAWSUIT, THAT YOU ENTANGLED IT IN THIS LAWSUIT.  
21 WHY DID YOU DECIDE --

22 MR. FIELD: OBJECTION, YOUR HONOR. THIS  
23 LETTER IS NOT FROM AN ATTORNEY FOR THE CITY.

24 MS. BARCLAY: YOUR HONOR, I AM NO LONGER  
25 TALKING ABOUT THE LETTER.

1 THE COURT: ASK YOUR QUESTION AGAIN, PLEASE.

2 BY MS. BARCLAY:

3 Q. THE ATTORNEYS FOR THE CITY HAVE ACCUSED YOU OF  
4 NEEDLESSLY MAKING DOE FOSTER CHILD NUMBER 1 SITUATION  
5 PART OF THIS LAWSUIT AND ENTANGLING THAT WITH THIS  
6 LAWSUIT. WHY DID YOU DECIDE THAT ADDITIONAL FACTS  
7 RELEVANT TO THE DOE FOSTER CHILD NUMBER 1 SITUATION  
8 NEEDED TO BE COMMUNICATED TO THE CITY THROUGH YOUR  
9 ATTORNEYS AND THIS LITIGATION?

10 MR. FIELD: YOUR HONOR, I OBJECT TO THE  
11 CHARACTERIZATION OF THE CITY'S REPRESENTATION. THOSE WORDS  
12 CHANGE BETWEEN LITIGATION COUNSEL AND THIS LITIGATION.

13 MS. BARCLAY: YOUR HONOR, MAY I PULL OUT THE  
14 CHARACTERIZATION OF THE BRIEF?

15 THE COURT: WELL, AGAIN, JUST ASK THE SIMPLE  
16 QUESTION.

17 MS. BARCLAY: YES, YOUR HONOR.

18 BY MS. BARCLAY:

19 Q. WHY DID YOU DECIDE THAT THE ADDITIONAL FACTS YOU  
20 LEARNED ABOUT THE DOE FOSTER CHILD NUMBER 1 SITUATION  
21 NEEDED TO BE COMMUNICATED THROUGH LITIGATION COUNSEL TO  
22 THE CITY?

23 A. BECAUSE ON MAY 25TH WHEN IT WAS DISCOVERED BY  
24 OUR CUA WORKER THAT DOE CHILD NUMBER 2 NEEDED AN  
25 EMERGENCY PLACEMENT AND OUR -- HIS PREVIOUS FOSTER HOME



1 WAS OFFERED AS AN EMERGENCY PLACEMENT, THE ANSWER FROM  
2 THE LINE WORKER AFTER CHECKING WITH HIS SUPERVISORS WAS  
3 THAT THE -- THE REFERRAL WOULD NOT BE ALLOWED BECAUSE OF  
4 THE CASE AGAINST THE CATHOLIC SOCIAL SERVICES.

5 Q. AND WHEN YOU TALKED ABOUT THE LINE WORKER, YOU  
6 ARE REFERRING TO A DHS WORKER, CORRECT?

7 A. YES, AND THE CUA.

8 Q. WHAT DOES THAT INDICATE TO YOU ABOUT THAT DENIAL  
9 AND WHY COMMUNICATIONS NEEDED TO BE PART OF THIS  
10 LITIGATION?

11 A. WELL, THEY TIED THE DENIAL TO THE CASE AGAINST  
12 CATHOLIC SOCIAL SERVICES.

13 MR. FIELD: OBJECTION, YOUR HONOR, THIS IS  
14 HEARSAY.

15 MS. BARCLAY: YOUR HONOR, THIS IS NOT BEING  
16 OFFERED FOR THE TRUTH OF THE MATTER ASSERTED, BUT BECAUSE  
17 THE CATHOLIC SOCIAL SERVICES' MOTIVES FOR BRINGING UP THE  
18 DOE FOSTER CHILD NUMBER 1 SITUATION HAS BEEN CALLED IN  
19 QUESTION, THIS IS RELEVANT TO ADDRESS WHAT HIS MOTIVES WERE  
20 AS FAR AS THOSE COMMUNICATIONS.

21 THE COURT: OVERRULED. YOU STARTED TO  
22 ANSWER.

23 BY MS. BARCLAY:

24 Q. YOU CAN START AGAIN, MR. AMATO. WHAT -- DO YOU  
25 NEED ME TO REPEAT THE QUESTION?

1 A. PLEASE.

2 Q. SO WHAT DID THAT DENIAL BY DHS INDICATE TO YOU  
3 AS FAR AS WHY THOSE COMMUNICATIONS NEEDED TO BE MADE AS  
4 PART OF THIS LITIGATION?

5 A. THE DENIAL INDICATED TO ME THAT THE SOLE REASON  
6 FOR THE LACK OF WHAT WAS A VERY SOLID PLAN FOR DOE  
7 NUMBER 1 CHILD WAS NEGATED BECAUSE OF THE CASE AGAINST  
8 CATHOLIC SOCIAL SERVICES AND THE FREEZE ON ADMISSION.  
9 SO I THOUGHT IT IMPERATIVE TO TAKE THIS THROUGH LEGAL  
10 COUNSEL BECAUSE IT WAS CLEAR TO ME THAT IT WAS IN THE  
11 BEST INTERESTS OF THE CHILD TO BE REUNITED WITH HIS CSS  
12 FOSTER MOTHER.

13 MS. BARCLAY: JUST A MOMENT, MR. AMATO.  
14 PERMISSION TO APPROACH THE WITNESS, YOUR  
15 HONOR.

16 THE COURT: YES.

17 MS. BARCLAY: AND FOR CLARITY I AM GOING TO  
18 APPROACH THE WITNESS WITH BOTH THE REDACTED AND UNREDACTED  
19 VERSION OF THE DOCUMENT.

20 THE COURT: YES.

21 BY MS. BARCLAY:

22 Q. MR. AMATO, I AM APPROACHING YOU WITH WHAT HAS  
23 BEEN MARKED AS PLAINTIFF'S EXHIBITS 10 AND 11. MR.  
24 AMATO, I AM GOING TO READ TO YOU A REDACTED VERSION. IT  
25 SAYS ABOUT THE 4TH PARAGRAPH DOWN: DHS TOLD THE CUA

1 WORKER NO SINCE DHS IS REFUSING TO SEND REFERRALS TO  
2 CSS. SO IS THIS THE DENIAL THAT YOU ARE REFERRING TO  
3 THAT LED YOU TO ARRIVE AT THIS CONCLUSION?

4 A. YES, IT IS.

5 Q. WHY DIDN'T YOU ROUTE THIS ISSUE THROUGH THE  
6 NORMAL FAMILY COURT PROCESS?

7 A. BECAUSE OF THE COMPLEXITY OF THE ACTION TAKEN  
8 AGAINST CATHOLIC SOCIAL SERVICES, BECAUSE OF THE URGENT  
9 NEEDS OF THE CHILD TO BE SERVED, I THOUGHT THAT THIS  
10 MATTER WAS OUTSIDE THE REALM OF WHAT FAMILY COURTS  
11 TRADITIONALLY HANDLES.

12 Q. DID YOU THINK THAT THERE WERE ANY EXCEPTIONAL  
13 CIRCUMSTANCES AT ISSUE HERE?

14 A. ABSOLUTELY. WE HAVE A VERY YOUNG CHILD WITH  
15 SPECIAL NEEDS WHO WAS MOVED FROM RESPITE HOME TO RESPITE  
16 HOME, WAS HAVING PROBLEMS WITH BODILY FUNCTIONS AND A  
17 FOSTER MOTHER WHO DIRELY WANTED HER BACK --

18 MR. FIELD: YOUR HONOR, I OBJECT TO PUTTING  
19 DETAILS ABOUT THE FOSTER CHILD IN THE CITY'S CARE IN THE  
20 RECORD.

21 BY MS. BARCLAY:

22 Q. IF YOU CAN LIMIT YOUR RESPONSE, MR. AMATO, TO  
23 THE LIMITED THINGS WITHOUT GOING INTO DETAIL THAT WERE  
24 THE EXCEPTIONAL CIRCUMSTANCES THAT YOU THOUGHT WARRANTED  
25 NOT ROUTING THIS THROUGH NORMAL FAMILY COURT PROCESS.

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 WITH YOU ABOUT THIS PARTICULAR SITUATION?

2 MR. FIELD: YOUR HONOR, I OBJECT. THE  
3 WITNESS DID NOT SEND THIS E-MAIL OR WASN'T INVOLVED IN THIS  
4 COMMUNICATION.

5 BY MS. BARCLAY:

6 Q. WAS THIS E-MAIL SENT AT YOUR DIRECTION, MR.  
7 AMATO?

8 A. YES.

9 Q. SO PRIOR TO THIS E-MAIL BEING SENT, WERE YOU  
10 AWARE OF THE CITY TRYING TO REACH OUT TO YOU TO ARRANGE  
11 -- CONVERSATIONS WITH YOU ABOUT THIS CHILD?

12 A. NO.

13 THE COURT: COUNSEL, I AM GOING TO INTERRUPT  
14 YOU AT THIS POINT AND ASK YOU WHAT IS THE RELEVANCE OF ALL  
15 OF THIS, AS IT RELATES TO THE REQUEST FOR THE INJUNCTION?

16 MS. BARCLAY: WELL, THE RELEVANCE FOR ALL OF  
17 THIS IS TO RESPOND TO SOME OF THE ARGUMENTS THAT THE CITY  
18 HAS MADE, NUMBER ONE, THAT THE INTENT OF CATHOLIC SOCIAL  
19 SERVICES WAS UNFOUNDED AS FAR AS THEIR NEED TO INVOLVE THE  
20 DOE SITUATION AS PART OF THIS LAWSUIT AND COMMUNICATE ABOUT  
21 THE DOE SITUATION AS PART OF THIS LAWSUIT AND THEY WERE  
22 BEING DILATORY IN THEIR COMMUNICATION ABOUT THAT SITUATION.

23 THE COURT: I DON'T KNOW THAT IT WILL IMPACT  
24 THIS COURT'S DECISION AS TO WHETHER OR NOT AN INJUNCTION IS  
25 APPROPRIATE.

1 MS. BARCLAY: THERE IS ALSO CERTAINLY THE  
2 QUESTION AS FAR AS THE ABILITY OF THIS SITUATION TO REPEAT  
3 IN THE FUTURE AS LONG AS THIS REFERRAL FREEZE IS IN PLACE,  
4 AND AS MR. AMATO HAS TESTIFIED, THERE IS NO CLEAR  
5 INSTRUCTION TO DHS WORKERS OR TO CUA LEADERSHIP TO ENSURE  
6 THESE SORT OF REFERRALS ARE SENT TO CATHOLIC SOCIAL  
7 SERVICES, YOUR HONOR.

8 THE COURT: I DON'T KNOW THAT THIS GENTLEMAN  
9 CAN TESTIFY. HE CAN TESTIFY AS TO WHAT HAPPENED, AND YOU  
10 CAN MAKE THE ARGUMENT THAT IT MAY HAPPEN IN THE FUTURE OR  
11 YOU DON'T WANT IT TO HAPPEN IN THE FUTURE. BUT I DON'T KNOW  
12 THAT WE HAVE TO GO THROUGH THE WHOLE HISTORY OF HIS  
13 COMMUNICATION IN REGARD TO THIS ONE YOUNG BOY.

14 MS. BARCLAY: THE COMMUNICATION -- SO COUNSEL  
15 FOR THE CITY HAS OFFERED COMMUNICATION WITH THE ATTORNEYS IN  
16 THEIR OWN EXHIBITS, YOUR HONOR, AND WE ARE PROVIDING THE  
17 COMPLETE STORY ABOUT THE NARRATIVE THAT THEY HAVE MADE AT  
18 ISSUE IN THEIR BRIEFING, AND THAT'S NUMBER ONE.

19 AND NUMBER TWO, MR. AMATO IS ABLE TO TESTIFY  
20 ABOUT HIS CONCERN THAT THIS SORT OF SITUATION COULD REPEAT  
21 IN THE FUTURE BASED ON THE CURRENT POLICY AND THE CURRENT  
22 REFERRAL FREEZE.

23 THE COURT: HE ALREADY TESTIFIED TO THAT.

24 MS. BARCLAY: SO THAT'S HOW THIS IS RELEVANT,  
25 YOUR HONOR, AS FAR AS THE NEED TO GRANT THE TRO.

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 MR. FIELD: YOUR HONOR, BEFORE I BEGIN, I  
2 WOULD JUST LIKE TO CLARIFY ONE POINT. COUNSEL REFERRED TO  
3 MOVING ALL EXHIBITS INTO EVIDENCE. I'D JUST LIKE TO CLARIFY  
4 THAT THAT'S THE EXHIBITS INTRODUCED TO THE WITNESS AND NOT  
5 AFFIDAVITS AND OTHER EXHIBITS THAT SHE DISCUSSED IN THE  
6 PARTIES' FILINGS.

7 THE COURT: YES. IT'S P-1 THROUGH 13 -- NO,  
8 12.

9 MR. FIELD: THANK YOU, YOUR HONOR.

10 (PLAINTIFF EXHIBITS 1 THROUGH 12 ADMITTED  
11 INTO EVIDENCE.)

12 CROSS-EXAMINATION

13 BY MR. FIELD:

14 Q. MR. AMATO, THANK YOU FOR BEING HERE TODAY.  
15 WOULD YOU LIKE ME TO CALL YOU MR. AMATO?

16 A. JIM WOULD BE FINE.

17 Q. JIM WOULD BE FINE. THANK YOU.

18 YOU MOVED THROUGH A LOT OF TERRITORY. WE  
19 ARE GOING TO MOVE THROUGH A FAIR AMOUNT OF TERRITORY. I  
20 WANT TO START ON A FAIRLY DISCRETE POINT, WHICH IS DOE  
21 FOSTER CHILD NUMBER 1, AS WE HAVE CALLED HIM, THE  
22 LAWYERS HAVE CALLED HIM IN THIS LITIGATION, WHO IS A  
23 CHILD WHO IS THE SUBJECT OF A MAY 25TH COMMUNICATION AND  
24 THEN I BELIEVE AN E-MAIL THAT YOUR COUNSEL SHOWED YOU ON  
25 THIS.

1                                   WHEN DID YOU FIRST BECOME AWARE OF ISSUES  
2 WITH DOE FOSTER CHILD NUMBER 1'S PLACEMENT?

3           A.           EARLY IN THE FOLLOWING WEEK, SO IT WOULD  
4 PROBABLY BE THE WEEK OF MAY 28, I THINK.

5           Q.           SO YOU WERE NOT AWARE OF THAT ON MAY 25?

6           A.           NO.

7           Q.           AND WERE YOU INVOLVED IN ANY OF THE  
8 COMMUNICATIONS ON MAY 25?

9           A.           NO.

10          Q.           AND HOW DID YOU LEARN ABOUT THOSE  
11 COMMUNICATIONS?

12          A.           BECAUSE MR. BLACK REPORTS DIRECTLY TO ME, AND  
13 MR. BLACK WAS HAVING THOSE CONVERSATIONS, TEXTS, AND  
14 PHONE CALLS WITH DEPUTY COMMISSIONER ALI.

15          Q.           AND WHAT DID MR. BLACK TELL YOU?

16          A.           MR. BLACK INDICATED THAT THE -- THAT OUR CUA  
17 WORKER, CATHOLIC SOCIAL SERVICES CUA WORKER, ON THE  
18 NIGHT OF MAY 25 HAD CONTACTED OUR CSS FOSTER MOTHER WHO  
19 WAS VERY WILLING TO TAKE DOE CHILD 1 BACK AND -- INTO  
20 HER HOME AND THAT THE -- AND THAT THE CITY CUA RESPONSE  
21 WAS THAT THAT WOULD NOT BE PERMITTED DUE TO THE CASE  
22 AGAINST CATHOLIC SOCIAL SERVICES.

23          Q.           AND WHEN, TO THE BEST OF YOUR RECOLLECTION, DID  
24 HE TELL YOU THIS?

25          A.           HE TOLD ME THAT ON MONDAY, THE FOLLOWING MONDAY.

1 Q. JIM, I WOULD LIKE YOU TO REFER TO AN EXHIBIT  
2 THAT HAS BEEN INTRODUCED IN AN UNREDACTED AND REDACTED  
3 FORM, EXHIBITS 10 AND 11 IN FRONT OF YOU. AND THIS IS  
4 AN E-MAIL FROM TABITHA SEEHOUSEN TO JERNARD WHITMAN AND  
5 ROBERT MONTORO REGARDING DOE FOSTER CHILD NUMBER 1,  
6 DATED JUNE 1ST, 2018. IS THAT CORRECT?

7 A. CORRECT.

8 Q. WHO IS MS. SEEHOUSEN?

9 A. SHE IS A FOSTER-CARE CASE MANAGER EMPLOYED BY  
10 CATHOLIC SOCIAL SERVICES.

11 Q. AND LET'S DIGRESS FOR A MOMENT, JUST SO I  
12 UNDERSTAND. YOU SAID EARLIER THAT YOU OVERSEE CATHOLIC  
13 SOCIAL SERVICES IN YOUR POSITION, CORRECT?

14 A. YES.

15 Q. AND WHO DO YOU REPORT TO? WHO IS ABOVE YOU AND  
16 WHAT IS THE STRUCTURE THERE?

17 A. I REPORT TO BISHOP JOHN MCINTYRE WHO IS THE  
18 PRESIDENT OF OUR BOARDS.

19 Q. AND IS THERE AN OVERSIGHT STRUCTURE ABOVE BISHOP  
20 JOHN MCINTYRE?

21 A. HE REPORTS IN THE ARCHBISHOP.

22 Q. AND WITHIN CATHOLIC SOCIAL SERVICES, YOU TALKED  
23 ABOUT THE DIFFERENT FOSTER-CARE SERVICES IT OFFERS. I  
24 BELIEVE YOU TALKED ABOUT A CUA, WHAT I BELIEVE IS CALLED  
25 CONGREGATE CARE, RIGHT?

1 A. YES.

2 Q. AND IN-HOME FOSTER-CARE PLACEMENT?

3 A. CLOSE ENOUGH, YEAH.

4 Q. AND DO THE STAFF OF CATHOLIC SOCIAL SERVICES  
5 WORK ACROSS ALL OF THOSE ACTIVITIES, OR ARE THEY SILOED  
6 WITHIN ACTIVITIES?

7 A. SILOED IN INDIVIDUAL PROGRAM ACTIVITIES.

8 Q. WHICH PROGRAM ACTIVITY DOES TABITHA SEEHOUSEN  
9 WORK IN?

10 A. CATHOLIC SOCIAL SERVICES FOSTER-CARE DEPARTMENT.

11 Q. AND WHO IS MR. WHITMAN?

12 A. HE IS THE CATHOLIC COMMUNITY SERVICES CUA CASE  
13 MANAGER.

14 Q. AND WHO IS MR. MONTORO?

15 A. HE IS THE ADMINISTRATOR OF CATHOLIC SOCIAL  
16 SERVICES FOSTER-CARE DEPARTMENT.

17 Q. SO IS THIS -- AM I UNDERSTANDING THIS E-MAIL  
18 CORRECTLY THAT IT'S NOW THE FOSTER-CARE SERVICES  
19 COMMUNICATING INFORMATION ABOUT THIS CASE TO THE CUA?

20 A. CORRECT.

21 Q. AND DID MR. BLACK HAVE THIS INFORMATION BEFORE  
22 JUNE 1ST?

23 A. YES.

24 Q. OKAY. HE RELATED THAT INFORMATION TO YOU AT THE  
25 START OF THAT WEEK?

1 A. YES, TO THE BEST OF MY RECOLLECTION.

2 Q. YOU ARE PRESENTLY AWARE, AREN'T YOU, THAT DHS  
3 WILL GRANT EXCEPTIONS IN SOME CASES FOR PLACEMENTS WITH  
4 CATHOLIC SOCIAL SERVICES?

5 A. I ONLY BECAME AWARE OF THAT BECAUSE I ASKED.

6 Q. AND TO THE BEST OF YOUR RECOLLECTION, WHEN DID  
7 YOU ASK?

8 A. I ASKED IN LATE MARCH FOR THE EXCEPTION FOR DOE  
9 CHILD NUMBER -- THESE NUMBERS -- WAS THAT 1 -- 2. OKAY.

10 Q. AND SO YOU HAVE BEEN AWARE SINCE LATE MARCH THAT  
11 DHS WOULD GRANT EXCEPTIONS?

12 A. I WAS ONLY AWARE OF ONE EXCEPTION, FOR DOE CHILD  
13 NUMBER 2.

14 Q. YOU ARE AWARE THAT DHS WOULD GRANT EXCEPTIONS IN  
15 CERTAIN CASES WHEN APPROPRIATE?

16 A. I WAS AWARE THERE WAS AN EXCEPTION FOR DOE CHILD  
17 NUMBER 2.

18 Q. IS YOUR ANSWER NO TO MY QUESTION?

19 MS. BARCLAY: OBJECTION, YOUR HONOR, ASKED  
20 AND ANSWERED.

21 THE COURT: HE HAS ANSWERED.

22 MR. FIELD: YOUR HONOR, PERMISSION TO  
23 APPROACH THE WITNESS.

24 THE COURT: YES.

25 BY MR. FIELD:



1 Q. MR. AMATO, I HAVE JUST HANDED YOU AN EXHIBIT  
2 MARKED DEFENDANT'S EXHIBIT NUMBER 1. IT'S AN E-MAIL  
3 FROM JAMES AMATO, DATED TUESDAY, MAY 1ST, TO CYNTHIA  
4 FIGUEROA. DO YOU RECALL WRITING THIS E-MAIL?

5 A. YES.

6 Q. AND I WILL NOTE FOR THE RECORD THAT A PORTION OF  
7 THE BODY OF THIS E-MAIL IS REDACTED. THAT PORTION --

8 MS. BARCLAY: OBJECTION, YOUR HONOR. MAY WE  
9 SEE -- ACTUALLY WE HAVE NEVER SEEN THIS DOCUMENT. MAY WE  
10 SEE AN UNREDACTED VERSION FOR COUNSEL'S CONTEXT?

11 THE COURT: YES.

12 MR. FIELD: WE HAVE NO PROBLEM WITH THAT,  
13 YOUR HONOR.

14 MS. BARCLAY: MAY MR. AMATO BE ALSO PROVIDED  
15 AN UNREDACTED VERSION FOR CLARITY?

16 THE COURT: DO YOU WANT TO REPEAT YOUR  
17 QUESTION.

18 BY MR. FIELD:

19 Q. MR. AMATO, I WANT TO DIRECT YOU TO THE  
20 PENULTIMATE LINE OF THAT E-MAIL THAT STARTS WITH: WE  
21 ARE PREPARED. WOULD YOU READ THAT, PLEASE?

22 A. WE ARE PREPARED TO ACCEPT BOTH CHILDREN BUT  
23 REALIZE THAT DHS SENIOR MANAGEMENT WOULD HAVE TO GIVE  
24 THE GREEN LIGHT TO CUA FRONT LINE STAFF.

25 Q. ISN'T THAT TRUE THAT YOU UNDERSTOOD THAT CSS

1 SENIOR MANAGEMENT COULD GIVE THE GREEN LIGHT TO CUA  
2 FRONT LINE STAFF TO PLACE CHILDREN WITH CSS AS OF MAY  
3 1ST?

4 A. THAT LINE WAS BASED ON THE FACT THAT THERE WAS A  
5 FREEZE ON ANY OF OUR REFERRALS THAT ENDED -- I NEEDED TO  
6 CONTACT THE COMMISSIONER FOR APPROVAL FOR ANY CHILD  
7 REFERRED TO US.

8 Q. AND IS THAT WHY YOU WROTE THIS E-MAIL, TO SEEK  
9 APPROVAL FOR A REFERRAL?

10 A. I DID.

11 Q. THANK YOU.

12 DID YOU WRITE A SIMILAR E-MAIL TO THE  
13 COMMISSIONER REGARDING DOE FOSTER CHILD NUMBER 1?

14 A. NUMBER 1 IS THE MAY, YEAH.

15 Q. CORRECT, THE MAY 25 CHILD?

16 A. NO. MY COMMUNICATIONS WITH DOE CHILD NUMBER 1  
17 WERE PHONE CALLS AND AN OCCASIONAL TEXT WITH DEPUTY  
18 COMMISSIONER ALI. AT ONE POINT IN ONE OF THE PHONE  
19 CALLS, THE COMMISSIONER WAS IN THE CAR WITH HER  
20 RETURNING FROM ALLENTOWN.

21 Q. DO YOU RECALL WHEN THOSE PHONE CALLS AND TEXTS  
22 WERE?

23 A. I RECALL IN THIS CONTEXT DOE CHILD NUMBER 2  
24 RETURNED TO THE CSS FOSTER HOME ON JUNE 12. REMEMBER,  
25 THAT'S 17 DAYS AFTER MAY 25, AND THE URGENCY OF THIS

1 CHILD BEING SETTLED IN THE HOME WAS GROWING.

2 THE COURT: LET'S JUST ANSWER THE QUESTION.

3 THE WITNESS: OKAY. GIVE ME THE QUESTION  
4 AGAIN.

5 BY MR. FIELD:

6 Q. I WAS ASKING IF YOU RECALL WHEN THOSE PHONE  
7 CALLS WERE. AND JUST TO CLARIFY THE RECORD, YOU SAID  
8 FOSTER CHILD NUMBER 2. I BELIEVE WE ARE TALKING ABOUT  
9 FOSTER CHILD NUMBER 1, JUST SO IT'S CLEAR.

10 A. THE DOES ARE GETTING ME CONFUSED. THAT  
11 CONVERSATION WOULD HAVE BEEN SEVERAL DAYS PRIOR TO JUNE  
12 12.

13 Q. SO SHORTLY -- IN BROAD TERMS, SHORTLY BEFORE THE  
14 CHILD WAS, AS YOU SAID, PLACED WITH A CSS HOUSEHOLD?

15 A. CORRECT.

16 Q. THANK YOU.

17 JIM, WHEN YOU WERE TALKING ABOUT THE VARIOUS  
18 PROGRAMS RELATED TO FOSTER CHILDREN THAT CATHOLIC SOCIAL  
19 SERVICES OPERATES, YOU REFERENCED THE FOSTER-CARE  
20 DEPARTMENT. YOU ALSO REFERENCED THE RESIDENTIAL SERVICES.  
21 APPROXIMATELY HOW MANY CHILDREN ARE SERVICED THROUGH THE  
22 RESIDENTIAL SERVICES PROGRAM?

23 A. 260 DAILY AT EITHER ST. GABRIEL'S HALL AND ST.  
24 FRANCIS. AND ANOTHER 85 CHILDREN SERVED AT DE LA SALLE  
25 VOCATIONAL, A DAY TREATMENT PROGRAM THAT IS IN THAT

1 CONTRACT DESPITE THE FACT THAT THE CHILDREN ARE LIVING  
2 AT HOME WITH THEIR FAMILIES. THESE ARE ALL KIDS  
3 ADJUDICATED DELINQUENT.

4 Q. AND YOU ALSO MENTIONED THE CUA, THE COMMUNITY  
5 UMBRELLA AGENCY?

6 A. CORRECT.

7 Q. HOW MANY CHILDREN ARE SERVICED THROUGH THE  
8 COMMUNITY UMBRELLA AGENCY?

9 A. I GET A REGULAR REPORT. MY LAST RECOLLECTION IS  
10 ABOUT 800.

11 Q. HOW MANY OF CATHOLIC SOCIAL SERVICES EMPLOYEES  
12 ARE EMPLOYED BY THE COMMUNITY UMBRELLA AGENCY OR THEIR  
13 AGREEMENT IS WITH REFERENCE TO THE COMMUNITY UMBRELLA  
14 AGENCY?

15 A. APPROXIMATELY 50 TO 60.

16 Q. DOES THAT INCLUDE CASE WORKERS?

17 A. THAT INCLUDES ALL STAFF EMPLOYED BY THE --

18 Q. WHAT TYPES OF STAFF WOULD THAT BE?

19 A. FROM SECRETARIES AND SUPPORT STAFF ON THE CASE,  
20 MANAGERS, SUPERVISORS, CASE MANAGEMENT DIRECTORS, AND  
21 SENIOR MANAGEMENT.

22 Q. AND YOU MENTIONED THAT THERE WERE 1500 KIDS LAST  
23 YEAR THROUGH ALL ACROSS CATHOLIC SOCIAL SERVICES?

24 A. YES.

25 Q. DOES CATHOLIC SOCIAL SERVICES WORK WITH ANY

1 OTHER COUNTY OTHER THAN PHILADELPHIA IN THE FIVE-COUNTY  
2 AREA?

3 A. WE HAVE CONTRACTS, BUT VERY FEW REFERRALS WITH  
4 THE MONTGOMERY/BUCKS.

5 Q. YOU HAVE CONTRACTS WITH MONTGOMERY AND BUCKS  
6 COUNTY?

7 A. YES.

8 Q. DO THOSE CONTRACTS INCLUDE FOSTER-CARE?

9 A. YES.

10 Q. SO I WOULD LIKE TO TURN TO THE DISCUSSION OF --  
11 I UNDERSTAND TO BE THE CORE ISSUES OF THIS CASE, WHICH  
12 IS CATHOLIC SOCIAL SERVICES' REFUSAL TO CERTIFY SAME-SEX  
13 COUPLES FOR FOSTER-CARE. YOU SAID IN YOUR TESTIMONY,  
14 AND I APOLOGIZE, I WANT TO GET YOUR WORDS RIGHT, TO THE  
15 EXTENT I WROTE THEM DOWN CORRECTLY -- SO BEAR WITH ME A  
16 MOMENT -- THAT YOU WOULD NOT DO IT, AND "IT" I TAKE IT  
17 YOU MEANT CSS WOULD NOT CERTIFY SAME-SEX RESOURCE  
18 PARENTS, I THINK THEY ARE CALLED --

19 MS. BARCLAY: OBJECTION, SPECULATION.

20 THE COURT: OVERRULED.

21 MR. FIELD: I AM JUST TRYING TO MAKE SURE I  
22 GOT HIS WORDS CORRECT, YOUR HONOR.

23 BY MR. FIELD:

24 Q. YOU SAID IT WAS AGAINST THE TEACHING OF THE  
25 CATHOLIC CHURCH, IS THAT CORRECT?

1 A. CAN YOU REPEAT THE QUESTION, PLEASE.

2 Q. IS CERTIFYING A SAME-SEX -- I'M SORRY, A FOSTER  
3 PARENT WHO IS IN A SAME-SEX RELATIONSHIP AGAINST THE  
4 TEACHING OF THE CATHOLIC CHURCH?

5 A. THE CATHOLIC CHURCH ASSERTS ITS RELIGIOUS  
6 BELIEF, A MARRIAGE TO A SACRED BOND BETWEEN A MAN AND A  
7 WOMAN. SO THAT CERTIFYING A HOME OF THE SAME-SEX COUPLE  
8 WOULD BE IN VIOLATION OF THAT RELIGIOUS BELIEF.

9 Q. SO -- AND TO BE CLEAR, I AM NOT CHALLENGING THE  
10 SINCERITY OF THE RELIGIOUS BELIEF OR THE DOCTRINE YOU  
11 REFERENCE REGARDING SAME-SEX COUPLES OR SAME-SEX  
12 MARRIAGE. BUT WHAT IS IT ABOUT CERTIFYING THE HOME AS  
13 RESOURCE PARENTS FOR A FOSTER CHILD THAT IS AGAINST THE  
14 -- YOUR BELIEFS?

15 MS. BARCLAY: I OBJECT, YOUR HONOR. THIS HAS  
16 NOT ARISEN. IT IS CALLING FOR SPECULATION.

17 THE COURT: I'M SORRY.

18 MS. BARCLAY: I'M OBJECTING SINCE HE IS BEING  
19 ASKED ABOUT A PARTICULAR RESOURCE HOME, WHAT WOULD CAUSE A  
20 PROBLEM WITH THE RELIGIOUS BELIEFS. I AM NOTING THIS CALLS  
21 FOR SPECULATION.

22 THE COURT: OVERRULED.

23 THE WITNESS: BECAUSE AS I INDICATED EARLIER,  
24 A HOME STUDY IS ESSENTIALLY A VALIDATION OF THE  
25 RELATIONSHIPS IN THAT HOME, AND IN THIS CASE THAT

1 RELATIONSHIP IS -- THAT RELATIONSHIP IS NOT ONE THAT IS  
2 ACCEPTABLE IN TERMS OF CHURCH TEACHING.

3 BY MR. FIELD:

4 Q. LET'S TALK ABOUT HOME STUDY. WHAT DOES CSS DO  
5 IN PERFORMING A HOME STUDY?

6 A. WELL, THE HOME STUDY OBVIOUSLY IS DONE IN THE  
7 POTENTIAL FOSTER PARENT'S HOME AND THAT INVOLVES A  
8 THOROUGH REVIEW OF THE HOME FOR SAFETY-RELATED REASONS,  
9 FOR THE PHYSICAL PLAN OF THE HOME, THE CLEARANCES  
10 ABSOLUTELY HAVE TO BE DONE FOR ALL OF THE INDIVIDUALS IN  
11 THE HOME, AND AN EVALUATION OF THE QUALITY OF THE  
12 RELATIONSHIPS IN THAT HOME AND -- AS TO HOW THEY WOULD  
13 BEST BENEFIT THE CHILD WHO MIGHT BE PLACED THERE.

14 Q. TO YOUR KNOWLEDGE IS THERE ANYTHING IN THE CSS  
15 CONTRACT WITH THE CITY OR THE STATE REGULATIONS THAT  
16 APPLY TO EVALUATION OF RESOURCE PARENTS THAT REFERS TO  
17 THE MARITAL STRUCTURE OF THE HOME?

18 MS. BARCLAY: OBJECTION, CALLING FOR A LEGAL  
19 OPINION, YOUR HONOR.

20 THE COURT: OVERRULED.

21 THE WITNESS: TO MY KNOWLEDGE, THERE IS  
22 NOTHING IN THE STATE REGULATIONS THAT SPEAKS TO THE  
23 NECESSITY OR THE REQUIREMENT THAT FOSTER PARENTS BE MARRIED.

24 BY MR. FIELD:

25 Q. SO -- AND I AM GOING TO ASK AGAIN. WHAT IS IT

1 THAT CSS IS DOING, IF THERE IS NOTHING -- NO MARRIAGE  
2 REQUIREMENTS THAT BURDENS THIS RELIGIOUS DOCTRINE WHEN  
3 YOU ARE REVIEWING A RESOURCE PARENT?

4 MS. BARCLAY: OBJECTION. ASKED AND ANSWERED,  
5 YOUR HONOR.

6 THE COURT: OVERRULED.

7 THE WITNESS: REPEAT THE QUESTION, PLEASE.

8 BY MR. FIELD:

9 Q. WHAT IS IT ABOUT CSS'S REVIEW OF A HOUSEHOLD TO  
10 BE A RESOURCE PARENT OR AN INDIVIDUAL TO BE A RESOURCE  
11 PARENT THAT BURDENS YOUR RELIGIOUS BELIEF IF THAT PARENT  
12 HAPPENS TO BE IN A SAME-SEX RELATIONSHIP?

13 MS. BARCLAY: OBJECTION TO THE FORM OF THE  
14 QUESTION; COMPOUND QUESTION.

15 THE COURT: OVERRULED.

16 THE WITNESS: CATHOLIC TEACHING, AND I WILL  
17 QUALIFY THAT BY THE OBVIOUS, I AM NOT A THEOLOGIAN, CATHOLIC  
18 TEACHING -- IT IS CLEAR THAT CHILDREN ARE BEST RAISED IN A  
19 HOME THAT OF -- WHERE -- WITH A HUSBAND AND WIFE.

20 BY MR. FIELD:

21 Q. IS IT YOUR BELIEF THAT A RESOURCE PARENT IN A  
22 SAME-SEX RELATIONSHIP IS NOT QUALIFIED TO RAISE A FOSTER  
23 CHILD?

24 A. IT IS MY BELIEF THAT THAT FOSTER PARENT IS IN A  
25 LIFESTYLE THAT CANNOT BE ACCEPTED BY THE -- VIA THE



1 TEACHINGS OF THE CATHOLIC CHURCH.

2 Q. IS THAT THE REASON YOU REFUSED TO PERFORM  
3 CERTIFICATIONS FOR THOSE HOUSEHOLDS?

4 MS. BARCLAY: OBJECTION, ASKED AND ANSWERED,  
5 YOUR HONOR.

6 THE COURT: OVERRULED.

7 THE WITNESS: YES.

8 BY MR. FIELD:

9 Q. JIM, WHEN YOU WERE TALKING ABOUT CERTIFICATIONS  
10 BEFORE, YOUR COUNSEL ASKED YOU ABOUT A COUPLE OF OTHER  
11 CIRCUMSTANCES. I BELIEVE YOU DID SAY IT'S CORRECT THAT  
12 CATHOLIC SOCIAL SERVICES WORKS WITH FOSTER CHILDREN WHO  
13 ARE LGBTQ IDENTIFYING, IS THAT CORRECT?

14 A. CORRECT.

15 Q. AND CATHOLIC SOCIAL SERVICES WORKS WITH SINGLE  
16 PARENTS WHO ARE LGBTQ IDENTIFYING, IS THAT CORRECT?

17 MS. BARCLAY: OBJECTION AS TO CALLING FOR  
18 SPECULATION.

19 THE COURT: OVERRULED.

20 THE WITNESS: CATHOLIC SOCIAL SERVICES SERVES  
21 ANY INDIVIDUAL REGARDLESS OF SEXUAL ORIENTATION WHO REQUEST  
22 SERVICES AS A CLIENT FOR CATHOLIC SOCIAL SERVICES.

23 BY MR. FIELD:

24 Q. EXCEPT FOR INDIVIDUALS WHO ARE IN SAME-SEX  
25 RELATIONSHIPS?

1 THE COURT: HOW ABOUT UNMARRIED COUPLES?

2 THE WITNESS: UNMARRIED COUPLES -- WITH AN  
3 UNMARRIED COUPLE, WHAT CATHOLIC SOCIAL SERVICES DOES IN  
4 TERMS OF HOME STUDIES IS TO IMMEDIATELY REFER THE UNMARRIED  
5 COUPLE TO ANOTHER AGENCY WHO WOULD COMPLETE A HOME STUDY.  
6 BY MR. FIELD:

7 Q. SO CATHOLIC SOCIAL SERVICES REFUSES TO CONDUCT  
8 HOME STUDIES FOR UNMARRIED COUPLES?

9 MS. BARCLAY: OBJECTION AS TO THE FORM OF THE  
10 QUESTION.

11 THE COURT: OVERRULED.

12 THE WITNESS: CATHOLIC SOCIAL SERVICES DOES  
13 NOT COMPLETE HOME STUDIES FOR UNMARRIED COUPLES BUT  
14 IMMEDIATELY PUTS THE UNMARRIED COUPLE IN TOUCH WITH ONE OF  
15 28 OTHER AGENCIES WHO WOULD COMPLETE THAT HOME STUDY.

16 BY MR. FIELD:

17 Q. DOES CATHOLIC SOCIAL SERVICES COMPLETE HOME  
18 STUDIES FOR MARRIED COUPLES WHO ARE PREVIOUSLY DIVORCED?

19 A. YES.

20 Q. EVEN IF THAT DIVORCE HAS NOT BEEN PROPERLY  
21 ANNULLED WITH THE CATHOLIC CHURCH?

22 MS. BARCLAY: OBJECTION, YOUR HONOR.

23 THE COURT: OVERRULED.

24 MS. BARCLAY: IT IS SPECULATION WHETHER OR  
25 NOT THE DIVORCE HAS BEEN ANNULLED OR NOT.

1 MR. FIELD: I CAN REPHRASE, YOUR HONOR.

2 BY MR. FIELD:

3 Q. DOES CATHOLIC SOCIAL SERVICES ASK IF THE DIVORCE  
4 HAS BEEN ANNULLED WITH THE CATHOLIC CHURCH?

5 A. NO. WE ASK FOR A LETTER FROM THE COUPLE'S LOCAL  
6 CLERGY OR PASTOR.

7 Q. SO YOU REFERENCED ASKING FOR A CLERGY LETTER  
8 BEFORE. PLEASE EXPLAIN TO ME WHAT A CLERGY LETTER IS.

9 A. A CLERGY LETTER CAN BE A REFERENCE LETTER FROM A  
10 PASTOR WHO WOULD INDICATE THAT HE OR SHE KNOWS THE  
11 COUPLE, IS AWARE OF THEIR ACTIVE PARTICIPATION IN  
12 RELIGIOUS SERVICES, BOTH -- REGARDLESS OF THE FAITH,  
13 WHICH WE DEEM IS A VERY GOOD INDICATION OF THEIR  
14 COMMITMENT TO THEIR FAITH AND THEIR COMMITMENT TO RAISE  
15 A CHILD IN THAT FAITH AND THAT THAT FAITH DOES NOT HAVE  
16 TO BE AND IS USUALLY NOT CATHOLICISM.

17 Q. IS A CLERGY LETTER A REQUIREMENT OF CATHOLIC  
18 SOCIAL SERVICES' HOME STUDY TO CERTIFY PROSPECTIVE  
19 FOSTER PARENTS?

20 A. YES, WE REQUIRE THAT LETTER.

21 Q. IF THERE IS NOT A CLERGY LETTER, WILL YOU  
22 CERTIFY THAT PROSPECTIVE RESOURCE PARENT?

23 A. NOT TO MY KNOWLEDGE.

24 Q. YOU MENTIONED THAT THE FAITH OF THAT CLERGY  
25 LETTER DOES NOT MATTER, IS THAT CORRECT?

1 A. CORRECT.

2 Q. SO CLERGY OR A PASTOR IS THE TERM YOU ARE USING,  
3 BUT IT COULD BE A RABBI OR AN IMAM?

4 A. ABSOLUTELY.

5 Q. AND IS THERE A LETTER THAT AN INDIVIDUAL WHO  
6 DOES NOT PARTICIPATE IN RELIGIOUS WORSHIP COULD PROVIDE  
7 CATHOLIC SOCIAL SERVICES TO SATISFY THIS REQUIREMENT?

8 A. NOT TO MY KNOWLEDGE.

9 Q. WOULD ANYBODY ELSE OTHER THAN YOU HAVE THAT  
10 KNOWLEDGE?

11 MS. BARCLAY: OBJECTION, YOUR HONOR. THAT IS  
12 CALLING FOR SPECULATION.

13 THE COURT: OVERRULED.

14 THE WITNESS: THE STAFF THAT ARE DAY-TO-DAY  
15 IN THE FOSTER-CARE DEPARTMENT AND ARE REGULARLY HANDLING THE  
16 INQUIRIES AND THE MATTERS THAT ARISE WOULD HAVE A BETTER  
17 HANDLE ON THAT.

18 BY MR. FIELD:

19 Q. YOU OVERSEE THE STAFF, CORRECT?

20 A. I OVERSEE THEM THROUGH JIM BLACK, WHO REPORTS TO  
21 ME, AND OUR FOSTER-CARE ADMINISTRATOR REPORTS TO HIM.

22 Q. AND IT IS YOUR UNDERSTANDING, AT THE TOP OF THAT  
23 CATHOLIC SOCIAL SERVICES HIERARCHY, THAT ONE HAS TO HAVE  
24 A -- AS YOU CALL IT, A CLERGY LETTER IN ORDER TO BECOME  
25 A FOSTER PARENT THROUGH CATHOLIC SOCIAL SERVICES,

1 CORRECT?

2 MS. BARCLAY: ASKED AND ANSWERED.

3 THE COURT: OVERRULED.

4 THE WITNESS: YES.

5 BY MR. FIELD:

6 Q. JIM, IF YOU CAN JUST RETURN QUICKLY TO THE  
7 CERTIFICATION PROCESS. YOU SAID THAT THERE IS A WRITTEN  
8 ENDORSEMENT, I BELIEVE WAS THE WORD THAT YOU USED, OF  
9 THE RELATIONSHIP. WHAT IS THAT WRITTEN ENDORSEMENT?

10 A. IT'S THE COMPLETED --

11 MS. BARCLAY: OBJECTION; ASKED AND ANSWERED  
12 AGAIN.

13 THE COURT: OVERRULED.

14 THE WITNESS: IT'S THE FINAL PRODUCT OF THE  
15 WRITTEN HOME STUDY THAT APPEARS IN THE FOSTER PARENT'S CASE  
16 RECORD.

17 BY MR. FIELD:

18 Q. AND TO YOUR KNOWLEDGE, DOES THAT FINAL PRODUCT  
19 -- IS THERE A REQUIREMENT THAT FINAL PRODUCT REFERENCE  
20 THE MARRIAGE?

21 A. YES.

22 Q. AND WHAT IS -- WHERE IS THAT REQUIREMENT FOUND?

23 MS. BARCLAY: OBJECTION, YOUR HONOR. THE  
24 WITNESS HAS TESTIFIED THAT HE IS AWARE ABOUT THE  
25 REQUIREMENT. HE DOES NOT NEED TO CITE THE LEGAL CODE THAT

1 REQUIRES THAT.

2 THE COURT: OVERRULED.

3 THE WITNESS: SO ASK ME THAT AGAIN, PLEASE.

4 BY MR. FIELD:

5 Q. WHERE IS THAT REQUIREMENT FOUND IN REFERENCE TO  
6 THE MARRIAGE?

7 A. OUR POLICY -- WE HAVE A POLICY AND PROCEDURE  
8 STATED ON RECRUITMENT THAT INDICATES THAT -- ON  
9 FOSTER-CARE HOME STUDY THAT INDICATES THAT MARRIAGE IS  
10 REQUIRED AND THAT THE CLERGY LETTER IS REQUIRED.

11 Q. THESE ARE CSS'S REQUIREMENTS?

12 A. YES.

13 Q. THESE ARE NOT IN THE CONTRACT WITH THE CITY OF  
14 PHILADELPHIA?

15 A. NOT IN THE CONTRACT.

16 Q. AND TO YOUR KNOWLEDGE, NOT IN THE STATE  
17 REGULATIONS?

18 A. NOT IN THE STATE REGULATIONS.

19 THE COURT: MR. AMATO, I WANT TO ASK YOU A  
20 QUESTION THAT I AM NOT QUITE SURE WHETHER OR NOT YOU  
21 ANSWERED. DOES THE CSS CONSIDER SINGLE PARENTS WHO ARE  
22 LGBTQ FOR CERTIFICATION?

23 THE WITNESS: YEAH. WE WOULD COMPLETE A HOME  
24 STUDY FOR A SINGLE PARENT WHO IS LIVING MONOGAMOUSLY TO BE A  
25 FOSTER PARENT.

1 THE COURT: OKAY.

2 BY MR. FIELD:

3 Q. SO YOU WOULD NOT INQUIRE OF THAT SINGLE PARENT  
4 ANYTHING ABOUT THEIR SEXUAL ORIENTATION OR PRACTICES?

5 A. SEXUAL BEHAVIORS AND PRACTICES ARE NOT A PART OF  
6 ANY HOME STUDY.

7 Q. AND IF THERE WERE A RESOURCE PARENT WHO WAS PART  
8 OF AN UNMARRIED SAME-SEX COUPLE, WOULD YOU CONSIDER THEM  
9 FOR TO -- FOR CERTIFICATION AS A RESOURCE PARENT?

10 MS. BARCLAY: OBJECTION, ASKED AND ANSWERED.  
11 WE'VE ALREADY SPOKEN ABOUT UNMARRIED COUPLES.

12 THE COURT: OVERRULED.

13 THE WITNESS: CAN YOU PLEASE ASK ME THAT  
14 AGAIN.

15 BY MR. FIELD:

16 Q. IF THERE WAS A PROSPECTIVE RESOURCE PARENT  
17 SEEKING CERTIFICATION AND CAME TO CATHOLIC SOCIAL  
18 SERVICES AND THEY WERE PART OF AN UNMARRIED SAME-SEX  
19 COUPLE, WOULD YOU CONSIDER THEM FOR CERTIFICATION?

20 MS. BARCLAY: THIS IS ALSO CALLING FOR  
21 SPECULATION. THE SITUATION HAS NOT ARISEN.

22 THE COURT: OVERRULED.

23 THE WITNESS: I QUALIFY THAT FIRST BY SAYING  
24 THAT WE HAVE NOT RECEIVED ANY INTEREST IN FOSTER-CARE IN  
25 THAT PROFILE THAT YOU JUST SUGGESTED. OKAY? SO....

1 BY MR. FIELD:

2 Q. I UNDERSTAND THAT, BUT I WOULD LIKE AN ANSWER TO  
3 THE QUESTION.

4 A. GIVE ME THE QUESTION AGAIN.

5 Q. WOULD CATHOLIC SOCIAL SERVICES CERTIFY OR EVEN  
6 MOVE THROUGH THE PROCESS OF CERTIFICATION OF A  
7 PROSPECTIVE RESOURCE PARENT WHO IS IN A SAME-SEX  
8 UNMARRIED RELATIONSHIP?

9 A. IF THAT SITUATION AROSE, AND THE PERSON THAT  
10 THEY WERE IN AN UNMARRIED RELATIONSHIP WITH LIVED IN  
11 THAT HOME, WE WOULD NOT CONTINUE TO MOVE FORWARD WITH  
12 THAT.

13 Q. WHAT IF THE INDIVIDUALS WERE MONOGAMOUS?

14 A. THAT'S A HYPOTHETICAL SITUATION. WE HAVE NEVER  
15 RUN INTO THAT, SO....

16 MS. BARCLAY: AND I AM GOING TO OBJECT AGAIN  
17 TO SPECULATION, YOUR HONOR. THE WITNESS HAS ALREADY  
18 TESTIFIED THEY DON'T INQUIRE ABOUT SPECIFIC SEXUAL  
19 PRACTICES, AND SO WHAT THE HOME STUDY PROCESS LOOKS AT IS  
20 PARENTS IN THE HOME.

21 MR. FIELD: YOUR HONOR, I DON'T BELIEVE IT'S  
22 APPROPRIATE FOR HER TO TESTIFY ABOUT THE HOME STUDY PROCESS.

23 THE COURT: YES.

24 MS. BARCLAY: IT IS SPECULATION, YOUR HONOR.

25 THE COURT: HE HAS ANSWERED THE QUESTIONS.



1 MR. FIELD: YES.

2 CAN I HAVE A MINUTE WITH MY COLLEAGUES, YOUR  
3 HONOR, COURT INDULGENCE?

4 THE COURT: YES.

5 (BRIEF PAUSE IN THE PROCEEDING.)

6 MR. FIELD: YOUR HONOR, I ONLY HAVE A MOMENT  
7 LEFT. I HAVE TO JUST OBTAIN ONE EXHIBIT.

8 THE COURT: YES.

9 BY MR. FIELD:

10 Q. JIM, JUST ONE QUICK QUESTION ON THE TOPICS WE  
11 WERE COVERING BEFORE. WILL CATHOLIC SOCIAL SERVICES  
12 CERTIFY A SINGLE RESOURCE PARENT WHO IS NOT CELIBATE?

13 MS. BARCLAY: OBJECTION, YOUR HONOR. THE  
14 WITNESS HAS ANSWERED THEY DON'T INQUIRE AS TO SEXUAL --

15 THE COURT: THAT IS WHAT HE STATED, SO HE  
16 WOULD NOT KNOW.

17 BY MR. FIELD:

18 Q. IS THAT CORRECT, YOU WOULD NOT KNOW WHETHER OR  
19 NOT THEY ENGAGED IN SEXUAL ACTIVITIES?

20 MS. BARCLAY: OBJECTION AGAIN, YOUR HONOR.  
21 THIS HAS BEEN ANSWERED.

22 MR. FIELD: HE ONLY SAID THEY DON'T INQUIRE,  
23 YOUR HONOR. HE MIGHT BE TOLD THAT. I DON'T KNOW THE RANGE  
24 OF SITUATIONS THAT OCCUR, BUT THIS IS ALL A LITTLE OUTSIDE  
25 THE BOX.

1 THE COURT: I AM GOING TO SUSTAIN THE  
2 OBJECTION.

3 MR. FIELD: THANK YOU, YOUR HONOR.

4 BY MR. FIELD:

5 Q. SO, JIM, IN YOUR PRIOR QUESTIONING, YOU TALKED  
6 ABOUT COMMUNICATIONS WITH THE CITY REGARDING CLOSURE OF  
7 INTAKE AND REGARDING ONGOING CONTRACTS WITH THE CITY.  
8 IS IT CATHOLIC SOCIAL SERVICES'S POSITION THAT IT WILL  
9 NOT SIGN A FULL ONGOING CONTRACT WITH THE CITY?

10 MS. BARCLAY: OBJECTION, YOUR HONOR, CALLS  
11 FOR SPECULATION.

12 MR. FIELD: I AM ASKING THE ORGANIZATION'S  
13 POSITION.

14 THE COURT: RIGHT. OVERRULED.

15 THE WITNESS: TO UNDERSTAND THE  
16 ORGANIZATION'S POSITION IS TO UNDERSTAND THE OVERALL  
17 CONTRACT. IN THE CITY TERMINOLOGY, THIS IS A 290  
18 REPLACEMENT CONTRACT THAT INVOLVES NOT ONLY FOSTER-CARE BUT  
19 ST. GABRIEL'S AND ST. FRANCIS AND OUR REINTEGRATION PROGRAM.  
20 SO WE WOULD MOVE FORWARD WITH THAT CONTRACT BECAUSE THOSE  
21 KIDS -- IT'S AN IMPORTANT MISSION FOR US. IT'S AN IMPORTANT  
22 CONTRACT AND THE CHILDREN NEED TO BE SERVED.

23 BY MR. FIELD:

24 Q. AND ST. GABRIEL'S AND ST. FRANCIS --

25 A. ST. GABRIEL'S SYSTEM, WHICH IS ST. GABRIEL'S

1 HALL, IS 150 ADJUDICATED DELINQUENT BOYS. ST. FRANCIS  
2 AND ST. VINCENT'S IS 115 ADOLESCENT BOYS AND GIRLS,  
3 PLACED IN GROUP HOMES.

4 Q. AND THAT IS CONGREGATE UNITS?

5 A. GROUP HOMES, YES.

6 Q. GROUP HOMES?

7 A. ST. GABE'S IS CONGREGATE INSTITUTIONAL CARE.

8 ST. FRANCIS IS SMALL GROUP HOMES.

9 Q. FOR THE CONTRACT THAT IS TERMINATING ON  
10 JUNE 30TH, THOSE WERE PART OF THE SAME CONTRACT, IS THAT  
11 CORRECT?

12 A. YES.

13 Q. AND ISN'T IT TRUE THAT YOU HAVE RECEIVED TWO  
14 SEPARATE NOTICE OF AWARDS FOR THE COMING YEAR'S  
15 CONTRACTS FROM THE CITY WHICH SEPARATED THE FOSTER-CARE  
16 SERVICES THAT ARE AT ISSUE IN THIS LITIGATION AND WHAT  
17 YOU WERE JUST TALKING ABOUT, GROUP HOMES, CONGREGATE  
18 CARE?

19 MS. BARCLAY: OBJECTION TO THE FORM OF THE  
20 COMPOUND QUESTION.

21 THE COURT: YES. BREAK IT DOWN, PLEASE.

22 BY MR. FIELD:

23 Q. DID YOU RECEIVE NOTICES OF AWARDS FOR THE COMING  
24 CONTRACT YEAR FROM THE CITY?

25 A. I RECEIVED A CONTRACT LETTER WITH A COVER LETTER

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 PROGRAM AND THE STAFF.

2 Q. I WAS ASKING IF YOU WOULD ENTER INTO A CONTRACT  
3 THAT REQUIRED YOU TO DO THE FULL SET OF FOSTER-CARE  
4 SERVICES.

5 MS. BARCLAY: OBJECTION AS TO SPECULATION AS  
6 TO WHAT THE FULL CONTRACT WOULD ENTAIL AS FAR AS CONTRACT  
7 TERMS.

8 THE COURT: TO THE EXTENT THAT THEY HAVE  
9 ALREADY ENTERED INTO A CONTRACT AND THEY HAVE BEEN -- ARE  
10 UNDER CONTRACT WITH THE CITY FOR A NUMBER OF YEARS, I'M SURE  
11 THAT MR. AMATO UNDERSTANDS THE PROVISIONS, GENERAL  
12 PROVISIONS OF THE CONTRACT, SO HE CAN ANSWER.

13 MS. BARCLAY: YOUR HONOR, IF I MAY ADD, THE  
14 CITY HAS INDICATED THAT PROVISIONS WILL BE CHANGING IN THE  
15 NEW CONTRACT, WHICH IS WHY IT'S CALLING FOR SPECULATION.

16 MR. FIELD: YOUR HONOR, I DON'T BELIEVE IT'S  
17 APPROPRIATE FOR OPPOSING COUNSEL TO BE TESTIFYING ABOUT  
18 THESE MATTERS.

19 THE COURT: OVERRULED. YOU MAY ANSWER THE  
20 QUESTION, IF YOU CAN.

21 THE WITNESS: CAN YOU PLEASE ASK THE QUESTION  
22 AGAIN.

23 BY MR. FIELD:

24 Q. IN THE DOCUMENT MARKED DEFENDANT'S EXHIBIT 2,  
25 THE CITY STATED THAT CONSISTENT WITH CURRENT LAW AND

1 CITY POLICY, DHS WOULD OFFER CSS A NEW CONTRACT THAT  
2 ALLOWS CSS TO CONTINUE TO SELECT AND RECRUIT NEW FOSTER  
3 PARENTS AND CONTINUE TO RECEIVE NEW REFERRALS. WILL CSS  
4 ENTER INTO THAT CONTRACT CONSISTENT WITH LAW AND CITY  
5 POLICY?

6 MS. BARCLAY: OBJECTION, YOUR HONOR.

7 THE COURT: YOU MAY ANSWER.

8 THE WITNESS: FOR THE SAKE OF THE CHILDREN  
9 THAT ARE CURRENTLY IN OUR SERVICES, FOSTER PARENTS WILL  
10 ENTER INTO A NEW CONTRACT WITH THE CITY, BUT WE WILL NOT  
11 BEGIN TO MOVE FORWARD WITH DOING HOME STUDY FOR SAME-SEX  
12 COUPLES.

13 BY MR. FIELD:

14 Q. YOU WILL ENTER INTO A NEW CONTRACT WITH THE  
15 CITY, BUT WILL NOT PERFORM HOME STUDY FOR SAME-SEX  
16 COUPLES?

17 A. CORRECT.

18 Q. JIM, I HAVE JUST HANDED YOU A DOCUMENT MARKED  
19 DEFENDANT'S EXHIBIT 3. CAN YOU TAKE A MINUTE AND LOOK  
20 THAT OVER. HAVE YOU SEEN THIS DOCUMENT BEFORE?

21 A. I HAVE.

22 Q. IS THIS A NOTICE OF AWARD THE CITY SENT TO YOU?

23 A. IT IS.

24 Q. AND THIS DOCUMENT, CAN YOU READ THE FIRST  
25 PARAGRAPH THERE?



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 THAT CONGREGATE PORTION YOU WERE JUST TALKING ABOUT?

2 A. THAT'S MY UNDERSTANDING.

3 MS. BARCLAY: ASKED AND ANSWERED, YOUR HONOR.

4 MR. FIELD: THANK YOU. NO FURTHER QUESTIONS  
5 AT THIS TIME, YOUR HONOR.

6 THE COURT: OKAY. WE WILL TAKE A BRIEF  
7 RECESS AND YOU CAN REDIRECT.

8 MS. BARCLAY: THANK YOU.

9 (BRIEF RECESS.)

10 THE COURT: OKAY. YOU MAY BE SEATED.  
11 REDIRECT.

12 MS. BARCLAY: YES, YOUR HONOR.

13 REDIRECT EXAMINATION

14 BY MS. BARCLAY:

15 Q. MR. AMATO, YOU WERE JUST ASKED A NUMBER OF  
16 HYPOTHETICAL QUESTIONS ABOUT THE TYPE OF FOSTER PARENTS  
17 THAT MIGHT ASK FOR HOME STUDY CERTIFICATIONS.

18 I JUST WANT TO CLARIFY THAT YOU WERE --  
19 YOU UNDERSTOOD THOSE TYPES IN THE PROSPECTIVE FOSTER  
20 FAMILY APPROACHING CATHOLIC SOCIAL SERVICES AND  
21 REQUESTING HOME STUDY SERVICES; IS THAT CORRECT?

22 A. THAT IS CORRECT.

23 Q. NOW, THERE WAS SOME DISCUSSION ABOUT CSS  
24 COMMUNICATIONS THE WEEK AFTER MAY 25TH REGARDING DOE  
25 FOSTER CHILD NUMBER ONE, AND YOU MENTIONED THAT MR. JIM

1 BLACK HAD SOME INFORMATION ABOUT THAT INFORMATION IN THE  
2 BEGINNING OF THE WEEK, CORRECT?

3 A. WELL, HE ACTUALLY -- HE RELAYED THAT TO ME IN  
4 THE BEGINNING OF THE WEEK.

5 Q. RIGHT.

6 A. HIS INFORMATION WAS FROM THE NIGHT OF THE  
7 EMERGENCY PLACEMENT.

8 MR. FIELD: OBJECTION. FOUNDATION.

9 MS. BARCLAY: THIS IS RELATED TO HIS WITNESS.

10 THE COURT: OVERRULED.

11 BY MS. BARCLAY:

12 Q. WAS YOUR UNDERSTANDING AT THAT POINT EARLIER IN  
13 THE WEEK THAT MR. BLACK HAD ALL OF THE RELEVANT DETAILS  
14 ABOUT THE SITUATION?

15 A. I THINK THE ONLY RELEVANT DETAIL THAT HAD NOT  
16 EMERGED BUT EMERGED ONLY A DAY OR TWO LATER WAS THE  
17 WONDERFUL NEWS THAT THE CSS FOSTER MOTHER WAS ADOPTION  
18 -- IS ADOPTION-MINDED.

19 Q. ON MAY 1ST THERE WAS AN E-MAIL THAT WAS  
20 DISCUSSED, AND THIS IS FROM YOU TO JESSICA SHAPIRO.

21 DO YOU STILL HAVE THAT IN FRONT OF YOU,  
22 MR. AMATO?

23 A. OH, YEAH, HERE IT IS.

24 Q. I JUST WANT TO DRAW YOUR ATTENTION TO TWO  
25 DIFFERENT LINES IN THIS E-MAIL. IN THE FIRST PARAGRAPH

1 IT SAYS: "CASES WITH CUA, BUT THERE ARE UNCERTAINTIES  
2 ABOUT APPROVING THIS GIVEN THE FREEZE." AND YOU ALSO  
3 SAY: "THIS IS IN FRONT OF CUA WITH QUESTIONS FOR CSS  
4 INTAKE FREEZE."

5 CAN YOU TELL US WHAT YOU MEANT ABOUT THIS  
6 UNCERTAINTY?

7 A. JUST SO I AM CLEAR, I AM LOOKING AT AN E-MAIL  
8 FROM ME TO COMMISSIONER FIGUEROA ON MAY 1ST.

9 Q. THAT'S RIGHT.

10 A. ALL RIGHT. IS THAT THE REDACTED ONE THAT WE ARE  
11 LOOKING AT?

12 Q. THESE LINES ARE NOT VISIBLE IN THE REDACTED  
13 VERSION.

14 A. OKAY. SO CAN YOU ASK ME YOUR QUESTION AGAIN,  
15 PLEASE?

16 Q. YES. SO THERE'S TWO LINES IN THE E-MAIL. IT  
17 SAYS: "THE CASES WITH CUA THAT THERE'S UNCERTAINTY  
18 ABOUT APPROVING THIS GIVEN THE PRESENT FREEZE."

19 THAT'S THE FIRST PARAGRAPH. AND THE  
20 SECOND PARAGRAPH, IT SAYS: "THIS IS ALSO IN FRONT OF  
21 CUA WITH QUESTIONS AS CSS INTAKE FREEZE."

22 CAN YOU DESCRIBE A LITTLE BIT WHAT YOU  
23 MEANT ABOUT THESE QUESTIONS AND UNCERTAINTY ABOUT THE  
24 INTAKE FREEZE?

25 A. AGAIN, THAT GETS BACK TO THE FACT THAT -- AND

1 THE WAY THAT I LOOK AT IT, THAT WE -- THE EXCEPTION  
2 POLICY WAS NEVER ARTICULATED BY THE CITY. SO ANY TIME  
3 SOMETHING CAME UP, I THOUGHT IT WAS DUE DILIGENCE AND  
4 GOOD PRACTICE AND THE RIGHT THING TO DO TO GET IN TOUCH  
5 WITH HIM, THE COMMISSIONER, AND TELL HER THAT THIS WAS  
6 GOING ON.

7 Q. ON MAY 25TH, WHICH WAS AFTER THE STAFF -- THAT'S  
8 WHEN CUA STAFF KIND OF COMMUNICATED THAT THEY WERE GOING  
9 TO DENY IT BECAUSE OF THE CASE ONGOING WITH CATHOLIC  
10 SOCIAL SERVICES, CORRECT?

11 A. YEAH, WELL THAT'S DOE 2, DOE 1?

12 Q. YES, BECAUSE IT WAS RELATED TO DOE 1. THEY WERE  
13 GOING TO DENY THAT PLACEMENT?

14 MR. FIELD: OBJECTION, HEARSAY.

15 THE COURT: OVERRULED.

16 BY MS. BARCLAY:

17 Q. IS THAT CORRECT, MR. AMATO?

18 A. YES, THAT'S CORRECT.

19 Q. WAS PART OF YOUR CONCERN ABOUT THE DOE FOSTER  
20 CHILD SITUATION THAT THAT SITUATION COULD REPEAT AGAIN  
21 GIVEN THE DHS RESPONSE?

22 A. ABSOLUTELY. JUST TO GET THAT ON THE RIGHT  
23 TRACK, TOOK A NUMBER OF VERY COMPLICATED AND INTENSE  
24 FOLLOW-UPS. IF THAT WASN'T THERE, KIDS COULD FALL  
25 THROUGH THE CRACKS EASILY.



1 Q. I WANT TO DRAW YOUR ATTENTION TO SOME OF THE  
2 DISCUSSIONS ABOUT ADDITIONAL POTENTIAL CONTRACTS WITH  
3 THE CITY.

4 NOW, IF THE CITY WERE OFFERING WHAT THEY  
5 HAVE DESCRIBED AS A FULL CONTRACT THAT ALLOWED CATHOLIC  
6 SOCIAL SERVICES TO CONTINUE TO PROVIDE FOSTER-CARE,  
7 CONSISTENT WITH ITS RELIGIOUS BELIEFS, AS IT HAS DONE  
8 FOR OVER 50 YEARS, WOULD CATHOLIC SOCIAL SERVICES BE  
9 ABLE TO CONTINUE PROVIDING SERVICES?

10 A. CERTAINLY.

11 Q. AND IN FACT, IF THE CITY AGREED TO THAT, WOULD  
12 THERE EVEN BE A NEED FOR THIS LAWSUIT?

13 A. ABSOLUTELY NOT.

14 Q. SO WITH THE PARTIAL CONTRACT THAT THEY HAVE,  
15 DRAWING YOUR ATTENTION TO THE PARTIAL AWARD LETTER AND  
16 THE E-MAIL FROM JONATHAN JANISZEWSKI -- I APOLOGIZE IF I  
17 AM SAYING THAT WRONG, WHAT IS YOUR UNDERSTANDING WILL  
18 BE --

19 MR. FIELD: OBJECTION TO THE CHARACTERIZATION  
20 AS IT BEING PARTIAL, YOUR HONOR.

21 THE COURT: SUSTAINED.

22 JUST REPHRASE.

23 BY MS. BARCLAY:

24 Q. IN THE E-MAIL FROM JONATHAN JANISZEWSKI, THAT AT  
25 THE THIRD PARAGRAPH TO YOU IT SAYS: "DHS STILL INTENDS

1 TO SEND YOU AN OFFICIAL AWARD TO PREPARE FOR A NEW  
2 CONTRACT UNDER THE TERMS DESCRIBED ABOVE. YOU SHOULD  
3 ANTICIPATE RECEIVING DHS'S OFFICIAL AWARD LETTER LATER  
4 THIS WEEK."

5 DID YOU UNDERSTAND THAT AWARD LETTER TO  
6 BE THE OTHER DOCUMENT THAT WAS WRITTEN BY CYNTHIA  
7 FIGUEROA ON JUNE 11TH?

8 A. NO. AGAIN, THE JUNE 11TH WENT TO ME. I AM  
9 GOING IN REVERSE ORDER HERE, SIMPLY VERIFIED THAT DHS  
10 CONTINUES TO WANT THE CONTRACT AND NEED OUR CONGREGATE  
11 CARE SERVICES. THE JUNE 5TH MEMO, BASICALLY, TO ME IN A  
12 NUTSHELL IS, YOU EITHER FOLLOW ACCORDING TO THE  
13 PROVISIONS THAT DHS PROVIDED, OR YOU ARE BASICALLY GOING  
14 -- THAT MISSION IS GOING TO EVAPORATE OVER TIME.

15 Q. I SHOULD CLARIFY. ALL OF MY QUESTIONS ARE GOING  
16 TO BE IN THE CONTEXT OF YOUR FOSTER-CARE PROGRAM, AND  
17 WE'RE NOT TALKING ABOUT ANY OF THE OTHER CARE PROGRAMS  
18 RIGHT NOW.

19 A. OH, OKAY.

20 Q. SO IF YOU LOOK AT THIS JUNE 11, 2018 LETTER, IT  
21 SAYS: "THE FY19 CONTRACT WILL ALLOW FOR REFERRALS OF  
22 NEW CHILD AND FOSTER-CARE PLACEMENT ONLY IN LIMITED  
23 AUTHORIZED CIRCUMSTANCES WHERE CSS PLACEMENT IS IN THE  
24 BEST INTEREST OF THE CHILD, SUCH AS FOR THE CHILD SHARES  
25 A PRIOR RELATIONSHIP WITH FOSTER PREADOPTIVE PARENTS, OR

1 WHERE SIBLINGS SHOULD BE PLACED TOGETHER. THE NEW  
2 CONTRACT WILL ALSO PROVIDE TIME FOR THE ORDERLY  
3 TRANSITION OF SERVICES SHOULD THAT BECOME NECESSARY."

4 DID YOU UNDERSTAND, THIS DOCUMENT THAT  
5 THE CITY IS CALLING AN AWARD LETTER, TO BE THE NORMAL  
6 TYPE OF AWARD LETTER YOU WOULD RECEIVE FOR THE FULL  
7 CONTRACT?

8 A. OH, NO, IT'S SUBSTANTIALLY DIFFERENT.

9 Q. SO UNDER THIS ARRANGEMENT, WHAT WOULD BE THE  
10 CONSEQUENCE IN A MATTER -- THE CONSEQUENCE TOWARD THE  
11 CATHOLIC SOCIAL SERVICES FOSTER PROGRAM?

12 A. SADLY, ALL STAFF WOULD BE LAID OFF, AND THE  
13 PROGRAM WOULD CEASE.

14 Q. NOW, I WOULD ALSO LIKE TO DIRECT YOUR ATTENTION  
15 TO ANOTHER LETTER FROM THE CITY.

16 MS. BARCLAY: PERMISSION TO APPROACH THE  
17 WITNESS, YOUR HONOR.

18 THE COURT: YES.

19 BY MS. BARCLAY:

20 Q. MR. AMATO, I AM APPROACHING YOU WITH WHAT HAS  
21 BEEN MARKED PLAINTIFF'S EXHIBIT NUMBER 13. I AM GOING  
22 TO DRAW YOUR ATTENTION, MR. AMATO, IF YOU TURN NOT TO  
23 THE FIRST PAGE, NOT THE SECOND PAGE, BUT THE THIRD PAGE,  
24 AND THERE'S A PARAGRAPH IN THE MIDDLE?

25 A. UM-HUM.

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 A. YES.

2 Q. I JUST WANT TO DIRECT YOUR ATTENTION TO THE 3700  
3 REGULATIONS DOT 64. YOU ARE FAMILIAR WITH THE  
4 REQUIREMENT UNDER (A) (3) (B) (1) THAT AN AGENCY EVALUATE,  
5 QUOTE: "EXISTING FAMILY RELATIONSHIPS ADDED TO AND  
6 EXPECTATIONS REGARDING THE APPLICANT'S OWN CHILDREN AND  
7 PARENT-CHILD RELATIONSHIPS, ESPECIALLY THAT THEY MIGHT  
8 AFFECT A FOSTER CHILD." CORRECT?

9 A. YES.

10 Q. AND YOU ALSO UNDERSTOOD THAT UNDER THIS STATE  
11 LAW, CATHOLIC SOCIAL SERVICES IS ENTITLED AND INDEED  
12 REQUIRED TO EVALUATE THE ABILITY OF THE APPLICANT TO  
13 WORK IN PARTNERSHIP WITH CATHOLIC SOCIAL SERVICES,  
14 CORRECT?

15 A. YES.

16 Q. AND IT WAS YOUR UNDERSTANDING THAT THIS STATE  
17 LAW REQUIREMENT MEANT THAT YOU, TO PERFORM AN ADEQUATE  
18 HOME STUDY, NEEDED TO EVALUATE THE RELATIONSHIPS OF ANY  
19 FOSTER PARENT LIVING IN THE SAME HOME, CORRECT?

20 A. YES.

21 MS. BARCLAY: JUST ONE MOMENT, YOUR HONOR.

22 THANK YOU, MR. AMATO. NO FURTHER QUESTIONS.

23 THE COURT: ANY OTHER QUESTIONS?

24 MR. FIELD: JUST TWO BRIEF QUESTIONS, YOUR  
25 HONOR.

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RECROSS-EXAMINATION

BY MR. FIELD:

Q. JIM, A MINUTE AGO, IN TALKING TO YOUR COUNSEL YOU SAID THAT A PRODUCT OF THE HOME STUDY INCLUDES A WRITTEN ENDORSEMENT OF RELATIONSHIPS OF THE PARENTS; IS THAT CORRECT?

A. YES.

Q. IS THAT A WRITTEN ENDORSEMENT OF ANY RELATIONSHIPS THAT EXIST IN THAT HOUSEHOLD THAT IS SUBJECT TO THE HOME STUDY?

MS. BARCLAY: OBJECTION, YOUR HONOR, ASKED AND ANSWERED ON HIS DIRECT.

THE COURT: OVERRULED.

THE WITNESS: YES.

BY MR. FIELD:

Q. AND YOUR COUNSEL JUST READ YOU A PORTION OF THE 3700 REGULATIONS.

ARE YOU FAMILIAR WITH THOSE?

A. YES.

Q. AND I BELIEVE THE QUOTE SHE READ YOU IN HER WORDS WAS ABILITY OF APPLICANT TO WORK IN PARTNERSHIP WITH CATHOLIC SOCIAL SERVICES.

IS IT CORRECT TO SAY THE RIGHTS -- SAY THE ABILITY OF THE APPLICANT TO WORK IN PARTNERSHIP WITH AN AGENCY?

1 A. YES.

2 Q. THEY DON'T SPECIFICALLY REFER TO CATHOLIC SOCIAL  
3 SERVICES, RIGHT?

4 A. NO.

5 Q. DOES ANYWHERE IN THE REGS TALK ABOUT THE ABILITY  
6 OF THE AGENCY TO WORK WITH THE APPLICANT, TO YOUR  
7 KNOWLEDGE?

8 MS. BARCLAY: OBJECTION, YOUR HONOR. IT'S  
9 ASKING FOR A LEGAL QUESTION, AND AS FAR AS QUOTING FROM  
10 REGS, HE MAY NOT BE AWARE OF.

11 MR. FIELD: I AM ASKING, TO HIS KNOWLEDGE, IS  
12 IT IN THE REGULATIONS, AND NOT ASKING HIM TO INTERPRET THE  
13 LEGAL MEANING OF THAT.

14 THE COURT: OVERRULED.

15 THE WITNESS: CAN YOU PLEASE ASK ME THAT  
16 AGAIN?

17 BY MR. FIELD:

18 Q. DO THE REGULATIONS ANYWHERE, TO YOUR KNOWLEDGE,  
19 REFER TO OR DISCUSS THE ABILITY OF THE AGENCY TO WORK  
20 WITH THE APPLICANT OR AN AGENCY TO WORK WITH AN  
21 APPLICANT?

22 A. NOT TO MY KNOWLEDGE.

23 MR. FIELD: THANK YOU. I HAVE NOTHING  
24 FURTHER, YOUR HONOR.

25 THE COURT: OKAY. ANY OTHER QUESTIONS?



1 MS. BARCLAY: NOTHING FURTHER, YOUR HONOR.

2 THE COURT: OKAY. THANK YOU, MR. AMATO.

3 DOES THE PLAINTIFF HAVE ANY FURTHER  
4 WITNESSES?

5 MS. WINDHAM: YOUR HONOR, WE DO NOT HAVE ANY  
6 FURTHER WITNESSES. HOWEVER, WE DO WANT TO MAKE TWO MOTIONS.  
7 ONE MOTION FIRST TO MOVE THE ADMISSION OF THE DOCUMENTS THAT  
8 WERE ATTACHED TO THE JAMES AMATO DECLARATION. WE HAVE ABOUT  
9 20 DIFFERENT DOCUMENTS, WHICH WERE ATTACHED TO THAT  
10 DECLARATION, AND HE AUTHENTICATED THOSE DOCUMENTS WITHIN  
11 THAT DECLARATION.

12 DEFENDANT DID HAVE THE OPPORTUNITY TO RESPOND  
13 OR OBJECT TO THOSE THROUGH THEIR BRIEFING, AND WE BELIEVE  
14 THOSE SHOULD BE ALLOWED IN AT THIS TIME.

15 WE ALSO WOULD MOVE FOR THE ADMISSION OF ALL  
16 OF PLAINTIFFS' DECLARATION, INCLUDING THE DECLARATIONS OF  
17 JAMES BLACK, BISHOP MCINTYRE, AND DOE FOSTER MOTHER NUMBER  
18 1.

19 MR. FIELD: YOUR HONOR, WE WOULD OPPOSE BOTH  
20 OF THOSE MOTIONS. THERE IS AN OPPORTUNITY HERE TO INTRODUCE  
21 DOCUMENTS, AND OBTAIN TESTIMONY FROM JIM AMATO REGARDING ANY  
22 MATTERS THAT PLAINTIFFS BELIEVE RELEVANT TO THIS, AND WE  
23 HAVE ALREADY OPPOSED THE INTRODUCTION AND TRIAL OF THIS BY  
24 AFFIDAVIT IN THE INTRODUCTION OF AFFIDAVITS OF WITNESSES WHO  
25 ARE NOT PRESENT AT THIS HEARING.

1 MS. WINDHAM: YOUR HONOR, WITH REGARD TO DOE  
2 FOSTER MOTHER NUMBER 1, DEFENDANTS DID NOT OBJECT TO THE  
3 ADMISSION OF HER TESTIMONY YESTERDAY. SHE WAS ACTUALLY HERE  
4 YESTERDAY. AND WE UNDERSTOOD THAT THEY WERE PLANNING TO  
5 OBJECT TO THE ADMISSION OF HER DECLARATION IF WE WOULD HAVE  
6 HAD HER ON THE STAND. SHE WAS NOT ABLE TO GO HERE TODAY.  
7 WE ASKED HER TO BE HERE TODAY.

8 SO WE FEEL THAT THIS WOULD BE AN UNFAIR BAIT  
9 AND SWITCH BY THE DEFENDANTS, AND NOW THAT SHE IS NOT HERE,  
10 MOVE TO EXCLUDE HER WHEN THEY DID NOT MOVE SO YESTERDAY.

11 MR. FIELD: YOUR HONOR, I DON'T BELIEVE  
12 DEFENDANT'S MOTION YESTERDAY TO EXCLUDE THE AFFIDAVITS --  
13 AFFIDAVITS OF WITNESSES WHOSE TESTIMONY WAS NOT TAKEN WAS AT  
14 ALL AMBIGUOUS. IT WAS ACROSS ALL OF THE EVIDENCE THAT  
15 PLAINTIFFS WISH TO INTRODUCE IN THIS HEARING.

16 MS. WINDHAM: YOUR HONOR, YESTERDAY THEY  
17 SPECIFICALLY LISTED JAMES AMATO, JAMES BLACK, AND BISHOP  
18 MCINTYRE. THEY DID NOT MENTION FOSTER MOTHER NUMBER 1. WE  
19 WOULD HAVE PUT HER ON THE STAND, IF WE HAD KNOWN.

20 MR. FIELD: YOUR HONOR, THOSE WERE EXAMPLES  
21 OF AFFIANTS THAT THEY WERE NOT INTRODUCING.

22 THE COURT: SINCE DOE FOSTER MOTHER NUMBER 1  
23 WAS PRESENT YESTERDAY, AND COULD NOT BE PRESENT TODAY, I'M  
24 GOING TO PERMIT THE AFFIDAVIT. HOWEVER, THE OTHER EXHIBITS,  
25 I'M NOT GOING TO PERMIT.

1 MS. WINDHAM: YOUR HONOR, TO CLARIFY, ARE YOU  
2 SPEAKING ABOUT THE OTHER AFFIDAVITS, OR ARE YOU SPEAKING --

3 THE COURT: EXHIBITS AND THE AFFIDAVITS. THE  
4 EXHIBITS, MY UNDERSTANDING IS THEY WERE ATTACHED TO THE  
5 AFFIDAVIT OF MR. AMATO, WHO HAS TESTIFIED HERE TODAY.

6 MS. WINDHAM: YES, YOUR HONOR. THOSE WERE  
7 ATTACHED TO HIS DECLARATION, AND THEY WERE PROPERLY  
8 AUTHENTICATED IN HIS DECLARATION. WE DID NOT WALK THROUGH  
9 AND INTRODUCE EVERY SINGLE ONE OF THOSE TODAY IN ORDER TO  
10 SAVE TIME.

11 THE COURT: WELL, TIME IS NOT A PROBLEM. IF  
12 YOU WANT TO HAVE THEM ADMITTED, THEN YOU NEED TO DO IT SINCE  
13 MR. AMATO IS HERE.

14 MS. WINDHAM: YOUR HONOR, MAY WE HAVE A QUICK  
15 RECESS TO LOOK AT THOSE DOCUMENTS AND DETERMINE WHICH WE  
16 NEED TO ADMIT?

17 THE COURT: OKAY. YOU CAN HAVE DISCUSSION  
18 WITH COUNSEL.

19 (BRIEF RECESS.)

20 THE COURT: ARE WE READY?

21 MS. CORTES: JUST ONE MORE MOMENT, YOUR  
22 HONOR.

23 MR. FIELD: YOUR HONOR, CAN WE APPROACH FOR  
24 SIDEBAR CONCERNING THIS MATTER?

25 THE COURT: YES.

1 (SIDEBAR OCCURRED.)

2 MS. BARCLAY: WE CAN TELL YOU WHICH  
3 ATTACHMENTS TO JIM AMATO'S DECLARATION WE HAVE AGREED TO,  
4 YOUR HONOR. IT IS ATTACHMENT B, ATTACHMENT C.

5 THE COURT: B, C?

6 MS. BARCLAY: B AS IN BOY, C AS IN CAT, D AS  
7 IN DOG, AND ATTACHMENT I AS IN IGLOO.

8 THERE ARE SOME ADDITIONAL DOCUMENTS THAT WE  
9 WOULD LIKE TO ADMIT. THEY ARE WEBSITE OR NEWS REPORTS THAT  
10 ARE FRANKLY JUDICIALLY NOTICEABLE, BUT FOR EASE OF  
11 REFERENCE, SO THEY ARE PART OF THE RECORD, WE WOULD LIKE TO  
12 ADMIT THEM AS WELL. WOULD YOU LIKE US TO PUT MR. AMATO ON  
13 THE STAND FOR THOSE, YOUR HONOR?

14 MR. FIELD: YOUR HONOR, OUR OBJECTION TO  
15 THOSE AND THE REASON I ASKED FOR THE SIDEBAR IS THAT I DON'T  
16 THINK WE NECESSARILY NEED TO DO THIS ON STAND. WE CAN  
17 RESOLVE THIS THAT WOULD BE BOTH RELEVANT AND FOUNDATION AS  
18 TO MR. AMATO'S ACTUAL KNOWLEDGE OF THOSE DOCUMENTS, AND I  
19 LEAVE IT TO THE COURT. I DON'T THINK THEY ARE APPROPRIATE  
20 AND RELEVANT TO THIS.

21 THE COURT: WHAT THEY ARE ARE NEWS REPORTS?

22 MS. BARCLAY: HERE IS AN EXAMPLE OF ONE  
23 REPORT, YOUR HONOR, THE ONE TALKING ABOUT SOME OF MAYOR  
24 KENNEY'S COMMENTS WITH REGARD TO THE ARCHDIOCESE THAT ARE  
25 RELEVANT TO CONCERNS ABOUT HOSTILITY OF RELIGIOUS OFFICIALS,

1 AND THESE HAVE ALL BEEN AUTHENTICATED TO THE DECLARATION.

2 THE COURT: WHETHER THEY ARE RELEVANT, THAT'S  
3 CLEARLY AN OPINION PIECE.

4 MS. BARCLAY: IT DOES HAVE SOME QUOTES FROM  
5 HIM.

6 THE COURT: I AM SURE, BUT IT'S FROM THE  
7 PHILADELPHIA MAGAZINE, AND THAT'S AN OPINION PIECE.

8 MS. BARCLAY: WE WOULD AGREE THAT ALL OF THE  
9 AWKWARD WORDS ARE NOT PARTICULARLY RELEVANT. IT IS THE  
10 QUOTES THAT THEY HAVE COLLECTED FROM MAYOR KENNEY THAT WE  
11 THINK ARE RELEVANT.

12 MS. CORTES: AND, YOUR HONOR, AGAIN, IT WOULD  
13 BE OUR POSITION THAT THAT IS IRRELEVANT TO THESE  
14 PROCEEDINGS. IT IS IRRELEVANT TO THIS PARTICULAR MATTER.  
15 THIS ARTICLE WAS WRITTEN IN 2015. WE ARE TALKING ABOUT  
16 CONTRACT NEGOTIATIONS OF 2018, THREE YEARS LATER.

17 MR. FIELD: YOUR HONOR, THEY ARE NOT AN  
18 AUTHENTICATION, THE QUOTES.

19 MS. CORTES: OR THE FULL CONTEXT, YOUR HONOR.

20 MS. BARCLAY: THERE IS ALSO, YOUR HONOR, WEB  
21 PAGES THAT WE HAVE BEEN TALKING ABOUT, SOME OF THE  
22 SPECIALTIES OF SOME AGENCIES AND PROGRAMS LIKE THE  
23 BEHAVIORAL HEALTH SPECIALTY OR THE SPECIAL MEDICAL SPECIALTY  
24 THAT ARE RELEVANT TO THE TYPES OF NEEDS AND POPULATIONS THAT  
25 FOSTER-CARE AGENCIES SERVE AND WE BELIEVE THAT ALSO WOULD BE

1 RELEVANT TO THESE PROCEEDINGS.

2 THE COURT: WELL, YOU HAVE TESTIMONY IN THAT  
3 REGARD.

4 MS. BARCLAY: WE CAN, YOUR HONOR.

5 THE COURT: I MEAN, YOU HAVE ALREADY HAD  
6 TESTIMONY.

7 MS. BARCLAY: I SEE.

8 THE COURT: WE HAVE HAD MORE THAN ENOUGH  
9 TESTIMONY AS FAR AS THE SPECIALIZATION.

10 MR. RIENZI: YOUR HONOR, MAY I MAKE A  
11 SUGGESTION? ONE POSSIBILITY WOULD BE THESE ARE ITEMS THAT  
12 -- YOU KNOW, THEY ARE WEBSITES AND NEWS ARTICLES THAT I AM  
13 SURE YOU HAVE HAD LITIGANTS CITE TO YOU IN BRIEFS AND THINGS  
14 LIKE THAT AND ASK YOU TO TAKE JUDICIAL NOTICE OF ANYWAY.  
15 ONE POSSIBILITY WOULD BE YOU DON'T NECESSARILY NEED TO RULE  
16 EITHER WAY ON WHETHER THEY COME NOW. PEOPLE CAN JUST MAKE  
17 ARGUMENTS FROM THEM AND YOU CAN DO WITH THEM WHAT YOU WILL,  
18 WHICH OF COURSE IS YOUR PREROGATIVE ANYWAY. IT SEEMS LIKE  
19 IT WOULD BE UNNECESSARY AND WASTEFUL OF COURT TIME TO PUT  
20 HIM BACK ON THE STAND TO HAVE HIM SAY STUFF THAT EVERYBODY  
21 KNOWS WHAT HE IS GOING TO SAY JUST TO DRAW A RULING OR YOUR  
22 CONSIDERATION.

23 MS. CORTES: YOUR HONOR, WE WOULD AGREE WITH  
24 THAT PART. WE DON'T THINK IT IS NECESSARY FOR HIM TO GO ON  
25 THE STAND. AGAIN, OUR OBJECTIONS ARE MORE SO TO THE

1 RELEVANCE AS TO THE VARIOUS WEBSITES OF THE DIFFERENT  
2 SPECIALTY NEEDS. I WOULD AGREE WITH YOUR HONOR THAT THERE  
3 HAS BEEN PLENTY OF TESTIMONY ON THAT. I THINK THE OBJECTION  
4 IS MORE SO THAT THEY ARE DUPLICATIVE OF THE TESTIMONY THAT  
5 YOUR HONOR HAS ALREADY TAKEN NOTICE OF.

6 AS TO THE ARTICLES REGARDING MAYOR KENNEY'S  
7 WORDS REGARDING THE ARCHDIOCESE, IT'S OUR POSITION THAT  
8 THOSE ARE IRRELEVANT.

9 MR. RIENZI: WE WOULD STRONGLY DISAGREE AS TO  
10 THE RELEVANCE OF MAYOR KENNEY'S STATEMENTS ABOUT THE  
11 ARCHDIOCESE, AND AS TO WHETHER OR NOT SOME OF THEM ARE  
12 DUPLICATIVE, I WOULD SIMPLY SAY I CAN'T SEE OR IMAGINE ANY  
13 HARM FOR THE COURT OR ANYBODY ELSE TO SIMPLY LETTING THEM  
14 IN.

15 MS. BARCLAY: AND THERE'S ANOTHER ARTICLE WE  
16 CAN PRESENT THAT I BELIEVE IS THIS YEAR, ONE OF THOSE  
17 ARTICLES SO IN AS FAR AS THE CONCERN IS ABOUT THE TIMELINE,  
18 AND GIVEN MR. AMATO'S TESTIMONY TODAY, THAT HE WAS TOLD BY  
19 DHS OFFICIALS THAT THIS HAD THE EYES OF THE TOP OFFICIALS IN  
20 THE CITY, THIS ISSUE, WE THINK THAT MAYOR KENNEY'S COMMENTS  
21 ARE RELEVANT TO THE TYPE OF MOTIVATION AND HOSTILITY, IF ANY  
22 AT ISSUE IN THIS CASE, REGARDING CATHOLIC SOCIAL SERVICES  
23 RELIGIOUS BELIEFS.

24 THE COURT: I AM NOT GOING TO PERMIT IT. I  
25 DON'T THINK IT'S RELEVANT. I DON'T THINK IT'S ADMISSIBLE.

1 IT IS AN OPINION PIECE, IT'S SOMEBODY'S OPINION. THE  
2 INTERPRETATION IS SOMEBODY ELSE'S INTERPRETATION. AND SO  
3 I'M NOT GOING TO PERMIT THE ARTICLE.

4 AS FAR AS THE SPECIALIZATION, HE HAS ALREADY  
5 TESTIFIED TO THAT AND I DON'T THINK YOU WILL BE PREJUDICED  
6 AS NECESSARY TO BRING IN THE ARTICLES.

7 MS. BARCLAY: THANK YOU, YOUR HONOR.

8 MR. RIENZI: THANK YOU, YOUR HONOR.

9 MR. FIELD: THANK YOU, YOUR HONOR.

10 (SIDEBAR CONCLUDED.)

11 THE COURT: OKAY. DOES THE PLAINTIFF REST?

12 MS. WINDHAM: YES, YOUR HONOR, PLAINTIFFS  
13 REST.

14 THE COURT: OKAY. DOES THE CITY HAVE ANY  
15 WITNESSES?

16 MS. OLIVER: YES, YOUR HONOR. AT THIS TIME I  
17 CALL KIMBERLY ALI.

18 MS. ALI.

19 THE COURT: OKAY.

20 MS. OLIVER: THANK YOU, YOUR HONOR.

21 BY MS. OLIVER:

22 Q. MS. ALI, YOU HEARD THE TESTIMONY OF MR. AMATO  
23 TODAY WHEREIN HE INDICATED THAT DOE FOSTER CHILD NUMBER  
24 1, FORMER FOSTER PARENT, DOE FOSTER PARENT NUMBER 1  
25 DESIRED TO HAVE HIM BACK IN HER CARE?



1 A. YES.

2 Q. FIRST OF ALL, WOULD YOU INFORM THE COURT, AS TO  
3 YOUR KNOWLEDGE, WHY DOE FOSTER CHILD NUMBER 1 WAS  
4 REMOVED FROM DOE FOSTER PARENT NUMBER 1'S CARE?

5 A. YES, DOE FOSTER CHILD NUMBER 1 WAS REMOVED FROM  
6 DOE FOSTER MOTHER NUMBER 1'S HOME BECAUSE THE FOSTER  
7 PARENT DID NOT WANT TO ADOPT DOE FOSTER CHILD NUMBER 1,  
8 SO HE WAS MOVED --

9 MS. BARCLAY: OBJECTION TO SPECULATION, YOUR  
10 HONOR.

11 THE COURT: ON WHAT DO YOU BASE THIS?

12 THE WITNESS: I BASE THAT ON TELEPHONE  
13 CONVERSATIONS WITH THE CUA CASE MANAGER, THE CATHOLIC SOCIAL  
14 SERVICES CUA CASE MANAGER.

15 MS. BARCLAY: OBJECTION AS TO HEARSAY, YOUR  
16 HONOR.

17 THE COURT: OVERRULED.

18 BY MS. OLIVER:

19 Q. AND WHEN DID YOU LEARN THAT DOE FOSTER MOTHER  
20 NUMBER 1 DESIRED TO HAVE DOE FOSTER CHILD RETURNED TO  
21 HER CARE?

22 A. I LEARNED THAT ON THE EVENING OF MAY 25TH AT  
23 APPROXIMATELY 10:16 P.M.

24 Q. 2018?

25 A. YES.

1 Q. AND HOW DID YOU LEARN THAT?

2 A. I LEARNED THAT VIA A TEXT FROM JIM BLACK.

3 MS. OLIVER: YOUR HONOR, MAY I APPROACH THE  
4 WITNESS?

5 THE COURT: YES.

6 MS. OLIVER: YOUR HONOR, I HAVE HANDED THE  
7 WITNESS WHAT HAS BEEN MARKED AS DEFENSE EXHIBIT NUMBER 5.  
8 FOR THE COURT'S INFORMATION, WE FILED AN UNREDACTED COPY  
9 UNDER SEAL, AND I HAVE HANDED THE WITNESS A REDACTED COPY  
10 FOR THE PURPOSE OF TODAY'S HEARING.

11 THE COURT: YES.

12 BY MS. OLIVER:

13 Q. MS. ALI, WILL YOU PLEASE TAKE A LOOK AT THIS  
14 EXHIBIT?

15 A. YES.

16 Q. DO YOU RECOGNIZE IT?

17 A. YES.

18 Q. WHAT IS IT?

19 A. IT'S A TEXT MESSAGE BETWEEN JIM BLACK AND  
20 MYSELF.

21 Q. I WOULD'N'T HAVE YOU READ THE EXHIBIT IN ITS  
22 ENTIRETY, BUT WITH RESPECT TO PAGE 1, WILL YOU PLEASE  
23 READ THE CONTENT OF THAT TEXT INTO THE RECORD?

24 A. "FRIDAY, MAY 25TH, 10:16 P.M. HI KIM, SORRY TO  
25 BOTHER YOU ON A FRIDAY NIGHT OF A HOLIDAY WEEKEND, BUT

1 WE HAVE A BOY WHO WAS MOVED EARLIER THIS MONTH FROM ONE  
2 OF CSS FOSTER HOMES TO A PREADOPTIVE HOME OF ANOTHER  
3 AGENCY. FOR SOME REASON THE PLACEMENT HAS NOT WORKED  
4 OUT, AND CUA 4 CONTACTED OUR FOSTER MOTHER WHO WILL TAKE  
5 THE CHILD BACK. BUT DHS SUPPOSEDLY JUST TOLD THE CASE  
6 MANAGER THE CHILD COULD NOT GO BACK TO OUR HOME.  
7 WANTING TO DO THE BEST THING FOR THE CHILD OF COURSE.  
8 I'LL FOLLOW YOUR LEAD."

9 Q. AND DID YOU SEND A REPLY TO THAT TEXT MESSAGE TO  
10 MR. BLACK?

11 A. YES, I DID.

12 Q. AND WHAT WAS THE CONTENT OF YOUR REPLY?

13 A. WOULD YOU LIKE ME TO READ IT?

14 Q. PLEASE.

15 A. "HEY JIM, IS THE PLACEMENT MOVE AN EMERGENCY FOR  
16 TONIGHT? IF NOT WE CAN MAKE THE MOVE ON TUESDAY AFTER  
17 GETTING THE APPROVAL DUE TO JUDICIAL RULES THAT  
18 PLACEMENTS MUST BE APPROVED. ONLY TIME CAN MAKE THE  
19 MOVE WITHOUT COURT APPROVAL, AS YOU KNOW, AS IF IT IS AN  
20 EMERGENCY. LET ME KNOW."

21 Q. OKAY. AND FINALLY, DID MR. BLACK REPLY?

22 A. YES.

23 Q. PLEASE DIRECT YOUR ATTENTION TO PAGE -- THE  
24 THIRD PAGE OF THIS EXHIBIT. AND WHY DON'T YOU READ ONLY  
25 AFTER THE SECOND REDACTION WHERE IT BEGINS "BUT THE GOOD

1 NEWS IS"?

2 A. THAT WAS FRIDAY, MAY 25TH AT 11:58 P.M. "BUT  
3 THE GOOD NEWS IS I JUST LEARNED THAT IS NOW SAFELY IN  
4 ANOTHER DEVEREUX FOSTER HOME, SO NO NEED TO INVOLVE CSS  
5 FOSTER CHILD 1. SORRY TO HAVE BOTHERED YOU. I REALLY  
6 APPRECIATE YOUR HELP. HAVE A TERRIFIC HOLIDAY. JIM."

7 Q. THANK YOU. AND SUBSEQUENT TO HAVING THIS  
8 CORRESPONDENCE WITH MR. BLACK, DID IT THEN COME TO YOUR  
9 ATTENTION THAT DOE FOSTER CHILD 1 NEEDED TO BE REMOVED  
10 FROM THE DEVEREUX FOSTER HOME?

11 A. NO. PRIOR TO JIM BLACK'S OUTREACH IS THE  
12 QUESTION? WHAT IS THE QUESTION?

13 Q. NO. MY QUESTION IS IN THIS TEXT MESSAGE, ISN'T  
14 IT CORRECT THAT MR. BLACK INDICATED THAT NO NEED TO  
15 INCLUDE CSS IN THIS ISSUE ANYMORE. IT'S BEEN RESOLVED  
16 ESSENTIALLY?

17 A. YES.

18 Q. BUT DID YOU THEN COME TO LEARN THAT THE CHILD  
19 NEEDED TO MOVE FROM THE DEVEREUX FOSTER HOME, WHERE HE  
20 WAS?

21 A. HE WAS MOVED FROM THE DEVEREUX FOSTER HOME INTO  
22 A RESPITE HOME, WHERE HE HAS REMAINED EVER SINCE.

23 Q. DID IT COME TO YOUR ATTENTION AGAIN THAT DOE  
24 FOSTER MOTHER NUMBER 1 ONCE AGAIN DESIRED TO HAVE THE  
25 CHILD RETURNED TO HER CARE?

1 A. YES.

2 Q. AND HOW DID THAT COME TO YOUR ATTENTION?

3 A. THAT CAME TO MY ATTENTION ON JUNE 5TH AFTER A  
4 CONVERSATION THAT I HAD WITH FIRST DEPUTY COMMISSIONER  
5 SHAPIRO.

6 Q. OKAY. AND ESSENTIALLY WHAT WAS THE SUBSTANCE OF  
7 THAT CONVERSATION?

8 A. THE SUBSTANCE OF THE CONVERSATION WAS THAT SHE  
9 WAS BRINGING ME UP TO SPEED IN REFERENCE TO THE  
10 LITIGATION, THE PENDING LITIGATION, SHE TOLD ME THE  
11 SCENARIO, AND I TOLD HER --

12 MS. BARCLAY: OBJECTION AS TO HEARSAY, YOUR  
13 HONOR.

14 THE COURT: WELL, SHE SAID -- SHE DIDN'T SAY  
15 WHAT SHE TOLD HER. SHE BROUGHT HER UP TO SPEED.

16 AND AS A RESULT OF WHAT SHE SAID, WHAT DID  
17 YOU DO?

18 THE WITNESS: I TOLD HER THAT I WAS FAMILIAR  
19 -- I THOUGHT THAT I WAS FAMILIAR WITH DOE FOSTER CHILD  
20 NUMBER 1.

21 BY MS. OLIVER:

22 Q. AND DID YOU -- ULTIMATELY, WAS DOE FOSTER CHILD  
23 NUMBER 1 RETURNED TO -- STRIKE THAT.

24 ULTIMATELY, WAS DOE FOSTER CHILD NUMBER 1  
25 RETURNED TO DOE FOSTER MOTHER 1'S CARE?

1 A. YES.

2 Q. HOW DID THAT COME ABOUT?

3 A. THAT CAME ABOUT ON JUNE 7TH. I HAD A  
4 CONVERSATION WITH THE CUA CASE MANAGEMENT TEAM. I SPOKE  
5 TO THE CUA CASE MANAGER, THE CUA SUPERVISOR, THE CUA  
6 CASE DIRECTOR TO GET A BETTER UNDERSTANDING AS TO THE  
7 PERMANENCY FOR DOE FOSTER CHILD NUMBER 1 AND THE FOSTER  
8 PARENT'S WILLINGNESS NOW TO ADOPT DOE FOSTER CHILD  
9 NUMBER 1.

10 AFTER I SPOKE TO THE CUA CASE MANAGEMENT  
11 TEAM LATER ON IN THE AFTERNOON, I HAD A CONVERSATION  
12 WITH DOE FOSTER PARENT NUMBER 1, AS WELL AS COUNSEL FOR  
13 DOE FOSTER PARENT NUMBER 1, MRS. BARCLAY, TO GET A SENSE  
14 OF HER COMMITMENT IN REFERENCE TO THE PERMANENCY AND  
15 ADOPTION OF DOE FOSTER CHILD NUMBER 1.

16 Q. OKAY.

17 A. AFTER HEARING BOTH SIDES, I FELT THAT IT WAS IN  
18 THE BEST INTEREST TO PLACE DOE FOSTER CHILD NUMBER 1  
19 BACK INTO THE HOME OF DOE FOSTER MOTHER NUMBER 1.  
20 HOWEVER, I EXPLAINED TO BOTH THE CUA CASE MANAGEMENT  
21 TEAM, AS WELL AS DOE FOSTER PARENT NUMBER 1, THAT WE  
22 NEEDED TO GET JUDICIAL APPROVAL BECAUSE THIS WAS NOT AN  
23 EMERGENCY MOVE, THEREFORE, THE COURT WOULD HAVE TO  
24 APPROVE THE MOVE.

25 Q. AND TO YOUR KNOWLEDGE, DID THE COURT ULTIMATELY

1 SIGN AN ORDER AUTHORIZING THE CHILD TO RETURN TO DOE  
2 FOSTER MOTHER NUMBER 1'S CARE?

3 A. YES.

4 Q. DO YOU RECALL WHAT DATE THAT OCCURRED?

5 A. JUNE 12TH.

6 Q. 2018?

7 A. YES.

8 Q. AND THAT WAS THE DATE THAT THE COURT SIGNED THE  
9 ORDER?

10 A. YES.

11 Q. AND THE CHILD RETURNED TO HER CARE ON THAT DATE?

12 A. YES.

13 Q. OKAY. AND JUST BRIEFLY, ONE OTHER THING. IN  
14 HIS TEXT MESSAGE, MR. BLACK INDICATED THAT -- AND AGAIN,  
15 I QUOTE: "BUT DHS SUPPOSEDLY JUST TOLD THE CASE MANAGER  
16 THE CHILD COULD NOT GO BACK TO OUR HOME."

17 DID YOU HAVE AN OPPORTUNITY TO VERIFY  
18 THAT? DID YOU HAVE ANY CONVERSATION WITH THE CATHOLIC  
19 CUA CASE MANAGER?

20 A. YES, I TALKED TO THE CATHOLIC CUA CASE MANAGER,  
21 MR. WHITMAN, ABOUT --

22 MS. BARCLAY: OBJECTION AS TO HEARSAY.

23 THE COURT: OVERRULED.

24 THE WITNESS: -- ABOUT WHAT HAPPENED THE  
25 EVENING OF MAY 25TH. NUMBER ONE, WHO DID HE SPEAK TO AT

1 DHS? HE INDICATED THAT HE COULD NOT REMEMBER, HOWEVER, IT  
2 WAS A FEMALE THAT HE SPOKE TO. I ASKED HIM THE CONVERSATION  
3 THAT HE HAD, AND HE INDICATED TO ME THAT THE DHS STAFF  
4 PERSON TOLD HIM THAT SHE WOULD HAVE TO GET APPROVAL IN ORDER  
5 TO PLACE DOE FOSTER CHILD NUMBER 1 BACK INTO THE HOME OF DOE  
6 FOSTER CHILD NUMBER 2.

7 HE INDICATED THAT HE COMMUNICATED THAT  
8 INFORMATION TO DOE FOSTER PARENT NUMBER 1, THAT APPROVAL  
9 NEEDED TO OCCUR BEFORE THE FOSTER CHILD COULD BE PLACED BACK  
10 IN HER HOME.

11 MS. OLIVER: THANK YOU, MS. ALI.

12 YOUR HONOR, I HAVE NO FURTHER QUESTIONS.

13 THE COURT: ANY CROSS-EXAMINATION?

14 MS. BARCLAY: YES, YOUR HONOR, VERY BRIEFLY.

15 CROSS-EXAMINATION

16 BY MS. BARCLAY:

17 Q. GOOD AFTERNOON, MS. ALI.

18 A. GOOD AFTERNOON.

19 Q. ON MAY 25TH, DID ANYONE FROM DHS COMMUNICATE TO  
20 YOU THE NEED FOR THAT APPROVAL THAT YOU DISCUSSED ON  
21 YOUR DIRECT EXAMINATION?

22 A. NO.

23 Q. NOW, WHEN DID -- THE ADDITIONAL ISSUES ABOUT DOE  
24 FOSTER PARENT NUMBER 1 AND DOE FOSTER CHILD NUMBER 1,  
25 WHEN WERE THOSE COMMUNICATED TO YOUR ATTORNEYS?



1 A. I'M NOT SURE. I WAS ACTUALLY ON VACATION OR  
2 RETURNING BACK FROM VACATION ON JUNE THE 5TH.

3 MS. BARCLAY: YOUR HONOR, MAY I HAVE  
4 PERMISSION TO APPROACH THE WITNESS?

5 THE COURT: YES.

6 MS. BARCLAY: THIS IS 3E OF THE DEFENDANT'S  
7 FILING.

8 BY MS. BARCLAY:

9 Q. CAN YOU TURN WITH ME TO THE BACK OF THIS  
10 DOCUMENT, THE VERY FIRST E-MAIL ON THE CHAIN, PAGE 7.

11 HAVE YOU EVER SEEN THIS E-MAIL FROM  
12 MS. WINDHAM TO MR. BENJAMIN FIELD?

13 A. YES.

14 Q. WHAT IS THE DATE OF THIS E-MAIL?

15 A. FRIDAY, JUNE 1ST, 2018, AT 9:14 P.M.

16 Q. AND THIS IS THE E-MAIL THAT I WILL FIRST BE  
17 BRINGING TO YOUR ATTENTION, TO DHS'S ATTENTION SOME OF  
18 THESE ADDITIONAL FACTS ABOUT DOE FOSTER PARENT NUMBER 1  
19 AND DOE FOSTER CHILD NUMBER 1, CORRECT?

20 MS. OLIVER: OBJECTION, YOUR HONOR, IN THAT  
21 THIS DOCUMENT WAS SENT TO MR. FIELD FROM MS. WINDHAM.

22 BY MS. BARCLAY:

23 Q. MS. ALI, DID YOU -- YOU SAID YOU WERE FAMILIAR  
24 WITH THIS E-MAIL.

25 IS THIS E-MAIL THE WAY THAT YOU LEARNED

1 ABOUT ADDITIONAL FACTS FROM DOE FOSTER CHILD NUMBER 1  
2 AND DOE FOSTER MOTHER NUMBER 1?

3 A. NO. I LEARNED ABOUT THE ADDITIONAL FACTS BY WAY  
4 OF OUR CONVERSATION WITH FIRST DEPUTY COMMISSIONER  
5 SHAPIRO ON JUNE THE 5TH.

6 Q. OKAY. WAS SHE RELAYING HER UNDERSTANDING ABOUT  
7 THAT CORRESPONDENCE ON JUNE THE 5TH, IS THAT YOUR  
8 TESTIMONY?

9 MS. OLIVER: OBJECTION. CALLS FOR  
10 SPECULATION.

11 THE COURT: I DON'T KNOW HOW SHE CAN ANSWER  
12 THAT. SUSTAINED.

13 BY MS. BARCLAY:

14 Q. DO YOU KNOW WHAT THE BASIS WAS FOR DEPUTY  
15 COMMISSIONER SHAPIRO'S INFORMATION ABOUT DOE FOSTER  
16 MOTHER NUMBER 1?

17 A. I DON'T KNOW THE BASIS.

18 Q. YOU DON'T KNOW THE BASIS FOR HER?

19 A. NO.

20 Q. WHEN YOU SPOKE WITH MR. BLACK ON MAY 25TH, YOU  
21 KNEW THAT HE WAS -- HE DID NOT KNOW THE SPECIFICS OF THE  
22 CASE, RIGHT?

23 A. HE KNEW SOME SPECIFICS OF THE CASE IN THAT HIS  
24 TEXT SAID THAT HE WAS MOVED EARLIER THIS MONTH FROM ONE  
25 OF CSS'S FOSTER HOMES TO A PREADOPTIVE HOME FROM ANOTHER

1 AGENCY; THAT THE PLACEMENT HAS NOT WORKED OUT; THAT CUA  
2 4 CONTACTED OUR FOSTER MOTHER WHO WOULD TAKE THE CHILD  
3 BACK. SO HE KNEW SOME INFORMATION.

4 MS. BARCLAY: YOUR HONOR, PERMISSION TO  
5 APPROACH THE WITNESS.

6 THE COURT: YES.

7 MS. BARCLAY: AND THIS IS HER DECLARATION.

8 BY MS. BARCLAY:

9 Q. MS. ALI, I AM READING FROM YOUR DECLARATION, IF  
10 YOU TURN TO PAGE 11.

11 ON PARAGRAPH 52, THIS BEGINS YOUR  
12 CONVERSATION THAT BEGAN FRIDAY, MAY 25TH AT 10:16 P.M.,  
13 CORRECT?

14 A. YES.

15 Q. AND ON PARAGRAPH 55, YOU SAID: "I SUBSEQUENTLY  
16 CALLED HIM TO DISCUSS WHETHER IT WAS AN EMERGENCY, AND  
17 HE DID NOT KNOW THE SPECIFICS OF THE CASE."

18 DID I READ THAT CORRECTLY?

19 A. YES.

20 Q. MS. ALI, YOU ALSO HAD DETERMINED THAT IT WAS IN  
21 THE BEST INTEREST OF DOE FOSTER CHILD NUMBER 1 TO BE  
22 PLACED WITH DOE FOSTER MOTHER NUMBER 1, CORRECT?

23 A. YES.

24 Q. AND THE JUDGE MADE THAT DETERMINATION AS WELL?

25 A. YES.

1 Q. AND IF IT WEREN'T FOR THE REFERRAL STOPPAGE THAT  
2 YOU PLACED, HE WOULDN'T HAVE BEEN PLACED WITH DOE FOSTER  
3 MOTHER NUMBER 1 ON THE EVENING OF THE 25TH, CORRECT?

4 MS. OLIVER: OBJECTION. CALLS FOR  
5 SPECULATION.

6 THE COURT: OVERRULED.

7 YOU CAN ANSWER.

8 THE WITNESS: NO.

9 BY MS. BARCLAY:

10 Q. HE WOULD NOT HAVE BEEN PLACED WITH THE PLACEMENT  
11 IN HIS BEST INTEREST WHERE THERE IS AN EMERGENCY  
12 SITUATION?

13 A. ON MAY THE 25TH WHEN I SPOKE TO JIM, HE COULD  
14 NOT ANSWER WHETHER OR NOT IT WAS AN EMERGENCY MOVE OR  
15 NOT.

16 Q. I'M TALKING ABOUT BEFORE YOU SPOKE TO JIM,  
17 BECAUSE YOU WOULD NOT HAVE NEEDED TO GET INVOLVED OR  
18 SPEAK TO JIM AT ALL IF THE PLACEMENT HAD NOT ALREADY  
19 BEEN DENIED AT THAT POINT, CORRECT?

20 MS. OLIVER: OBJECTION, YOUR HONOR. THE  
21 QUESTION CALLS FOR SPECULATION.

22 MS. BARCLAY: IT DOES NOT CALL FOR  
23 SPECULATION, YOUR HONOR. THOSE ARE FACTS THAT ARE ALREADY  
24 IN EVIDENCE.

25 THE COURT: CAN YOU ANSWER THE QUESTION?

1 THE WITNESS: CAN YOU REPEAT IT.

2 BY MS. BARCLAY:

3 Q. BY THE TIME YOU SPOKE TO MR. BLACK, THE -- HE  
4 WAS COMMUNICATING WITH YOU BECAUSE THE PLACEMENT BY THE  
5 CUA WORKER HAD ALREADY BEEN DENIED, CORRECT?

6 A. MR. BLACK'S TEXT SAYS, "DHS SUPPOSEDLY."

7 Q. AND SO IF DHS HAD NOT DENIED THE PLACEMENT AND  
8 SAID THAT, QUOTE: "THE CASE MANAGER" -- "JUST TOLD THE  
9 CASE MANAGER THE CHILD COULD NOT GO BACK TO OUR HOME,"  
10 IF THAT HAD NOT HAVE HAPPENED, JAMES BLACK WOULD NOT  
11 HAVE BEEN TEXTING YOU AT ALL THAT EVENING, WOULD HE?

12 MS. OLIVER: YOUR HONOR, OBJECTION, BASED ON  
13 SPECULATION.

14 THE COURT: SUSTAINED.

15 BY MS. BARCLAY:

16 Q. MR. BLACK WAS TEXTING YOU BECAUSE A DENIAL HAD  
17 HAPPENED ACCORDING TO HIS TEXT MESSAGE TO YOU, CORRECT?

18 MS. OLIVER: OBJECTION.

19 THE COURT: OVERRULED.

20 THE WITNESS: REPEAT IT AGAIN, I'M SORRY.

21 BY MS. BARCLAY:

22 Q. MR. BLACK WAS TEXTING YOU THAT EVENING BECAUSE  
23 DHS HAD DENIED THE CHILD BEING SENT BACK TO THE CATHOLIC  
24 SOCIAL SERVICES HOME, CORRECT?

25 MS. OLIVER: OBJECTION. THAT'S A

1 MISCHARACTERIZATION. THE TEXT SAYS "SUPPOSEDLY."

2 THE COURT: WELL, IF SHE KNOWS.

3 THE WITNESS: HE SAID, "DHS SUPPOSEDLY," SO I  
4 WENT BY THE BASIS OF HIS TEXT.

5 BY MS. BARCLAY:

6 Q. AND SO HE IS ONLY TEXTING YOU BECAUSE HE IS  
7 SAYING, QUOTE: "DHS JUST TOLD THE CASE MANAGER THE  
8 CHILD COULD NOT GO BACK TO OUR HOME."

9 DID I READ THAT CORRECTLY?

10 A. YES, YOU DID.

11 Q. AND SO IF THAT WAS TRUE AND IF THERE WAS NOT  
12 THAT DENIAL, MR. BLACK WOULD NOT HAVE NEEDED TO TEXT YOU  
13 ABOUT THAT SITUATION THAT EVENING, WOULD HE?

14 A. TRUE.

15 MS. BARCLAY: NO FURTHER QUESTIONS, YOUR  
16 HONOR.

17 THE COURT: ANY OTHER QUESTIONS?

18 MS. OLIVER: NO, YOUR HONOR.

19 THE COURT: OKAY. THANK YOU.

20 MS. CORTES: YOUR HONOR, CAN WE SEE YOU  
21 BRIEFLY AT SIDEBAR?

22 THE COURT: OKAY.

23 (SIDEBAR OCCURRED.)

24 MS. CORTES: YOUR HONOR, WE HAVE TWO MORE  
25 WITNESSES. I UNDERSTAND FROM YOUR LAW CLERK THAT HE SAID

1 THAT YOU WOULD BE WILLING TO GO UNTIL 5:30. HOWEVER, GIVEN  
2 THAT THERE ARE TWO WITNESSES AND I DON'T THINK THAT EITHER  
3 OF THEM WILL BE ABLE TO FINISH.

4 MR. FIELD: IF NEXT WITNESS WOULD BE  
5 COMMISSIONER FIGUEROA, WE WOULD DO OUR BEST TO BE FOCUSED,  
6 BUT IT'S A SUBSTANTIAL AMOUNT OF TESTIMONY.

7 THE COURT: WELL, YOU CAN DO THE DIRECT.  
8 THAT WOULD BE GOOD TO GET IT STARTED.

9 MS. BARCLAY: YOUR HONOR, MS. WINDHAM HAS A  
10 PLANE TICKET PURCHASED TO LEAVE TOMORROW MORNING AND WE JUST  
11 ARE NOT IN A POSITION FOR THIS TO CONTINUE AGAIN UNTIL  
12 TOMORROW.

13 THE COURT: WELL, I DON'T KNOW HOW LONG YOU  
14 WANT ME TO STAY, BUT...

15 MS. CORTES: THERE IS NO WAY FOR US TO  
16 FINISH.

17 MS. BARCLAY: CAN WE DISCUSS IT?

18 MR. RIENZI: YOUR HONOR, IF WE CONTINUE  
19 TOMORROW, WHAT TIME TOMORROW?

20 THE COURT: IN THE MORNING.

21 THE LAW CLERK: ACTUALLY, JUDGE, YOU ARE  
22 BOOKED UP FULLY TOMORROW.

23 THE COURT: SO IT WOULD BE THURSDAY.

24 MS. WINDHAM: AND I APOLOGIZE, YOUR HONOR,  
25 THIS IS A TRIP THAT I BOOKED BEFORE THIS CASE EVEN AROSE. I

1 DID NOT REALIZE THIS CASE MIGHT BLEED INTO A THIRD DAY.

2 THE COURT: OKAY. WELL, LET'S GET STARTED.

3 MR. FIELD: THANK YOU, YOUR HONOR.

4 (SIDEBAR CONCLUDED.)

5 THE COURT: OKAY. WELL, LET'S GET STARTED.

6 MR. FIELD: THANK YOU, YOUR HONOR.

7 THE COURT: CITY, CALL YOUR NEXT WITNESS.

8 MR. FIELD: THE CITY CALLS CYNTHIA FIGUEROA  
9 TO THE STAND.

10 (WITNESS SWORN.)

11 THE WITNESS: CYNTHIA FIGUEROA, FIRST NAME IS  
12 C-Y-N-T-H-I-A. LAST NAME FIGUEROA, F-I-G-U-E-R-O-A.

13 MR. FIELD: YOUR HONOR, MAY WE CLEAN UP THE  
14 EXHIBITS THAT ARE FROM PRIOR WITNESSES?

15 THE COURT: YES.

16 DIRECT EXAMINATION

17 BY MR. FIELD:

18 Q. COMMISSIONER FIGUEROA, THANK YOU FOR BEING HERE  
19 TODAY.

20 CAN YOU JUST STATE YOUR CURRENT POSITION  
21 WITH THE CITY?

22 A. I AM THE COMMISSIONER OF THE DEPARTMENT OF HUMAN  
23 SERVICES FOR PHILADELPHIA.

24 Q. THANK YOU.

25 AND BEFORE WE GET INTO THE MEAT OF THIS



1 CASE, I WANT TO START BY HAVING YOU TELL US A LITTLE BIT  
2 ABOUT YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND AND  
3 HOW YOU CAME TO THE POSITION YOU ARE CURRENTLY IN.

4 WHERE DID YOU GO TO COLLEGE?

5 A. I WENT TO SPRING HILL COLLEGE. IT'S THE THIRD  
6 OLDEST JESUIT INSTITUTION IN THE NATION.

7 Q. AND WHEN DID YOU GRADUATE FROM SPRING HILL?

8 A. I GRADUATED IN 1995.

9 Q. WHERE WAS SPRING HILL?

10 A. IT'S IN MOBILE, ALABAMA.

11 Q. WHAT DID YOU DO TO START YOUR CAREER AFTER  
12 GRADUATION?

13 A. CERTAINLY. SO I WAS JUST BY THE NATURE OF MY  
14 FAMILY HISTORY, WE ARE FIRST GENERATION -- FIRST  
15 GENERATION IMMIGRANTS. SOCIAL JUSTICE WAS A BIG CALL,  
16 AND A HUGE REASON WHY MY PARENTS WERE VERY INTERESTED IN  
17 MAKING SURE THAT I PURSUED AN EDUCATION, AND REALLY  
18 LOOKED VERY FONDLY ON THE JESUIT EDUCATION.

19 SO THROUGH COLLEGE I DID THE JESUIT  
20 VOLUNTEER CORP, WHERE I WORKED IN DETROIT, MICHIGAN, IN  
21 A DOMESTIC VIOLENCE SHELTER, AND I ALSO WORKED WITH  
22 WOMEN WHO WERE INCARCERATED, WHO WERE UP FOR PAROLE.

23 Q. AND WHERE DID YOU GO AFTER THAT POSITION?

24 A. SO I THEN MOVED TO PHILADELPHIA, AND I HAVE HAD  
25 OVER A 20-YEAR CAREER WORKING IN SOCIAL SERVICES WITH

1 WOMEN AND CHILDREN, MOSTLY SUPPORTING THE NEEDS AND  
2 RIGHTS OF CHILDREN AND FAMILIES.

3 Q. BRIEFLY -- AND WE DON'T NEED TO SPEND A LOT OF  
4 TIME -- WHAT ARE SOME OF THE ORGANIZATIONS YOU'VE WORKED  
5 WITH AND POSITIONS YOU'VE HELD?

6 A. SURE. SO MY FIRST JOB IN PHILADELPHIA WAS  
7 CONGRESSO DE LATINOS UNIDAS. I THEN WORKED AT WOMEN  
8 AGAINST ABUSE. I HAD THE HONOR OF SERVING IN THE  
9 MAYOR NUTTER'S ADMINISTRATION AS THE DEPUTY COMMISSIONER  
10 OF THE DEPARTMENT OF HUMAN SERVICES. I WAS THERE FOR A  
11 TIME BEFORE I BECAME THE CEO OF CONGRESSO DE LATINOS  
12 UNIDAS, AND THEN SUBSEQUENTLY, MOST RECENTLY, WAS  
13 APPOINTED TO SERVE AS COMMISSIONER OF THE DEPARTMENT OF  
14 HUMAN SERVICES.

15 Q. AND WERE SOME OF THOSE JOBS, SHALL WE SAY,  
16 HANDS-ON WITH THE COMMUNITIES, AND SOME OF THOSE JOBS  
17 SUPERVISORY?

18 A. YES. SO CERTAINLY THE EARLIER PART OF MY CAREER  
19 WAS DIRECT CASE MANAGEMENT WORK WITH INDIVIDUALS. EARLY  
20 ON WHEN I MOVED TO PHILADELPHIA, I RECOGNIZED THE  
21 CAPACITY AND ABILITY TO HANDLE AND DO MORE  
22 ADMINISTRATIVE AND LEADERSHIP WORK, BUT A HUGE PORTION  
23 OF MY WORK, BOTH AT WOMEN AGAINST ABUSE AND CONGRESSO,  
24 WAS DIRECTLY CONNECTED TO WORK IN THE COMMUNITY AND WITH  
25 DIRECT CLIENTS.

1 MY OFFICE WHEN I -- THE MAJORITY OF THE  
2 TIME THAT I RAN WOMEN AGAINST ABUSE WAS ACTUALLY IN THE  
3 PHYSICAL SHELTER WHERE THE WOMEN AND CHILDREN RESIDED,  
4 SO I WAS IN DAILY CONTACT WITH THE WOMEN AND CHILDREN  
5 THAT WE SERVED. AT CONGRESSO, A COMMUNITY THAT I SERVED  
6 FOR A NUMBER OF YEARS, MY OFFICE WAS LOCATED IN NORTH  
7 PHILADELPHIA. I WENT TO COMMUNITY MEETINGS. I  
8 PARTICIPATED IN COMMUNITY EVENTS. I FREQUENTED THE  
9 BUSINESSES IN NORTH PHILADELPHIA, AND WORKED VERY  
10 CLOSELY WITH THE COMMUNITY.

11 Q. AND YOU MENTIONED HAVING WORKED FOR DHS DURING  
12 THE NUTTER ADMINISTRATION?

13 A. THAT'S CORRECT.

14 Q. WHEN DID YOU WORK THERE AND WHAT POSITION DID  
15 YOU HAVE?

16 A. SO FROM 2008 TO 2011, I WAS A DEPUTY  
17 COMMISSIONER OF PREVENTION.

18 Q. AND WHAT WERE YOUR RESPONSIBILITIES IN THAT  
19 POSITION?

20 A. SO MY RESPONSIBILITIES WERE TO OVERSEE ALL OF  
21 THE PREVENTION SERVICES THAT WERE FOR FAMILIES AND  
22 CHILDREN WHO WERE NOT FORMALLY ENGAGED IN THE CHILD  
23 WELFARE SYSTEM, SO TRUANCY, DOMESTIC VIOLENCE, AFTER  
24 SCHOOL SERVICES, HOUSING SERVICES, AND IN-HOME CASE  
25 MANAGEMENT WHERE THERE WASN'T AN ACCEPTOR FOR SERVICES

1 CASE .

2 Q. THANK YOU .

3 SO I WOULD LIKE TO SHIFT AND TALK ABOUT  
4 YOUR TIME AT DHS CURRENTLY AND DHS'S AND YOUR -- DHS'S  
5 RESPONSIBILITIES AND YOUR RESPONSIBILITIES AS  
6 COMMISSIONER .

7 WHEN DID YOU BECOME COMMISSIONER AT DHS?

8 A. I WAS APPOINTED IN JULY OF 2017 .

9 Q. WAS THAT APPOINTMENT EFFECTIVE IN JULY, OR DID  
10 YOUR TENURE START --

11 A. MY TENURE STARTED IN SEPTEMBER OF 2016 .

12 Q. IF YOU COULD, AS COMMISSIONER, WHAT DOES DHS DO?  
13 WHAT IS ITS MANDATE? WHAT ARE ITS SET OF  
14 RESPONSIBILITIES?

15 A. WELL, IT'S A HUGE JOB WHERE I HAVE HAD A NUMBER  
16 OF COUNSELED MEMBERS AND OTHER INDIVIDUALS REMIND ME  
17 IT'S PROBABLY THE HARDEST JOB IN THE CITY OF  
18 PHILADELPHIA. BUT ON A DAILY BASIS, I AM RESPONSIBLE  
19 FOR 1,500 EMPLOYEES, A BUDGET OF WELL OVER 600 MILLION,  
20 AND I AM CHARGED AS THE COUNTY ADMINISTRATOR TO OVERSEE  
21 THE RESPONSIBILITY OF THE CHILD WELFARE INSTITUTION, SO  
22 THE RESPONSIBILITY IS ENSURING THAT WE MEET THE STATE  
23 MANDATES, AS WELL AS FEDERAL MANDATES RELATED TO CHILD  
24 WELFARE .

25 Q. AND SO HOW ARE THOSE CHILD WELFARE ACTIVITIES

1 ORGANIZED WITHIN DHS? WHAT DO THEY CONSIST OF, AND HOW  
2 DOES DHS MANAGE THEM?

3 A. WE HAVE MULTIPLE DIVISIONS, BECAUSE IT IS A VERY  
4 LARGE PIECE OF WORK, SO I HAVE DEPUTIES THAT LEAD  
5 VARIOUS DIVISIONS IN THE DEPARTMENT. YOU HEARD EARLIER  
6 FROM DEPUTY COMMISSIONER ALI. SHE OVERSEES WHAT IS  
7 CALLED CHILD WELFARE OPERATIONS, AND THAT'S EVERYTHING  
8 FROM THE VERY FRONT END OF OUR SERVICE, FROM THE  
9 HOTLINE, INTAKE, AND INVESTIGATION TO THE WORK OF THE  
10 UMBRELLA AGENCIES, AS WELL AS THE INVESTIGATION PIECE  
11 THAT I MENTIONED, ALL THE WAY THROUGH ADOPTION AND  
12 PERMANENCY.

13 WE ALSO HAVE OTHER DIVISIONS, INCLUDING  
14 PREVENTION. WE HAVE A PERFORMANCE MANAGEMENT AND  
15 TECHNOLOGY. WE HAVE A FINANCE AND CONTRACT DIVISION.  
16 WE HAVE JUVENILE JUSTICE, AND ADMINISTRATION AND  
17 MANAGEMENT.

18 Q. SO THE FOSTER-CARE SERVICES AND FOSTER-CARE  
19 CHILDREN THAT ARE AT ISSUE IN THE LITIGATION, WHAT  
20 DIVISION DO THOSE FALL UNDER?

21 A. CHILD WELFARE OPERATIONS.

22 Q. DOES THAT INCLUDE FOSTER-CARE CHILDREN WHO ARE  
23 SINGLE FAMILY PLACEMENTS AND OTHER CHILDREN IN THE  
24 CITY'S CUSTODY AS WELL?

25 A. YES.

1 Q. CAN YOU EXPLAIN THE FULL MONOPOLY OF CHILDREN  
2 YOU HAVE A RESPONSIBILITY THERE FOR, PLEASE?

3 A. SURE. WHEN WE REFER TO A CHILD BEING IN  
4 PLACEMENT, THAT PLACEMENT COULD BE A FOSTER-CARE HOME, A  
5 RESOURCE HOME THAT IS KIN, AS WELL AS CONGREGATE, SO THE  
6 RESIDENTIAL PLACEMENT.

7 Q. AND SO HOW MANY CHILDREN OVERALL -- AND I  
8 APOLOGIZE IF YOU SAID IT, I AM NOT SURE -- ARE IN  
9 FOSTER-CARE IN THE CITY'S CUSTODY?

10 A. SO CURRENTLY, THERE ARE 6,000 KIDS IN PLACEMENT,  
11 AND THERE ARE ABOUT ANOTHER ADDITIONAL 4,000 WHO RECEIVE  
12 IN-HOME CASE MANAGEMENT SERVICES WHO ARE CONSIDERED  
13 PLACEMENT. SO ON ANY GIVEN DAY, WE HAVE A  
14 RESPONSIBILITY OF OVER 10,000 KIDS IN OUR SYSTEM, AND  
15 THAT'S NOT INCLUDING THE JUVENILE JUSTICE PART OF THE  
16 WORD.

17 Q. UNDERSTOOD. THANK YOU.

18 ARE SOME OF THE KIDS PLACED WITH  
19 RELATIVES AND SOME OF THOSE KIDS PLACED WITH FOSTER-CARE  
20 FAMILIES THEY DON'T PREVIOUSLY HAVE RELATIONSHIPS WITH?

21 A. YES. SO ONE OF THE THINGS THAT WE HAVE BEEN  
22 VERY COMMITTED TO IS FAMILIES FIRST, AND KINSHIP FIRST  
23 IS THE NUMBER-ONE PRIORITY, AND THAT'S A WELL-UNDERSTOOD  
24 CULTURE NORM IN THE DEPARTMENT. SO I AM HAPPY TO REPORT  
25 IN TERMS OF THE PLACEMENT SERVICES THAT ARE HOME-BASED,

1 SO IF YOU REMOVE THE RESIDENTIAL, OVER 50 PERCENT OF OUR  
2 KIDS ARE WITH KIN.

3 Q. AND ARE YOU ABLE GENERALLY TO GIVE NUMBERS FOR  
4 HOW THE REMAINING 50 PERCENT OF THE CHILDREN ARE PLACED?

5 A. THEY ARE PLACED IN GENERAL FOSTER-CARE. I DON'T  
6 HAVE THE BREAKDOWN OF SPECIALIZED.

7 Q. AND YOU HEARD MS. ALI'S TESTIMONY YESTERDAY  
8 REGARDING THE STRUCTURE OF COMMUNITY UMBRELLA AGENCY AND  
9 FOSTER-CARE AGENCIES?

10 A. YES.

11 Q. TO YOUR UNDERSTANDING, WAS THAT GENERALLY  
12 ACCURATE?

13 A. YES, THAT WAS ACCURATE.

14 Q. SO CSS FOSTER-CARE AGENCY IS ONE OF HOW MANY  
15 FOSTER-CARE AGENCIES IN THE CITY?

16 A. 30.

17 Q. APPROXIMATELY HOW MANY CHILDREN, TO YOUR  
18 KNOWLEDGE, DO THEY TAKE CARE OF?

19 A. IN CSS FOSTER-CARE?

20 Q. CORRECT?

21 A. I BELIEVE AS OF THIS MONTH IT'S AROUND 107.

22 Q. SO LET'S SHIFT FOR A MOMENT -- ACTUALLY, LET'S  
23 JUST COME BACK. WE WERE TALKING ABOUT THE CHILDREN WHO  
24 ARE IN THE CITY'S CUSTODY.

25 WHEN THEY -- HOW DO THEY FIRST COME INTO

1 THE CITY'S CUSTODY?

2 A. SO GENERALLY, THEY COME TO OUR ATTENTION THROUGH  
3 THE HOTLINE, AND THERE IS SAFETY DETERMINED ABOUT  
4 WHETHER OR NOT THE CHILD CAN REMAIN SAFELY AT HOME. IF  
5 NOT, THEN THERE HAS TO BE AN ORDER OF PROTECTIVE CUSTODY  
6 AS A RESULT OF THE INVESTIGATION. WE WOULD MAKE A  
7 DETERMINATION OF THE PLACEMENT NEEDS OF THAT CHILD BASED  
8 ON THE LEVEL OF CARE THAT HAS BEEN DETERMINED BY THE  
9 CENTRAL REFERRAL UNIT.

10 Q. CAN YOU EXPLAIN WHAT THE CENTRAL REFERRAL UNIT  
11 IS, AND WHAT IT DOES?

12 A. SO IT'S APTLY NAMED FOR ITS ROLE THAT IT PLAYS,  
13 WHICH IT PLAYS A CENTRAL ROLE IN OUR DEPARTMENT TO  
14 MANAGE ANY OF THE PLACEMENT DECISIONS FOR CHILDREN IN  
15 THE CHILD WELFARE SYSTEM ON THE DEPENDENCY SIDE.

16 Q. SO WHEN A CHILD FIRST COMES INTO THE CITY  
17 CUSTODY, THE CENTRAL REFERRAL UNIT DOES WHAT?

18 A. SO THE CENTRAL REFERRAL UNIT WOULD BE ABLE TO  
19 DETERMINE THROUGH, AS MS. ALI OUTLINED, THE LEVEL OF  
20 CARE TOOL THAT IS USED TO DETERMINE THE BEST AND MOST  
21 ACCURATE PLACEMENT FOR THAT YOUTH, AND THEN WE WORK TO  
22 DETERMINE WHAT PLACEMENT THAT CHILD WOULD THEN FALL  
23 INTO.

24 Q. AND AS COMMISSIONER, WHAT IS YOUR UNDERSTANDING?  
25 WHAT GUIDES THOSE DETERMINATIONS?



1 A. THERE ARE A HOST OF ISSUES. IF THE CHILD HAS  
2 SPECIAL MEDICAL NEEDS, THE CHILD HAS ACUTE INTELLECTUAL  
3 DISABILITY ISSUES THAT WE HAVE TO CONSIDER IN PLACEMENT,  
4 IF THE CHILD HAS A SIBLING THAT IS ALREADY IN THE  
5 SYSTEM, THE AGE OF THE CHILD.

6 Q. AND WE HAVE HEARD THE TERM THROUGHOUT THE PAST  
7 TWO DAYS, "THE BEST INTEREST OF THE CHILD."

8 WHAT, AS COMMISSIONER, DO YOU UNDERSTAND  
9 THAT TO MEAN?

10 A. TO US THE BEST INTEREST OF THE CHILD IS -- YOU  
11 KNOW, IT'S A DIRECT CONNECTION TO OUR TRANSFORMATION  
12 EFFORT, WHICH OUR CHILDREN ARE IN HOMES WITH KIN IN  
13 THEIR COMMUNITY IN THE LEAST RESTRICTIVE ENVIRONMENTS.

14 Q. SO I WOULD LIKE TO TURN TO THE FOSTER PARENT  
15 SIDE OF THINGS, OR WHAT IS SOMETIMES CALLED RESOURCE  
16 PARENTS.

17 WHO ARE THEY, AND HOW DO THEY COME TO BE  
18 AVAILABLE TO THE CITY TO TAKE CARE OF THE CHILDREN WHO  
19 ARE IN THE CITY'S CUSTODY?

20 A. WELL, THEY ARE EVERYBODY AND ANYBODY WHO  
21 EXPRESSES AND HAS A CAPACITY AND INTEREST IN SERVING AS  
22 A RESOURCE FAMILY IN PHILADELPHIA.

23 Q. AND HOW DOES THE CITY BECOME AWARE OF THEM SUCH  
24 THAT THEY CAN OFFER CHILDREN THROUGH THE CENTRAL  
25 REFERRAL UNIT PLACEMENTS?

1 A. THERE IS AN -- ON THE CITY SIDE, WE HAVE  
2 ACTIVELY BEEN INVOLVED IN RECRUITMENT AND ENGAGEMENT  
3 EFFORTS WITH THE COMMUNITY, SO THAT WE CAN EXPAND THE  
4 NUMBER OF FAMILIES. A NUMBER OF FOSTER-CARE AGENCIES  
5 HIRE AND HAVE THEIR OWN RECRUITMENT STAFF WHO ACTUALLY  
6 WORK TO IDENTIFY THEIR OWN FAMILIES AS WELL.

7 Q. IS RECRUITING OR -- AND CERTIFYING FOSTER-CARE  
8 PARENTS A RESPONSIBILITY OF ALL OF THE FOSTER-CARE  
9 AGENCIES THAT CONTRACT WITH THE CITY?

10 A. IT IS.

11 Q. SO YOU MENTIONED THE CITY'S RECRUITMENT EFFORTS.

12 A. YES.

13 Q. WHAT ARE THOSE RECRUITMENT EFFORTS, AND WHY IS  
14 THE CITY ENGAGED IN THEM?

15 A. SO WE HAVE BEEN ON A QUEST TO -- FOR A FEW  
16 THINGS; ONE IS TO ENSURE THAT WE HAVE MORE KIDS IN THEIR  
17 COMMUNITIES IN THE LEAST RESTRICTIVE ENVIRONMENTS, AND  
18 SO WE HAVE BEEN LOOKING TO REDUCE THE CONGREGATE CARE  
19 NUMBERS. AND THEN WE HAVE BEEN LOOKING TO MAKE SURE  
20 THAT WE HAVE ALL AND AS MANY OPTIONS FOR OUR CHILDREN IN  
21 THE SYSTEM.

22 SO WE BELIEVE THE BEST WAY TO DO THAT IS  
23 TO ENSURE WE CAN HAVE MORE HOMES AVAILABLE, AS WELL AS  
24 MAKE SURE THAT WE WERE IDENTIFYING THE FACT THAT WE HAD  
25 A LARGE NUMBER OF OLDER YOUTH THAT IDENTIFIED AS LGBTQ,

1 AND WE WANTED TO ENSURE THAT WE HAD HOMES THAT WERE  
2 AFFIRMING TO THAT YOUTH, TO THAT GROUP.

3 Q. IS THAT GROUP MORE DIFFICULT TO FIND PLACEMENTS  
4 FOR THAN SOME OTHER GROUPS, IN YOUR EXPERIENCE?

5 A. IT HAS, YES.

6 Q. WHY DO YOU UNDERSTAND THAT TO BE?

7 A. SO THAT THE CHILD KNOWS GOING INTO THAT HOME  
8 THAT THERE ^AREN'T ANY ISSUES OR CHALLENGES IN REGARD TO  
9 THEIR OWN SEXUAL IDENTITY OR IDENTIFICATION, AND THAT  
10 THEY CAN BEHAVE FREELY AND BE WHO THEY ARE AS AN  
11 INDIVIDUAL IN THAT HOME WITH THOSE RESOURCE PARENTS.

12 Q. AND WHAT IS THE RESULT OF THE CITY'S RECENT  
13 RECRUITMENT EFFORTS?

14 A. WE HAVE BEEN HIGHLY SUCCESSFUL. WE ARE  
15 THRILLED. WE HAVE IDENTIFIED AND CERTIFIED 75 HOMES  
16 SINCE THAT RECRUITMENT EFFORT, AND WE HAVE ALSO REALLY  
17 EXPANDED THE NETWORK OF INDIVIDUALS WHO HAVE STEPPED  
18 FORWARD TO EXPRESS AN INTEREST IN BECOMING A RESOURCE  
19 PARENT.

20 Q. AND YOU MENTIONED THAT THERE ARE CHILDREN ALSO  
21 IN CONGREGATE CARE?

22 A. YES.

23 Q. WHAT IS CONGREGATE CARE?

24 A. CONGREGATE CARE IS A RESIDENTIAL PLACEMENT THAT  
25 I MIGHT REFER TO AS A SHELTER, A GROUP HOME, OR AN

1 INSTITUTION.

2 Q. AND IS IT -- COULD ALL OF THOSE CHILDREN BE  
3 PLACED WITH FAMILIES, OR ARE THERE CHILDREN --

4 A. NO.

5 Q. -- WHO ARE NOT APPROPRIATE TO PLACE WITH  
6 FAMILIES?

7 A. THERE ARE A NUMBER OF CHILDREN THAT ARE IN A  
8 RESIDENTIAL SETTING FOR A NUMBER OF FACTORS THAT WOULD  
9 NOT HAVE THEM BE AN APPROPRIATE PLACEMENT IN  
10 FOSTER-CARE.

11 Q. OUTSIDE OF THOSE CIRCUMSTANCES, ARE THERE  
12 OCCASIONS WHERE A CHILD CAN BE IMMEDIATELY PLACED WITH A  
13 FOSTER FAMILY?

14 A. YES, THAT'S CORRECT. THERE'S A HOST OF REASONS,  
15 WHETHER IT'S THE YOUNG CHILD'S HISTORY; IF THERE IS  
16 ACUTE, AS I SAID BEFORE, BEHAVIORAL HEALTH ISSUE; IF  
17 THERE ARE -- UNFORTUNATELY, THERE'S OFTENTIMES SEXUAL,  
18 ACTING-OUT BEHAVIOR, AND THE CHILD HAS TO BE PLACED  
19 COMPLETELY ALONE, SO IF THERE IS ANOTHER SIBLING OR  
20 ANOTHER CHILD IN THE HOME, WE CANNOT PLACE THAT CHILD  
21 RIGHT AWAY.

22 IT IS AN INCREDIBLY COMPLEX SYSTEM. THE  
23 RESPONSIBILITY OF MANAGING OVER 6,000 KIDS, AND THE  
24 NUMBER OF HOTLINE CALLS AND REFERRALS AND INVESTIGATIONS  
25 THAT HAPPEN. WE ARE ALWAYS TRYING TO ENSURE THAT WE ARE

1 MAKING THE BEST DETERMINATION FOR THAT CHILD.

2 Q. IS IT DHS'S RESPONSIBILITY, TO THE BEST OF ITS  
3 ABILITY, TO REVIEW ALL OF THE INFORMATION ABOUT CHILD --  
4 CHILDREN BEFORE MAKING A PLACEMENT?

5 A. YES. WE DON'T LIKE TO RUSH TO MAKE A  
6 DETERMINATION THAT COULD FURTHER PLACE A CHILD IN HARM'S  
7 WAY.

8 Q. THANK YOU.

9 SO I WANT TO TURN TO TALK ABOUT CATHOLIC  
10 SOCIAL SERVICES, THE PLAINTIFF HERE TODAY, AND MORE  
11 CONCRETELY THE ISSUES IN THIS LITIGATION.

12 IN YOUR UNDERSTANDING, WHAT DOES CATHOLIC  
13 SOCIAL SERVICES DO FOR DHS?

14 A. THEY HAVE TO DO A HOST OF SERVICES FOR US, BOTH  
15 ON THE CHILD WELFARE, THE DELINQUENT, AND THE PREVENTION  
16 SERVICES SIDE OF THAT, SO IT'S -- I AM HAPPY TO TALK  
17 ABOUT ALL OF THOSE INDIVIDUALS SERVICES THAT -- ALMOST  
18 EVERYTHING I HAVE HIGHLIGHTED THAT WE HAVE SOME CAPACITY  
19 TO HAVE A CONTRACT WITH, WE ENGAGE IN CONTRACTS WITH  
20 CATHOLIC SOCIAL SERVICES.

21 Q. AND IN TERMS OF BROAD FOSTER-CARE ACTIVITIES,  
22 JUST GENERALLY, WHAT DO THOSE INCLUDE, NOT IN DETAILS?

23 A. SO THEY ARE A GENERAL FOSTER-CARE PROVIDER, AND  
24 SO THEIR RESPONSIBILITIES, AS WITH ALL FOSTER-CARE  
25 AGENCIES, ARE TO RECRUIT, TRAIN, AND CERTIFY FOSTER-CARE

1 HOMES AND FAMILIES .

2 Q. AND WERE YOU INVOLVED IN THE LAST YEAR'S  
3 CONTRACTING PROCESS WITH CATHOLIC SOCIAL SERVICES FOR  
4 THEIR FOSTER-AGENCY ACTIVITIES?

5 A. I SIGN ALL CONTRACTS FOR THE DEPARTMENT.

6 Q. AND YOU ARE FAMILIAR WITH THE CONTRACT?

7 A. I AM FAMILIAR WITH THE CONTRACT.

8 Q. DOES THAT CONTRACT, IN YOUR VIEW AS COMMISSIONER  
9 ASSIGNED FOR THE CITY, INCLUDE THE RECRUITMENT AND  
10 CERTIFICATION OF NEW FOSTER-CARE FAMILIES?

11 A. YES. IT CLEARLY DEFINES THAT AS SERVICES  
12 RENDERED BY THE CONTRACTOR.

13 MR. RIENZI: OBJECTION, YOUR HONOR. IT CALLS  
14 FOR LEGAL CONCLUSIONS.

15 THE COURT: OVERRULED.

16 BY MR. FIELD:

17 Q. AND DOES THE -- AND IN YOUR VIEW, DOES THE  
18 COMPENSATION UNDER THE CONTRACT COMPENSATE CATHOLIC  
19 SOCIAL SERVICES FOR THOSE ACTIVITIES?

20 A. YES.

21 MR. RIENZI: OBJECTION.

22 MS. BARCLAY: OBJECTION.

23 THE COURT: OVERRULED.

24 BY MR. FIELD:

25 Q. AND CATHOLIC SOCIAL SERVICES ALSO HAS A

1 COMMUNITY UMBRELLA AGENCY?

2 A. THEY DO.

3 Q. WHAT ROLE DO THEY PLAY?

4 A. SO ALL OF THE COMMUNITY UMBRELLA AGENCIES, AS  
5 WITH CATHOLIC SOCIAL SERVICES, ARE THE CASE MANAGEMENT  
6 COMPONENT OF THE CHILD WELFARE SYSTEM, SO THAT'S THE  
7 REFORM EFFORT THAT WAS TALKED ABOUT YESTERDAY.

8 SO ALL OF THE COORDINATION OF SERVICES  
9 WHO -- OF CHILDREN WHO ARE IN OUR CARE, WHETHER IN-HOME  
10 OR PLACEMENT IN FOSTER-CARE OR A CONGREGATE-CARE  
11 SETTING, THEY COORDINATE AND SUPPORT THE WORK OF THAT  
12 CASE TO MOVE IT TOWARDS TIMELY PERMANENCY.

13 Q. AND ARE THEY RESPONSIBLE FOR WORKING  
14 SPECIFICALLY WITH CATHOLIC SOCIAL SERVICES FOSTER-CARE  
15 AGENCY, OR WITH ANY FOSTER-CARE AGENCY?

16 A. THEY ARE REQUIRED TO WORK WITH ALL FOSTER-CARE  
17 PROVIDERS.

18 Q. THANK YOU.

19 SO I WOULD LIKE TO MOVE TO CSS'S -- TO  
20 THE CLOSURE OF CSS'S INTAKE AND THE ISSUES THAT ARE  
21 CENTRAL TO THIS LITIGATION TODAY.

22 HOW DID -- WHAT ASPECT OF THIS MATTER  
23 FIRST CAME TO YOUR ATTENTION?

24 MR. RIENZI: OBJECTION, VAGUE.

25 BY MR. FIELD:

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.

1 BY MR. FIELD:

2 Q. ARE YOU AWARE OF ANY OTHER AGENCIES THAT -- IN  
3 FOSTER-CARE FOR THE CITY THAT WILL NOT CERTIFY SAME-SEX  
4 COUPLES?

5 A. NO.

6 Q. SO WHAT DID YOU DO AFTER YOUR CONVERSATION WITH  
7 JIM AMATO THAT YOU JUST REFERENCED?

8 A. SO AFTER MY CONVERSATION WITH JIM AMATO, I WAS  
9 IMMEDIATELY CONCERNED BECAUSE IT WOULD PUT THE CITY IN A  
10 POSITION OF DISCRIMINATING AGAINST ONE PARTICULAR  
11 COMMUNITY. I KNEW THAT THAT ACTUALLY HAD TO BE EXPLORED  
12 FURTHER, AND I MADE THE DETERMINATION THAT WE WOULD HAVE  
13 TO MEET WITH THEM TO DISCUSS THESE MATTERS FURTHER, AND  
14 WE WOULD HAVE TO DO AN ANALYSIS, TOO, OF HOW MANY  
15 CHILDREN ARE WE TALKING ABOUT, WHAT IS THE IMPACT ON THE  
16 KIDS THAT WE SERVED.

17 I ULTIMATELY DECIDED THAT IT WAS IN THE  
18 BEST INTEREST TO CLOSE INTAKE, SO THAT I COULD LOOK MORE  
19 DEEPLY INTO THIS ISSUE.

20 Q. BEST INTEREST OF THE HOME?

21 A. THE BEST INTEREST OF THE CHILDREN.

22 Q. AND WHY, IN YOUR VIEW, WAS IT IN THE BEST  
23 INTEREST OF THE CHILDREN TO CLOSE INTAKE AT THAT TIME?

24 A. SO I MAKE DETERMINATIONS AROUND CLOSURE  
25 REGARDING BEST INTEREST, EVEN IF THEY ARE ADMINISTRATIVE

1 OR PROGRAMMATIC, IN ORDER TO MAKE SURE THAT ANY  
2 ADDITIONAL CHILDREN THAT WE'RE PUTTING THERE WERE NOT  
3 GOING TO EITHER BE PUT IN HARM'S WAY, OR CAUSE ANY SORT  
4 OF DISRUPTION. IN THIS PARTICULAR CIRCUMSTANCE, ADDING  
5 ADDITIONAL CHILDREN TO THE CASELOAD COULD BE  
6 PROBLEMATIC.

7 Q. AND WHAT -- JUST SO WE ARE CLEAR ON WHAT WE ARE  
8 TALKING ABOUT, WHAT DOES "CLOSE INTAKE" MEAN TO YOU?

9 A. SO "CLOSE INTAKE" IS THAT WE WOULD NOT PROVIDE  
10 ANY -- WE WOULD NOT SEND IN THE WAY OF A REFERRAL ANY  
11 NEW CHILDREN TO BE PLACED IN A CATHOLIC SOCIAL SERVICES  
12 FOSTER-CARE HOME.

13 Q. IS THAT ANY NEW CHILDREN IN ALL CIRCUMSTANCES,  
14 OR ARE THERE EXCEPTIONS THAT DHS OBSERVES THOSE  
15 CIRCUMSTANCES?

16 MR. RIENZI: OBJECTION, LEADING.

17 THE COURT: OVERRULED.

18 YOU CAN ANSWER.

19 THE WITNESS: SO EXCEPTIONS AS IT RELATED,  
20 YES, ALWAYS SINCE IT IS IN THE CULTURE OF THE AGENCY TO LOOK  
21 AT KIN, SO, ABSOLUTELY, THE PLACEMENT OF SIBLINGS, THE  
22 ABILITY TO ALSO LOOK TO SEE THE HISTORY OF THE CHILD, IF  
23 THEY HAD A RECENT PLACEMENT WITH THAT PROVIDER.

24 THE COURT: OKAY. PERHAPS THIS WOULD BE AN  
25 APPROPRIATE TIME TO RECESS UNTIL THURSDAY AT 9:30.

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MR. FIELD: THANK YOU, YOUR HONOR.

(ALL RISE.)

I N D E X

| WITNESS          | DIRECT | CROSS | REDIRECT | RECROSS |
|------------------|--------|-------|----------|---------|
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| JAMES AMATO      | 3      | 80    | 113      | 123     |
| CYNTHIA FIGUEROA | 148    |       |          |         |

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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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1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF PENNSYLVANIA

3 - - -

4 SHARONELL FULTON, ET AL : CIVIL DOCKET FOR CASE  
5 : NO. 18-2075  
6 -VS- :  
7 :  
8 CITY OF PHILADELPHIA, ET AL :

9 - - -

10 PHILADELPHIA, PA.

11 JUNE 21, 2018

12 BEFORE HONORABLE JUDGE PETRESE B. TUCKER

13 TEMPORARY RESTRAINING ORDER

14 DAY 3

15 APPEARANCES:

16 FOR THE PLAINTIFF: BECKET FUND FOR RELIGIOUS LIBERTY  
17 BY: MARK L. RIENZI, ESQ.  
18 1200 NEW HAMPSHIRE AVE, N.W.  
19 SUITE 700  
20 WASHINGTON, DC 20036

21 FOR THE DEFENDANTS: CITY OF PHILADELPHIA LAW DEPARTMENT  
22 BY: ELEANOR N. EWING, ESQ.  
23 BENJAMIN H. FIELD, ESQ.  
24 SCHAUNDRA OLIVER, ESQ.  
25 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 THE COURT: GOOD MORNING.

2 ALL COUNSEL: GOOD MORNING, YOUR HONOR.

3 THE COURT: YOU MAY BE SEATED.

4 WILL THE WITNESS TAKE THE WITNESS STAND.

5 YOU CAN STATE YOUR NAME.

6 THE WITNESS: CYNTHIA FIGUEROA.

7 CONTINUED DIRECT EXAMINATION

8 BY MR. FIELD:

9 Q. GOOD MORNING, COMMISSIONER FIGUEROA.

10 A. GOOD MORNING.

11 Q. THANK YOU FOR BEING BACK WITH US TODAY. IF YOU  
12 GIVE ME A MOMENT, I AM JUST GOING TO PREPARE MY NOTES  
13 AND START YOUR QUESTIONING AGAIN.

14 SO COMMISSIONER, STARTING TODAY, I JUST  
15 WANT TO RETURN TO THE TOPIC WE WERE TALKING ABOUT WHEN  
16 WE CLOSED ON WEDNESDAY AND MAKE SURE IT IS CLEAR WHAT WE  
17 ARE TALKING ABOUT AS WE GO FORWARD. TOWARDS THE END OF  
18 YOUR TESTIMONY YOU TALKED ABOUT BEING CONTACTED BY A  
19 REPORTER. REMIND US WHAT YOU LEARNED FROM THAT  
20 REPORTER.

21 A. SO THE REPORTER ASKED IF I WAS AWARE OF ANY  
22 ORGANIZATIONS, SPECIFICALLY BETHANY CHRISTIAN SERVICES  
23 AND CATHOLIC SOCIAL SERVICES, DISCRIMINATING AGAINST --  
24 OFFERING SUPPORT AND SERVICES TO SAME-SEX COUPLES WHO  
25 WERE INTERESTED IN BECOMING FOSTER PARENTS.

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 YOU CALLED OTHER FAITH-BASED FOSTER CARE AGENCIES?

2 A. YES, THAT'S CORRECT. I CALLED A MAJORITY OF OUR  
3 PROVIDERS.

4 Q. AND WOULD YOU HAVE ANY REASON AT THAT POINT TO  
5 BELIEVE THAT A SECULAR AGENCY WOULD HAVE HAD AN  
6 OBJECTION TO SERVING SAME-SEX COUPLES?

7 A. I DID NOT, NO.

8 Q. AND SO UPON LEARNING THIS -- DID YOU SAY MARCH  
9 9TH, MARCH 10TH?

10 A. IT WAS MARCH 9TH.

11 Q. MARCH 9TH. WHAT WAS YOUR -- WHAT CONCERNS DID  
12 THIS INFORMATION RAISE FOR YOU AS COMMISSIONER?

13 A. MY CONCERN IS THAT THERE WAS A PARTICULAR  
14 COMMUNITY THAT WAS BEING EXCLUDED FROM ALLOWING TO  
15 BECOME FOSTER PARENTS. AND I WAS CONCERNED THAT THIS  
16 WAS POSSIBLY IN VIOLATION OF THEIR CONTRACT, AND SO  
17 SUBSEQUENTLY LOOKED AT WORKING WITH OUR LAW DEPARTMENT  
18 TO DETERMINE WHAT CHALLENGES THE POSITION THAT CATHOLIC  
19 SOCIAL SERVICES TOOK IN REGARD TO THEIR ABILITY TO WORK  
20 WITH SAME-SEX COUPLES.

21 Q. AND WHY IS IT CONCERNING TO YOU AS COMMISSIONER  
22 IF A PARTICULAR COMMUNITY IS BEING EXCLUDED IN SOME WAY?

23 A. I THINK IT'S SIGNIFICANT IN A NUMBER OF FACTORS.  
24 ONE, AS PHILADELPHIA IS RESPONSIBLE FOR SERVING ALL  
25 CITIZENS, IT SENDS A SIGNAL, A VERY STRONG SIGNAL TO

1 THAT COMMUNITY THAT THEIR RIGHTS ARE NOT PROTECTED AND  
2 WE DON'T CARE ABOUT THEM. MORE IMPORTANTLY, WHEN YOU  
3 THINK ABOUT YOUTH THAT ARE BEING SERVED WHO MIGHT  
4 IDENTIFY AS LGBTQU, THEY WILL BECOME ADULTS AT SOME  
5 TIME. SO YOU ARE SENDING A SIGNAL TO THOSE YOUTH THAT  
6 WHILE WE MIGHT SUPPORT YOU NOW, WE WON'T SUPPORT YOUR  
7 RIGHTS AS AN ADULT.

8 Q. AND YOU TESTIFIED ON WEDNESDAY THAT YOU COULD  
9 NOT TAKE WHAT I UNDERSTAND TO BE CALLED AN INTAKE  
10 CLOSURE?

11 A. THAT IS CORRECT.

12 Q. TELL US AGAIN WHY YOU DID THAT.

13 A. SO I CLOSED INTAKE AND I BELIEVE I ALSO SHARED  
14 THIS ON WEDNESDAY IS THAT I HAVE CLOSED INTAKE IN OTHER  
15 CIRCUMSTANCES FOR OTHER PROVIDERS AS AN OPPORTUNITY TO  
16 GET A BETTER SENSE OF THE MAGNITUDE OF THE ISSUE AND  
17 ALSO TO MAKE SURE THAT WE STOP ANY FURTHER DAMAGE THAT  
18 MIGHT OCCUR. AND FOR ME IN THIS INSTANCE IT WAS MAKING  
19 SURE THAT WE WERE NOT PROVIDING ADDITIONAL CHILDREN TO  
20 BE SENT TO CATHOLIC SOCIAL SERVICES OR BETHANY AT THE  
21 TIME.

22 Q. AND YOU SAID -- YOU JUST USED THE WORD PREVENT  
23 ANY FURTHER DAMAGE TO OCCUR. HOW, IN YOUR VIEW, COULD  
24 SENDING ADDITIONAL CHILDREN CREATE THE POSSIBILITY OF  
25 FURTHER DAMAGE?

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 CURRENTLY CLOSED ALSO FOR ADMINISTRATIVE REASONS, THE  
2 CRU MADE MYSELF AND KIMBERLY ALI AWARE AND ASKED FOR US  
3 TO CONSIDER AN EXCEPTION, AND WE SUBSEQUENTLY DID SO.

4 Q. AND THE CRU YOU TALKED ABOUT YESTERDAY IS  
5 CENTRAL REFERRAL UNIT?

6 A. THAT IS CORRECT.

7 Q. AND THE CENTRAL REFERRAL UNIT IS RESPONSIBLE FOR  
8 PLACEMENTS, IS THAT CORRECT?

9 A. THEY'RE RESPONSIBLE FOR HELPING DETERMINE THE  
10 LEVEL OF CARE AND SUBSEQUENTLY HELPING TO IDENTIFY THE  
11 BEST PLACEMENT FOR THE YOUTH THAT IS PRESENTED TO THE  
12 CRU.

13 Q. AND IN PAST INTAKE CLOSURES, HAS THE CENTRAL  
14 REFERRAL UNIT BEEN INVOLVED IN MAKING EXCEPTIONS FOR, I  
15 BELIEVE YOU SAID, KINSHIP AND WHEN THERE WAS A  
16 RELATIONSHIP WITH A PRIOR FOSTER PARENT?

17 A. YES. IT'S VERY STANDARD PRACTICE AND I WOULD  
18 JUST HIGHLIGHT THAT WE ARE IN CONSTANT COMMUNICATION  
19 WITH THE CRU. SO THERE IS -- ON ANY GIVEN DAY, THERE  
20 ARE COMPLICATED HIGH PROFILE CASES THAT COME TO THE  
21 ATTENTION OF BOTH DEPUTY COMMISSIONER ALI AND MYSELF.  
22 AND SO IT'S PRETTY STANDARD PRACTICE WHEN THEY ARE AWARE  
23 THAT THERE IS A CLOSURE THAT THEY WOULD BRING SOMETHING  
24 TO OUR ATTENTION. SOMETIMES THERE IS AN ISSUE OF A  
25 COURT ORDER OR THERE'S SOMETHING THAT COMES UP THAT

1 MAKES THEM RECOGNIZE THAT AN EXCEPTION SHOULD BE  
2 CONSIDERED, AND PARTICULARLY WHERE THAT IS MOST  
3 SIGNIFICANT IS KIN, BECAUSE THAT HAS BEEN SUCH A  
4 CULTURAL NORM FOR OUR DEPARTMENT.

5 MR. RIENZI: OBJECTION, MOVE TO STRIKE.  
6 THAT'S NOT RESPONSIVE TO THE QUESTION.

7 THE COURT: OVERRULED.

8 BY MR. FIELD:

9 Q. WITH RESPECT TO CSS, THE INTAKE CLOSURE YOU  
10 REFERENCED, DOES THAT STILL REMAIN IN PLACE?

11 A. YES.

12 Q. WHY DOES THAT STILL REMAIN IN PLACE?

13 A. BECAUSE WE HAVE NOT RESOLVED THE ISSUE, AND CSS  
14 HAS INDICATED THAT THEY DO NOT WANT TO ENTER INTO A FULL  
15 CONTRACT WITH THE CITY, IN WHICH CASE I DON'T WANT TO  
16 SEND ADDITIONAL CHILDREN WHOSE SUBSEQUENT SITUATION  
17 COULD BE DISRUPTED.

18 Q. AS DHS COMMISSIONER, WOULD IT -- IS IT -- WOULD  
19 DHS OFFER CATHOLIC SOCIAL SERVICES THE SAME FULL  
20 CONTRACT IT IS OFFERING THE OTHER FOSTER CARE AGENCIES?

21 A. YES.

22 MR. RIENZI: OBJECTION, SPECULATION.

23 THE COURT: OVERRULED.

24 THE WITNESS: YES, AND WE HAVE.

25 BY MR. FIELD:



1 Q. AND HAS DHS OFFERED CATHOLIC SOCIAL SERVICES AN  
2 ALTERNATIVE?

3 A. YES, WE HAVE.

4 Q. AND WHAT IS THAT ALTERNATIVE?

5 A. WE OFFERED A LIMITED CONTRACT TO ENSURE THAT  
6 THEY COULD CONTINUE TO SEARCH THE CHILDREN WHO ARE  
7 CURRENTLY PLACED IN FOSTER CARE WITHOUT SENDING IN  
8 ADDITIONAL REFERRALS. IT WAS GOOD TO HEAR MR. AMATO  
9 STATE THAT THEY WOULD CONSIDER ENTERING INTO A LIMITED  
10 CONTRACT.

11 MR. RIENZI: OBJECTION, MOVE TO STRIKE  
12 THE NARRATIVE.

13 THE COURT: OVERRULED.

14 BY MR. FIELD:

15 Q. HAVE YOU BEEN IN SITUATIONS IN THE PAST IN WHICH  
16 PROVIDERS ARE CLOSING OR FOR SOME OTHER REASON UNABLE TO  
17 CONTINUE LONG-TERM PROVIDING SERVICES?

18 A. YES. UNFORTUNATELY IN MY TENURE I HAVE HAD TO  
19 EXPERIENCE THAT A FEW TIMES.

20 Q. AND IN THOSE EXPERIENCES, WHAT HAVE YOU DONE TO  
21 WORK WITH PROVIDERS TO ENSURE THE BEST INTEREST OF THE  
22 CHILDREN?

23 A. SO IN A NUMBER OF EXPERIENCES WE HAVE ACTUALLY  
24 NEGOTIATED A CONTRACT IN -- UNDERSTANDING THAT THEY WERE  
25 GOING TO HAVE TO CLOSE, BUT UNDERSTANDING ALSO THAT WE

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 THE WITNESS: YES. IT'S MY EXPECTATION.  
2 IN COMMUNICATION IT HAS BEEN INDICATED THAT WE WILL  
3 LIKELY ENTER INTO A FULL CONTRACT WITH BETHANY.

4 BY MR. FIELD:

5 Q. AND IS IT YOUR UNDERSTANDING OF THE COMING  
6 FISCAL YEAR CONTRACT THAT IT INCLUDES A CLAUSE THAT  
7 PROVIDERS NOT DISCRIMINATE IN THE RECRUITMENT AND  
8 CERTIFICATION OF FOSTER PARENTS?

9 MR. RIENZI: OBJECTION, SPECULATION,  
10 HEARSAY AND BEST EVIDENCE RULE. THE DOCUMENT SPEAKS FOR  
11 ITSELF.

12 THE COURT: OVERRULED.

13 THE WITNESS: YES.

14 MR. FIELD: MAY I HAVE A MOMENT, YOUR  
15 HONOR?

16 THE COURT: YES.

17 MR. FIELD: THANK YOU.

18 (BRIEF PAUSE IN THE PROCEEDING.)

19 MR. FIELD: THAT'S ALL I HAVE AT THE  
20 MOMENT, YOUR HONOR.

21 THE COURT: OKAY. CROSS-EXAMINE.

22 MR. FIELD: THANK YOU.

23 THE WITNESS: THANK YOU.

24 MR. RIENZI: YOUR HONOR, CAN I TAKE A  
25 VERY SHORT RECESS SO THAT I CAN CONFER WITH MY

1 CO-COUNSEL AND LOOK AT MY NOTES SO I CAN DO THIS AS  
2 BRIEFLY AS POSSIBLE.

3 THE COURT: I WILL GIVE YOU TWO MINUTES.

4 MR. RIENZI: THAT'S ALL I NEED. THANK  
5 YOU, YOUR HONOR.

6 (BRIEF PAUSE IN THE PROCEEDING.)

7 CROSS-EXAMINATION

8 BY MR. RIENZI:

9 Q. GOOD MORNING, COMMISSIONER FIGUEROA.

10 A. GOOD MORNING.

11 Q. YOU HAVE HAD A LONG CAREER DOING A VARIETY OF  
12 DIFFERENT KINDS OF SOCIAL JUSTICE WORK?

13 A. THAT IS CORRECT.

14 Q. I BELIEVE YOU SAID YESTERDAY YOU WENT TO A  
15 JESUIT COLLEGE?

16 A. I DID.

17 Q. AND THEN YOU STARTED YOUR CAREER IN THE JESUIT  
18 VOLUNTEER CORPS?

19 A. YES, THAT'S CORRECT.

20 Q. WHAT INSPIRED YOU TO DO THAT?

21 A. MOSTLY MY PARENTS AND A HISTORY -- LONG  
22 TRADITION. WE HAVE BELIEVED FAITH AND SOCIAL JUSTICE  
23 ARE GOOD TENETS TO ENSURE THAT THOSE WITH LESS HAVE THE  
24 SAME OPPORTUNITIES THAT WE HAVE BEEN GIVEN.

25 Q. AND THOSE EXPERIENCES PROBABLY GAVE YOU A GOOD

1 UNDERSTANDING OF WHAT CATHOLIC NONPROFIT SERVICE GROUPS  
2 ARE LIKE?

3 A. ABSOLUTELY.

4 Q. YOU KNOW THAT CATHOLIC LOSES MONEY DOING FOSTER  
5 CARE?

6 A. NO, I AM NOT AWARE OF THAT.

7 Q. DO YOU KNOW THAT CATHOLIC IS A RELIGIOUS  
8 ORGANIZATION?

9 A. I DO KNOW THAT.

10 Q. AND AS DHS COMMISSIONER WOULD YOU SAY THAT  
11 CATHOLIC HAS A STRONG COMMITMENT TO SERVICE?

12 A. YES.

13 Q. AND FOR CATHOLIC THAT COMMITMENT TO SERVICE IS  
14 PART OF HOW THEY PRACTICE THEIR RELIGIOUS BELIEFS?

15 A. I WOULD NOT PROVIDE THAT EXPECTATION.

16 Q. DO YOU THINK THERE'S A DIFFERENT REASON?

17 A. THERE COULD BE.

18 Q. YOU HAVE NO OPINION EITHER WAY AS TO WHETHER  
19 THEY DO IT FOR RELIGIOUS REASONS?

20 A. I DON'T KNOW THAT IT IS FOR ME TO SAY.

21 Q. I'M ASKING, DO YOU HAVE AN OPINION?

22 A. NO.

23 MR. FIELD: OBJECTION, CALLS FOR  
24 SPECULATION.

25 THE COURT: OVERRULED.

1 BY MR. RIENZI:

2 Q. YOU HAVE BEEN DHS COMMISSIONER SINCE WHEN?

3 A. MY TENURE BEGAN IN SEPTEMBER OF 2016.

4 Q. DO YOU HAVE THAT JOB FOR A PARTICULAR TERM OF  
5 YEARS?

6 A. NO.

7 Q. YOU ARE AN AT-WILL EMPLOYEE?

8 A. I'M AN EXEMPT EMPLOYEE WITH THE CITY OF  
9 PHILADELPHIA.

10 Q. HOW MANY FOSTER AGENCIES ARE THERE IN THE CITY  
11 RIGHT NOW?

12 A. THERE ARE 30 AGENCIES IN THE CITY OF  
13 PHILADELPHIA.

14 Q. DOES THAT INCLUDE CATHOLIC WHEN YOU SAY THAT?

15 A. IT DOES.

16 Q. AND BETHANY?

17 A. YES.

18 Q. SO OF THOSE, HOW MANY PROVIDE HOME STUDIES FOR  
19 SAME-SEX COUPLES?

20 A. TO MY KNOWLEDGE, ALL OF THEM SHOULD.

21 Q. HOW MANY DO?

22 A. ALL OF THEM. EXCEPT FOR CATHOLIC SOCIAL  
23 SERVICES.

24 Q. SO IT IS YOUR TESTIMONY THAT 28 TODAY PROVIDE  
25 HOME STUDIES FOR SAME-SEX COUPLES?

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 PARENTS TO LOOK FOR AN AGENCY THAT WOULD BE A GOOD FIT  
2 FOR THEM, CORRECT?

3 A. I DON'T HAVE IT IN FRONT OF ME, SO....

4 MR. RIENZI: PERMISSION TO APPROACH, YOUR  
5 HONOR.

6 THE COURT: YES.

7 BY MR. RIENZI:

8 Q. I AM HANDING YOU A DOCUMENT LABELED PLAINTIFF'S  
9 EXHIBIT 14. DO YOU RECOGNIZE THAT DOCUMENT?

10 A. I DO.

11 Q. WHAT IS THAT?

12 A. IT'S THE PHILADELPHIA WEBSITE. IT'S THE  
13 PHILLY.GOV WEBSITE.

14 Q. AND YOU ARE AN EMPLOYEE OF THE CITY OF  
15 PHILADELPHIA?

16 A. I AM.

17 Q. AND DHS IS PART OF THE CITY OF PHILADELPHIA  
18 GOVERNMENT?

19 A. THAT IS CORRECT.

20 Q. I WOULD LIKE YOU TO LOOK AT THE BOTTOM OF THE  
21 SECOND PAGE, PLEASE.

22 A. SECOND OR THIRD?

23 Q. BOTTOM OF THE SECOND SAYS: CHOOSE A FOSTER CARE  
24 AGENCY. DO YOU SEE THAT?

25 A. YES.

1 Q. AND THAT SAYS: DHS WORKS WITH MANY STATE  
2 LICENSED AGENCIES TO PROVIDE FOSTER CARE. BROWSE THE  
3 LIST OF FOSTER AGENCIES TO FIND THE BEST FIT FOR YOU.  
4 YOU WANT TO FEEL CONFIDENT AND COMFORTABLE WITH THE  
5 AGENCY YOU CHOOSE. THIS AGENCY WILL BE A BIG SUPPORT TO  
6 YOU DURING YOUR RESOURCE PARENT JOURNEY. ONCE YOU HAVE  
7 FOUND ONE THAT YOU LIKE, CALL THEM TO FIND OUT HOW TO  
8 BEGIN THE CERTIFICATION PROCESS.

9 DID I READ THAT CORRECTLY SO FAR?

10 A. YOU DID, YES.

11 Q. IS ALL OF THAT TRUE TO THE BEST OF YOUR  
12 KNOWLEDGE?

13 A. ABSOLUTELY.

14 Q. OKAY. WHY DO YOU WANT FOSTER PARENTS TO FIND AN  
15 AGENCY THAT THEY WILL FEEL CONFIDENT AND COMFORTABLE  
16 WITH?

17 A. BECAUSE IT'S THE CHOICE OF THE FAMILY TO  
18 DETERMINE WHO THEY WANT TO BE SERVED BY.

19 Q. AND WHY WOULD YOU LIKE THEM TO BE CONFIDENT AND  
20 COMFORTABLE?

21 A. BECAUSE IT IS THEIR DECISION.

22 Q. I AM NOT ASKING WHOSE DECISION IT IS. I'M  
23 ASKING WHY WOULD YOU -- HERE IT SAYS YOU WOULD LIKE THEM  
24 TO FEEL CONFIDENT AND COMFORTABLE. WHY?

25 A. BECAUSE THEY ARE DECIDING TO BECOME A FOSTER

1 PARENT, SO THEY HAVE TO FEEL COMFORTABLE AND CONFIDENT  
2 IN THEIR DECISION.

3 Q. YOU WOULD LIKE THEM TO HAVE A GOOD FIT WITH THE  
4 AGENCY?

5 A. I'D LIKE THEM TO BE COMFORTABLE WITH THEIR  
6 DECISION.

7 Q. YOU WOULD LIKE THEM TO HAVE A GOOD FIT WITH THE  
8 AGENCY?

9 A. I WOULD LIKE THEM TO BE COMFORTABLE WITH THEIR  
10 DECISION.

11 Q. WOULD YOU LIKE THEM TO HAVE A GOOD FIT WITH THE  
12 AGENCY?

13 MR. FIELD: ASKED AND ANSWERED, YOUR  
14 HONOR.

15 MR. RIENZI: YOUR HONOR, SHE HAS NOT  
16 ANSWERED.

17 THE COURT: OVERRULED. SHE CAN ANSWER.  
18 BY MR. RIENZI:

19 Q. WOULD YOU LIKE THEM TO HAVE A GOOD FIT WITH THE  
20 AGENCY?

21 A. YES.

22 Q. AGENCIES ARE ALLOWED TO HAVE DIFFERENT  
23 REQUIREMENTS FOR CERTIFYING FAMILIES, CORRECT?

24 A. NO.

25 Q. WOULD YOU READ FOR ME THE LAST SENTENCE OF THAT

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 Q. IS IT YOUR RESPONSIBILITY TO ENSURE THAT THAT  
2 CONTRACT IS ENFORCED?

3 A. THAT IS CORRECT.

4 Q. AND THAT AGENCIES ARE COMPLYING WITH THEIR  
5 CONTRACTUAL OBLIGATIONS?

6 A. THAT'S CORRECT.

7 Q. IN FACT, YOU SIGNED THE AGREEMENT?

8 A. I DID SIGN THE AGREEMENT.

9 Q. I BELIEVE YOU TESTIFIED YESTERDAY AND AGAIN SOME  
10 THIS MORNING ABOUT THE REASON YOU INSTITUTED A REFERRAL  
11 FREEZE?

12 A. AN INTAKE CLOSURE.

13 Q. INTAKE CLOSURE. THANK YOU. AN INTAKE CLOSURE.  
14 DID YOU DO THAT BECAUSE YOU THOUGHT  
15 CATHOLIC WAS IN VIOLATION OF ITS CONTRACT?

16 A. I BELIEVE SO, YES.

17 Q. WHAT PORTION OF THE CONTRACT WAS CATHOLIC IN  
18 VIOLATION OF, IN YOUR OPINION?

19 A. AFTER DISCUSSING WITH OUR LAW DEPARTMENT IT WAS  
20 CLEAR THE FAIR PRACTICES ORDINANCE AS WELL AS THE  
21 SERVICES PROVISION OF THEIR CONTRACT.

22 Q. I HAVE GOT TWO THERE. FAIR PRACTICES  
23 ORDINANCES?

24 A. UM-HUM.

25 Q. AND THE OTHER ONE YOU SAID WAS --

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 LONG.

2 GIVE ME A SECOND, PLEASE.

3 MR. RIENZI: PERMISSION TO APPROACH, YOUR  
4 HONOR.

5 THE COURT: YES.

6 BY MR. RIENZI:

7 Q. I AM HANDING THE WITNESS WHAT HAS BEEN LABELED  
8 PLAINTIFF'S EXHIBIT 15. CAN YOU TELL ME IF YOU  
9 RECOGNIZE THAT, PLEASE?

10 A. I DO RECOGNIZE THIS.

11 Q. WHAT IS THAT DOCUMENT?

12 A. THIS IS THE CONFORMED STANDARD AMENDMENT  
13 AGREEMENT FOR CATHOLIC SOCIAL SERVICES.

14 Q. OKAY. AND THIS IS THE AGREEMENT UNDER WHICH  
15 CATHOLIC PROVIDES FOSTER CARE SERVICES?

16 A. YES. IN THIS PARTICULAR CONTRACT THERE'S A  
17 NUMBER OF OTHER PLACEMENT SERVICES ALSO IN HERE SO....

18 Q. AND YOU SIGNED THIS CONTRACT, CORRECT?

19 A. I DID. I BELIEVE MY SIGNATURE IS ON ONE OF  
20 THESE PAGES.

21 Q. CAN YOU DIRECT --

22 A. PAGE 5.

23 Q. TERRIFIC. THANK YOU.

24 CAN YOU DIRECT ME TO THE SERVICES PORTION  
25 OF THE CONTRACT THAT YOU WERE TELLING ME YOU BELIEVE

1 CATHOLIC HAS VIOLATED?

2 MR. FIELD: OBJECTION, CALLS FOR A LEGAL  
3 CONCLUSION.

4 THE WITNESS: I WOULD HAVE TO HAVE A  
5 MOMENT TO BE ABLE TO GO THROUGH THIS ENTIRE DOCUMENT TO  
6 FIND THE SECTIONS I AM REFERENCING.

7 THE COURT: I DON'T KNOW THAT YOU CAN  
8 ANSWER LIKE THAT.

9 THE WITNESS: BECAUSE SERVICES ARE  
10 REFERENCED IN MULTIPLE PARTS OF THE CONTRACT. IT'S NOT  
11 JUST IN ONE AREA. SO THERE IS THE GENERAL PROVISIONS.  
12 THERE'S THE SCOPE OF SERVICES AND THERE'S THE  
13 DEFINITIONS AND TERMS AS IT RELATES TO SERVICES.

14 BY MR. RIENZI:

15 Q. OKAY. IS IT YOUR VIEW THAT THAT CONTRACT  
16 REQUIRES FOSTER AGENCIES TO RECRUIT AND CERTIFY ALL  
17 COUPLES?

18 A. YES.

19 Q. ARE AGENCIES ALLOWED TO HAVE TARGETED  
20 RECRUITING?

21 A. FOR SPECIALIZED BEHAVIORAL HEALTH AND AS WELL AS  
22 FOR MEDICALLY FRAGILE CHILDREN.

23 Q. BEYOND THOSE TWO, IS IT A VIOLATION OF THE  
24 CONTRACT THAT AGENCIES HAVE SPECIALIZED RECRUITING?

25 MR. FIELD: OBJECTION, CALLS FOR A LEGAL

1 CONCLUSION.

2 THE COURT: WHAT DO YOU MEAN BY  
3 SPECIALIZED RECRUITING?

4 MR. RIENZI: TARGETED RECRUITING TO  
5 PARTICULAR COMMUNITIES.

6 MR. FIELD: SAME OBJECTION, YOUR HONOR.

7 THE COURT: OVERRULED.

8 THE WITNESS: COULD YOU DEFINE WHAT YOU  
9 MEAN.

10 BY MR. RIENZI:

11 Q. MUST ALL AGENCIES RECRUIT EVERYBODY ALL THE TIME  
12 OR ARE THEY ALLOWED TO TARGET PARTICULAR COMMUNITIES TO  
13 DO THEIR RECRUITING?

14 A. SO THEY CAN HAVE A FOCUS ON A CULTURAL OR  
15 PARTICULAR COMMUNITY, BUT THEY REQUIRE -- ALL FOSTER  
16 CARE AGENCIES ARE REQUIRED TO SERVE ALL MEMBERS OF THE  
17 CITY OF PHILADELPHIA WHO PRESENT AND ARE INTERESTED IN  
18 BECOMING A FOSTER PARENT.

19 Q. SO THEY ARE ALLOWED TO RECRUIT IN A TARGETED  
20 WAY, IS THAT TRUE?

21 A. NO.

22 Q. SO CONCILIO TARGETS ITS RECRUITING TO THE LATINO  
23 COMMUNITY, CORRECT?

24 A. I WOULD NOT CONFUSE SERVING A PARTICULAR  
25 COMMUNITY WITH ONLY TARGETING.

1 Q. YOU DON'T THINK CONCILIO'S RECRUITING IS  
2 TARGETED TO THE HISPANIC COMMUNITY?

3 A. I KNOW FOR A FACT THAT CONCILIO SERVES ALL OF  
4 PHILADELPHIA.

5 Q. THAT WAS NOT MY QUESTION. MY QUESTION IS THEIR  
6 RECRUITING EFFORTS ARE TARGETED TO THE HISPANIC  
7 COMMUNITY, ARE THEY NOT?

8 MR. FIELD: OBJECTION TO THE TERM  
9 "TARGETED," YOUR HONOR.

10 THE COURT: WHAT DO YOU MEAN BY  
11 "TARGETED"?

12 MR. RIENZI: I MEAN DO THEY GO OUT TO  
13 RECRUIT IN PARTICULAR COMMUNITIES? DO THEY SET OUT TO  
14 RECRUIT FOSTER PARENTS IN HISPANIC COMMUNITIES?

15 THE COURT: I BELIEVE THE ANSWER WAS THEY  
16 GO OUT, BUT THEY ARE OBLIGED TO SERVE THE ENTIRE  
17 COMMUNITY.

18 MR. RIENZI: I DON'T THINK SHE ANSWERED  
19 THE FIRST PART AS TO WHETHER THEY DO THE RECRUITING IN A  
20 TARGETED WAY, WHICH IS WHAT I AM TRYING TO GET AT.

21 THE COURT: WELL, I THINK YOU NEED TO  
22 REPHRASE YOUR QUESTION.

23 BY MR. RIENZI:

24 Q. CONCILIO FOCUSES ITS RECRUITING EFFORTS IN THE  
25 HISPANIC COMMUNITY, DOESN'T IT?

1 A. I DON'T THINK I CAN ANSWER THE QUESTION.

2 Q. YOU DON'T KNOW EITHER WAY?

3 A. I SAID EARLIER THAT TARGETED DOES NOT EXCLUDE  
4 THE ENTIRE COMMUNITY.

5 Q. YOU DON'T KNOW EITHER WAY WHETHER THEY TARGET A  
6 PARTICULAR COMMUNITY, CORRECT?

7 MR. FIELD: OBJECTION TO THE TERM  
8 "TARGETED," YOUR HONOR.

9 THE COURT: AGAIN --

10 BY MR. RIENZI:

11 Q. FOCUS ON A PARTICULAR COMMUNITY.

12 THE COURT: SHE HAS ANSWERED THE QUESTION  
13 AS BEST AS SHE CAN USING HER TERMINOLOGY.

14 BY MR. RIENZI:

15 Q. YOU SAID YOU ALSO THINK CATHOLIC VIOLATED THE  
16 FAIR PRACTICES ORDINANCE PORTION OF THE CONTRACT?

17 A. YES, THAT IS CORRECT.

18 Q. WHY DO YOU THINK THAT?

19 A. THAT -- ACTUALLY I AM NOT AN ATTORNEY SO THAT  
20 WAS A DISCUSSION THAT WE HAD WITH OUR LEGAL COUNSEL IN  
21 TERMS OF THEIR CONCLUSIONS AS IT RELATES TO THE  
22 REPRESENTATION OF NOT SERVING SAME-SEX COUPLES.

23 MR. FIELD: YOUR HONOR, I JUST WANT TO  
24 OBJECT TO ANY INQUIRY INTO PRIVILEGED AND CONFIDENTIAL  
25 ATTORNEY/CLIENT INFORMATION.

1 THE COURT: YES.

2 BY MR. RIENZI:

3 Q. DO YOU THINK FOSTER CARE WORK IS A PUBLIC  
4 ACCOMMODATION?

5 MR. FIELD: OBJECTION, CALLS FOR A LEGAL  
6 CONCLUSION.

7 THE COURT: YES. SUSTAINED.

8 BY MR. RIENZI:

9 Q. DO YOU THINK THE FAIR PRACTICE ORDINANCE APPLIES  
10 TO THE WORK OF THE DEPARTMENT OF HUMAN SERVICES DOING  
11 FOSTER CARE WORK?

12 MR. FIELD: OBJECTION, CALLS FOR A LEGAL  
13 CONCLUSION.

14 THE COURT: ASK YOUR QUESTION AGAIN.

15 BY MR. RIENZI:

16 Q. DO YOU THINK THE FAIR PRACTICES ORDINANCE  
17 APPLIES TO THE WORK OF THE DEPARTMENT OF HUMAN SERVICES  
18 DOING FOSTER CARE WORK.

19 THE COURT: AND WAS THERE AN OBJECTION?

20 MR. FIELD: CALLS FOR A LEGAL CONCLUSION,  
21 YOUR HONOR.

22 THE COURT: SUSTAINED.

23 MR. RIENZI: YOUR HONOR, THE WITNESS HAS  
24 TESTIFIED THAT SHE IS IN CHARGE FOR THE DEPARTMENT OF  
25 ENSURING THAT THEY COMPLY WITH THE LAW.

1 THE COURT: I UNDERSTAND THAT, BUT WHAT  
2 SHE SAID WAS SHE HAD TO HAVE A CONVERSATION WITH HER  
3 COUNSEL -- LEGAL COUNSEL IN ORDER TO FIND OUT EXACTLY  
4 WHAT --

5 MR. RIENZI: UNDERSTOOD.

6 BY MR. RIENZI:

7 Q. COMMISSIONER FIGUEROA, YOUR DISCUSSION WITH THE  
8 LEGAL COUNSEL, WHICH I AM NOT GOING TO ASK THE SUBSTANCE  
9 OF AT ALL, BUT YOUR DISCUSSION WITH LEGAL COUNSEL WAS  
10 ABOUT WHETHER CATHOLIC HAD VIOLATED THE CONTRACT AND  
11 SPECIFICALLY THE FAIR PRACTICES ORDINANCE PORTION OF THE  
12 CONTRACT, CORRECT?

13 MR. FIELD: OBJECTION. SHE'S ALREADY  
14 TESTIFIED TO THE FACT --

15 THE COURT: OVERRULED.

16 THE WITNESS: I'M SORRY. CAN YOU REPEAT  
17 YOUR QUESTION.

18 BY MR. RIENZI:

19 Q. ALL I AM TRYING TO DO IS JUST BE CLEAR ABOUT  
20 WHAT YOUR DISCUSSION WITH COUNSEL WAS AND I AM NOT  
21 ASKING FOR THE SUBSTANCE OF IT. THAT WAS ABOUT WHETHER  
22 CATHOLIC HAD VIOLATED THE FAIR PRACTICE ORDINANCE  
23 PORTION OF THE CONTRACT, CORRECT?

24 A. NO. MY DISCUSSION WITH MY LAW DEPARTMENT WAS,  
25 HERE ARE THE ISSUES, AND I AM CONCERNED ABOUT THEIR

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. RIENZI: YOUR HONOR, SHE TESTIFIED  
2 THAT THE VIOLATION -- WAS VIOLATION OF THE FAIR  
3 PRACTICES ORDINANCE BECAUSE IT'S THEIR VIEW THAT FOSTER  
4 CARE IS A PUBLIC ACCOMMODATION COVERED BY THE FAIR  
5 PRACTICES ORDINANCE.

6 THE COURT: SHE HAS NOT TESTIFIED TO  
7 THAT.

8 MR. RIENZI: SHE HAS TESTIFIED THAT THAT  
9 WAS ONE OF THE TWO BREACHES OF THE FAIR PRACTICES  
10 ORDINANCE, IS MY UNDERSTANDING.

11 MR. FIELD: SHE TESTIFIED REGARDING  
12 INFORMATION PROVIDING BY HER COUNSEL, YOUR HONOR.

13 THE COURT: THAT IS CORRECT. SHE HAS NOT  
14 TESTIFIED TO THAT.

15 BY MR. RIENZI:

16 Q. MS. FIGUEROA, DID YOU TELL OTHER PEOPLE THAT  
17 CATHOLIC HAD VIOLATED THE FAIR PRACTICES ORDINANCES PART  
18 OF THAT CONTRACT?

19 MR. FIELD: YOUR HONOR, I JUST OBJECT TO  
20 THE EXTENT THAT THE QUESTION REQUIRES --

21 THE COURT: SUSTAINED. SUSTAINED.

22 BY MR. RIENZI:

23 Q. COMMISSIONER FIGUEROA, I AM NOT ASKING YOU TO  
24 TELL ME ANYTHING ABOUT ANY CONVERSATIONS YOU HAD WITH  
25 YOUR LAWYERS.



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 MARCH OF 2018, YOU HAD NEVER TAKEN THE POSITION THAT  
2 FOSTER CARE WORK WAS A PUBLIC ACCOMMODATION UNDER THE  
3 FAIR PRACTICES ORDINANCE, CORRECT?

4 MR. FIELD: OBJECTION TO THE  
5 CHARACTERIZATION OF TAKING A POSITION, YOUR HONOR.

6 THE COURT: SUSTAINED.

7 BY MR. RIENZI:

8 Q. YOU ARE NOT AWARE OF DHS EVER TELLING ANYONE  
9 THAT FOSTER CARE WAS A PUBLIC ACCOMMODATION PRIOR TO  
10 2018, CORRECT?

11 A. WE NEVER NEEDED TO PRIOR.

12 Q. THAT'S NOT MY QUESTION. MY QUESTION IS WHETHER  
13 YOU ARE AWARE OF ANYONE AT DHS EVER TAKING THAT POSITION  
14 PRIOR TO 2018?

15 MR. FIELD: OBJECTION TO THE SCOPE OF  
16 THIS, YOUR HONOR. SHE HAS ONLY BEEN THE COMMISSIONER  
17 SINCE THE FALL OF 2016.

18 THE COURT: MY UNDERSTANDING IS IT'S IN  
19 THE CONTRACT.

20 MR. RIENZI: I UNDERSTAND THAT THAT IS  
21 THEIR CLAIM, YOUR HONOR, AND I'M SIMPLY SAYING IF YOU  
22 ARE RUNNING A LARGE SYSTEM, I AM CURIOUS TO KNOW WHETHER  
23 THEY SAID IT TO ANYBODY ELSE.

24 THE COURT: WHEN YOU SAY "SAID IT TO  
25 ANYBODY ELSE," I MEAN THE FACT THAT IT'S LAID OUT IN THE

1 CONTRACT --

2 MR. RIENZI: YOUR HONOR, THE WORDS "FAIR  
3 PRACTICES ORDINANCE" APPEAR IN THE CONTRACT. WE HAVE A  
4 SERIOUS DISPUTE WITH THE CITY AS TO WHETHER THAT MAKES  
5 FOSTER CARE A PUBLIC ACCOMMODATION.

6 THE COURT: I CAN APPRECIATE THAT. ALL I  
7 AM SAYING IS, THE FACT THAT IT IS IN THE CONTRACT, I  
8 DON'T KNOW THAT IT'S NECESSARY THAT IT HAS TO BE SAID  
9 ANY OTHER WAY.

10 MR. RIENZI: YOUR HONOR, I THINK THAT'S A  
11 PERFECTLY FAIR POSITION TO TAKE, AND MAYBE MS. FIGUEROA  
12 IS GOING TO SAY THAT. BUT MY QUESTION IS JUST WHETHER  
13 SHE IS AWARE OF ANYPLACE ELSE THAT THEY HAVE TAKEN THE  
14 POSITION THAT FOSTER CARE IS A PUBLIC ACCOMMODATION.  
15 SHE HAS BEEN THERE FOR MANY YEARS. IF THE ANSWER IS NO,  
16 THEN THAT'S FINE. I BELIEVE THE ANSWER WAS --

17 BY MR. RIENZI:

18 Q. WAS YOUR ANSWER PREVIOUSLY IT HAS NOT COME UP  
19 BEFORE? WAS THAT YOUR ANSWER?

20 MR. FIELD: AGAIN, YOUR HONOR, I JUST  
21 OBJECT BECAUSE HE REFERRED AGAIN TO THIS  
22 CHARACTERIZATION OF TAKING THE POSITION, WHICH IS A  
23 LEGAL CONCLUSION.

24 BY MR. RIENZI:

25 Q. YOU HAVE WORKED AT DHS FOR A TOTAL --

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 FAMILY WANTS A HOME STUDY PERFORMED BY A PARTICULAR  
2 FOSTER AGENCY, THAT AGENCY MUST PROVIDE THE HOME STUDY.  
3 DO YOU RECALL THAT?

4 MR. FIELD: OBJECTION. HE IS  
5 MISCHARACTERIZING MS. ALI'S TESTIMONY.

6 THE COURT: OVERRULED.

7 BY MR. RIENZI:

8 Q. DO YOU RECALL MS. ALI TESTIFYING ABOUT A RULE  
9 THAT IF A QUALIFIED PROSPECTIVE FOSTER FAMILY WANTS A  
10 HOME STUDY PERFORMED BY A PARTICULAR AGENCY, THAT AGENCY  
11 MUST PROVIDE THE HOME STUDY?

12 A. I HAVE -- IN TERMS OF RULES, IS THAT THE -- WAS  
13 THAT THE LANGUAGE THAT MS. ALI USED?

14 THE COURT: I THINK SHE USED POLICY.

15 BY MR. RIENZI:

16 Q. POLICY. I'M NOT -- YOU CAN CALL IT WHATEVER YOU  
17 LIKE. I'M LOOKING FOR --

18 A. I THINK LANGUAGE IS IMPORTANT.

19 Q. I DO TOO. THANK YOU.

20 DID YOU HEAR MS. ALI TESTIFY ABOUT THAT  
21 POLICY?

22 A. I WAS HERE, YES. I HEARD HER TESTIFY ON THE  
23 POLICY.

24 Q. DO YOU AGREE WITH HER TESTIMONY ON THAT POLICY?

25 A. YES, THAT PARENTS CHOOSE WHICH ORGANIZATION THEY

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 HAVE SEEN THAT DOCUMENT BEFORE?

2 A. THERE'S A STICKER OVER PART OF IT, SO I AM  
3 ASSUMING THAT SAYS THE DEPARTMENT OF HUMAN SERVICES.

4 Q. I WILL SHOW YOU A COPY WITHOUT THE EXHIBIT  
5 STICKER, JUST SO YOU CAN SEE THAT. HAVE YOU SEEN THAT  
6 BEFORE?

7 A. YES, THIS IS ACTUALLY VERY DATED.

8 Q. IT STILL APPEARS ON YOUR WEBSITE, CORRECT?

9 A. I DON'T KNOW.

10 Q. DHS.PHILA.GOV IS YOUR WEBSITE?

11 A. THAT'S CORRECT.

12 Q. DO YOU RECOGNIZE THIS DOCUMENT?

13 A. I AM FAMILIAR WITH THIS DOCUMENT.

14 Q. WHAT IS IT?

15 A. IT'S THE FOSTER PARENT HANDBOOK.

16 Q. AND WHAT IS THE FOSTER PARENT HANDBOOK?

17 A. IT'S A GUIDE FOR PROSPECTIVE PARENTS.

18 Q. I WOULD LIKE YOU TO TURN TO THE PINK STICKY  
19 NOTE, WHICH IS ON PAGE 2, THE FREQUENTLY ASKED QUESTIONS  
20 PAGE. DO YOU SEE THE SECTION SAYING: HOW DO I BECOME A  
21 FOSTER PARENT?

22 A. YES.

23 Q. CAN YOU JUST TAKE A MOMENT AND -- WELL, I WOULD  
24 LIKE TO DIRECT YOUR ATTENTION TO THE SECOND SENTENCE  
25 THERE. IT SAYS: THERE ARE MANY FOSTER CARE AGENCIES IN

1 PHILADELPHIA THAT CAN HELP YOU THROUGH THIS PROCESS. DO  
2 YOU SEE THAT?

3 A. THAT IS CORRECT.

4 Q. AND -- I APOLOGIZE. IT SAYS: THE FIRST STEP IS  
5 TO BECOME LICENSED AS A FOSTER PARENT. THERE ARE MANY  
6 FOSTER CARE AGENCIES IN PHILADELPHIA THAT CAN HELP YOU  
7 THROUGH THIS PROCESS.

8 A. THAT'S CORRECT.

9 Q. AND THAT'S CORRECT. I MEAN, IT'S NOT JUST  
10 CORRECT WHAT IT SAYS. YOU AGREE IT IS A FACTUAL MATTER,  
11 CORRECT?

12 A. I AGREE, YES.

13 Q. THEN IT SAYS: DHS DOES NOT LICENSE OR APPROVE  
14 FOSTER PARENTS, IS THAT CORRECT?

15 A. THAT IS CORRECT.

16 Q. IT'S NOT THE CITY'S JOB TO LICENSE OR APPROVE  
17 FOSTER PARENTS?

18 A. PENNSYLVANIA DEPARTMENT OF HUMAN SERVICES  
19 LICENSES FOSTER PARENTS.

20 Q. IT SAYS: DHS DOES NOT LICENSE OR APPROVE FOSTER  
21 PARENTS, BUT IS PROVIDING THIS HANDBOOK AS A GENERAL  
22 GUIDE TO THE OVERALL PROCESS OF FOSTER PARENTING,  
23 INCLUDING RIGHTS, RESPONSIBILITIES AND TIPS FOR SUCCESS.

24 IS THAT WHAT IT SAYS?

25 A. YEP.

1 Q. NOTHING IN THE HOW I -- HOW DO I BECOME A FOSTER  
2 PARENT SECTION SAYS THAT FOSTER PARENTS HAVE A RIGHT TO  
3 RECEIVE A HOME STUDY FROM WHATEVER AGENCY THEY PICK,  
4 DOES IT?

5 A. NO, BUT I THINK IT'S IMPORTANT TO KNOW THAT THIS  
6 IS A GENERAL GUIDE TO THE OVERALL PROCESS OF FOSTER  
7 PARENTING.

8 Q. GREAT. AND THAT GENERAL GUIDE DOES NOT SAY YOU  
9 HAVE A RIGHT TO A HOME STUDY FROM ANY AGENCY YOU WANT,  
10 DOES IT?

11 A. BECAUSE IT'S A GENERAL GUIDE, IT MIGHT NOT  
12 INCLUDE ALL THE DETAIL NECESSARY.

13 Q. IT DOES NOT INCLUDE THAT STATEMENT, CORRECT?

14 A. WHAT STATEMENT?

15 Q. THE STATEMENT THAT YOU HAVE A RIGHT TO A HOME  
16 STUDY FROM WHATEVER AGENCY YOU PICK.

17 MR. FIELD: YOUR HONOR, I JUST OBJECT.

18 THE GENERAL GUIDE IS A --

19 THE COURT: OVERRULED.

20 MR. FIELD: -- MANY-PAGE DOCUMENT AND HE  
21 IS ASKING ABOUT THE ENTIRETY OF IT.

22 MR. RIENZI: I AM NOT.

23 BY MR. RIENZI:

24 Q. I AM ASKING ABOUT THE "HOW DO I BECOME A FOSTER  
25 PARENT" SECTION.

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 MR. FIELD: I BELIEVE SHE JUST ANSWERED  
2 THAT QUESTION, YOUR HONOR.

3 THE COURT: SHE DID ANSWER THE QUESTION.

4 MR. RIENZI: OKAY.

5 BY MR. RIENZI:

6 Q. DO YOU STILL HAVE THE CONTRACT UP THERE?

7 A. I DO.

8 Q. TURN TO PAGE 86 OF THE CONTRACT, PLEASE.

9 A. I GOT IT.

10 Q. DO YOU SEE SECTION 9.1?

11 A. I DO.

12 Q. CAN YOU READ THE FIRST SENTENCE OF THAT SECTION  
13 TO ME, PLEASE?

14 A. PROVIDER IS AN INDEPENDENT CONTRACTOR AND SHALL  
15 NOT IN ANY WAY FOR ANY PURPOSES BE DEEMED OR INTENDED TO  
16 BE AN EMPLOYEE OR AGENT OF THE CITY.

17 Q. AND THAT IS CORRECT AS YOUR UNDERSTANDING,  
18 RIGHT?

19 MR. FIELD: OBJECTION TO THE EXTENT IT  
20 CALLS FOR A LEGAL CONCLUSION, YOUR HONOR.

21 THE COURT: OVERRULED.

22 THE WITNESS: THAT'S CORRECT UNDER  
23 ARTICLE 9, THE INDEPENDENT CONTRACTOR INDEMNIFICATION  
24 LITIGATION COOPERATION.

25 BY MR. RIENZI:

1 Q. THANK YOU.

2 MR. RIENZI: PERMISSION TO APPROACH, YOUR  
3 HONOR.

4 THE COURT: YES.

5 BY MR. RIENZI:

6 Q. HANDING THE WITNESS A DOCUMENT LABELED  
7 PLAINTIFF'S EXHIBIT 17.

8 COMMISSIONER FIGUEROA, ACTUALLY IF I CAN  
9 JUST TURN YOU BACK TO THE FOSTER PARENT HANDBOOK FOR ONE  
10 MORE SECOND. IT IS THE PREVIOUS EXHIBIT. IN THE SECOND  
11 PARAGRAPH THERE YOU SEE THAT THE CITY IS REFERRING  
12 PEOPLE TO THE PENNSYLVANIA STATE FOSTER PARENT  
13 ASSOCIATION?

14 A. ARE WE BACK TO THE ORIGINAL TAB?

15 Q. I'M SORRY. I AM BACK TO THE FOSTER PARENT  
16 HANDBOOK.

17 A. YES. WHAT PAGE?

18 Q. SAME PAGE. PAGE 2, THE FREQUENTLY ASKED  
19 QUESTIONS. DO YOU SEE THAT DHS IS REFERRING PEOPLE TO  
20 THE PENNSYLVANIA STATE FOSTER PARENT ASSOCIATION?

21 A. HERE IN THE MIDDLE?

22 Q. SECOND PARAGRAPH?

23 A. YES. YEP.

24 Q. AND DHS SAYS THAT THAT ENTITY CAN ALSO GIVE YOU  
25 MORE INFORMATION AND ASSIST YOU AS YOU DECIDE WHICH

1 AGENCY IS THE BEST MATCH FOR YOU TO WORK WITH FOR YOUR  
2 HOME STUDY AND LICENSE. DO YOU SEE THAT?

3 A. I'M SORRY. WHERE ARE YOU READING FROM?

4 Q. THE SECOND PARAGRAPH ON PAGE 2?

5 A. YES.

6 Q. IT SAYS THAT THE PENNSYLVANIA STATE --

7 A. GOT IT. YES.

8 Q. -- FOSTER PARENT ASSOCIATION CAN ALSO GIVE YOU  
9 MORE INFORMATION AND ASSIST YOU AS YOU DECIDE WHICH  
10 AGENCY IS THE BEST MATCH FOR YOU TO WORK WITH FOR YOUR  
11 HOME STUDY AND LICENSE. DO YOU SEE THAT?

12 A. YES.

13 Q. ARE YOU FAMILIAR WITH THEN THE NEXT DOCUMENT I  
14 GAVE YOU, THE RESOURCE PARENT MANUAL?

15 A. I AM ACTUALLY NOT FAMILIAR WITH IT.

16 Q. OKAY. ARE YOU AWARE THAT THE PENNSYLVANIA STATE  
17 FOSTER PARENT ASSOCIATION CHANGED ITS NAME TO THE  
18 PENNSYLVANIA STATE RESOURCE FAMILY ASSOCIATION?

19 A. NO.

20 Q. I WOULD LIKE TO DIRECT YOUR ATTENTION TO PAGE 7  
21 OF THAT RESOURCE PARENT MANUAL. IT SAYS: REQUIREMENTS  
22 IN PENNSYLVANIA TO BE A RESOURCE PARENT.

23 A. YES.

24 Q. ARE YOU FAMILIAR WITH THE REGULATIONS THAT  
25 APPEAR ON THAT PAGE?



1 A. I AM FAMILIAR WITH THEM. I WOULD NOT SAY I  
2 COULD CITE THEM.

3 Q. THOSE ARE THE STATE REGULATIONS FOR AN AGENCY  
4 APPROVING A FOSTER FAMILY, CORRECT?

5 A. YES, CORRECT.

6 Q. AND DO YOU SEE UNDER HEADING NUMBER 1 WHERE IT  
7 SAYS: NOTE THAT THESE ARE MINIMUM REQUIREMENTS AND  
8 INDIVIDUAL AGENCIES WILL VARY THEIR POLICIES. DO YOU  
9 SEE THAT?

10 A. I DO SEE THAT.

11 Q. AND THAT IS CORRECT, ISN'T IT?

12 MR. FIELD: OBJECTION TO THE EXTENT IT  
13 CALLS FOR A LEGAL CONCLUSION, YOUR HONOR.

14 THE COURT: YES, OVERRULED.

15 THE WITNESS: AND CLARITY -- COULD YOU  
16 CLARIFY THE INTERPRETATION OF "INDIVIDUAL AGENCY" FOR  
17 THIS LINE OF QUESTIONING?

18 BY MR. RIENZI:

19 Q. I UNDERSTAND THEM TO BE TALKING ABOUT FOSTER  
20 CARE AGENCIES. AND SO THE WAY I AM LOOKING AT IT IS IN  
21 EXHIBIT 16 THE CITY TELLS PEOPLE TO GO TO THIS FOSTER  
22 CARE AGENCY.

23 A. I JUST ASKED THAT BECAUSE WE ARE ALSO CONSIDERED  
24 AN AGENCY OF THE STATE. SO IT'S NOT CLEAR TO ME THAT  
25 THIS IS TALKING EXCLUSIVELY ABOUT FOSTER CARE AGENCIES.

1 Q. OKAY. DO YOU SEE THAT IT SAYS THESE ARE MINIMUM  
2 REQUIREMENTS?

3 A. YES, I DO.

4 Q. WHAT DO YOU UNDERSTAND THAT TO MEAN?

5 A. LESS THAN WHAT IS REQUIRED.

6 Q. OKAY. AND TO THIS DAY, THIS IS A DOCUMENT THAT  
7 THE DEPARTMENT OF HUMAN SERVICES IS SENDING POTENTIAL  
8 FOSTER PARENTS TO, CORRECT?

9 MR. FIELD: YOUR HONOR, THIS IS NOT A  
10 DEPARTMENT OF HUMAN SERVICES DOCUMENT.

11 THE COURT: I BELIEVE SHE INDICATED THAT  
12 THE RESOURCE, THE PARENT RESOURCE THAT YOU GAVE TO HER  
13 FROM THE CITY OF PHILADELPHIA WAS DATED.

14 MR. RIENZI: I UNDERSTAND THAT, YOUR  
15 HONOR. IT APPEARS ON THEIR WEBSITE. AND SO I AM ASKING  
16 A QUESTION ABOUT IT BECAUSE THEY ARE STILL REFERRING  
17 PEOPLE TO THIS AGENCY. SO I AM SIMPLY TRYING TO FIND  
18 OUT --

19 BY MR. RIENZI:

20 Q. WELL, LET ME ASK YOU. I WILL ASK A DIFFERENT  
21 QUESTION. DO YOU DISAGREE WITH THE LANGUAGE YOU SEE ON  
22 PAGE 7 THAT THOSE REQUIREMENTS FOR RESOURCE PARENTS ARE  
23 MINIMUMS?

24 A. I DON'T RUN THIS AGENCY, SO I CAN'T SPEAK -- I  
25 CAN'T ANSWER THAT.

1 Q. THOSE ARE THE REQUIREMENTS FOR CERTIFYING A  
2 FOSTER FAMILY, CORRECT?

3 MR. FIELD: OBJECTION TO THE EXTENT IT  
4 CALLS FOR A LEGAL CONCLUSION, YOUR HONOR.

5 THE COURT: THIS IS NOT HER DOCUMENT.

6 MR. RIENZI: I KNOW IT'S NOT HER  
7 DOCUMENT. IT'S THE DOCUMENT THAT THE CITY SENDS TO  
8 FOSTER PARENTS TO LOOK AT.

9 THE COURT: THIS IS NOT HER DOCUMENT. SO  
10 SHE CANNOT TELL YOU WHETHER OR NOT THESE ARE THE  
11 MINIMUM -- THESE ARE THE REQUIREMENTS TO CERTIFY.

12 MR. RIENZI: SO FAIR ENOUGH. I AM ASKING  
13 HER IF SHE AGREES WITH THE DOCUMENT. SHE DOESN'T HAVE  
14 TO TELL ME WHAT THEY MEANT. DOES SHE AGREE?  
15 BY MR. RIENZI:

16 Q. DO YOU AGREE, COMMISSIONER FIGUEROA, TO THE  
17 STATEMENT IN THE DOCUMENT THAT YOU ARE SENDING FOSTER  
18 PARENTS TO?

19 MR. FIELD: I OBJECT TO THIS IN THAT THE  
20 DOCUMENT IS PRINTING PORTIONS OF REGULATIONS AND THE  
21 WITNESS HAS ALREADY SAID SHE IS ONLY GENERALLY FAMILIAR  
22 WITH THOSE REGULATIONS.

23 THE COURT: CAN YOU STATE WHETHER OR NOT  
24 THESE ARE THE MINIMUM REQUIREMENTS?

25 THE WITNESS: THESE ARE NOT THE

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 THE COURT: WHAT DO YOU MEAN BY "VARY  
2 THEIR REQUIREMENTS"?

3 BY MR. RIENZI:

4 Q. THERE ARE REQUIREMENTS LISTED IN STATE LAW,  
5 CORRECT?

6 A. YES.

7 Q. AND I APOLOGIZE. YOU ARE AWARE THAT THERE ARE  
8 REQUIREMENTS IN STATE LAW FOR BECOMING A FOSTER FAMILY,  
9 CORRECT?

10 A. I AM AWARE, YES.

11 Q. AND MY QUESTION TO YOU IS, ARE AGENCIES ALLOWED  
12 TO VARY AND TO ADD TO THOSE REQUIREMENTS?

13 A. I BELIEVE I HAVE ANSWERED THAT. THEY ARE  
14 REQUIRED TO FOLLOW THE CONTRACT WITH THE CITY OF  
15 PHILADELPHIA IRREGARDLESS OF WHAT THIS GUIDE MIGHT  
16 STIPULATE.

17 Q. AS I MATTER OF STATE LAW, IS IT YOUR  
18 UNDERSTANDING THAT THEY ARE ALLOWED TO TREAT THESE AS  
19 MINIMUM REQUIREMENTS?

20 MR. FIELD: OBJECTION TO THE LEGAL  
21 CONCLUSION.

22 THE COURT: YES. SUSTAINED. SUSTAINED.  
23 I AM NOT QUITE SURE WHERE -- WHAT REQUIREMENTS WE ARE  
24 TALKING ABOUT.

25 BY MR. RIENZI:

1 Q. NO ONE FROM YOUR AGENCY HAS COME TO YOU TO SAY  
2 WE ARE REFERRING PEOPLE TO A MANUAL THAT IS TELLING THEM  
3 THE WRONG THING, HAVE THEY?

4 A. NOT THAT HAS BEEN BROUGHT TO MY LEVEL.

5 Q. AND NO ONE HAS TOLD THAT YOU THAT THE CITY'S  
6 WEBSITE SAYS ANYTHING WRONG ABOUT BEING A FOSTER PARENT  
7 EITHER, CORRECT?

8 A. WE HAVE GOTTEN FEEDBACK THAT THE INFORMATION IS  
9 DATED.

10 Q. WHEN?

11 A. WE ARE IN THE PROCESS OF REDOING OUR ENTIRE  
12 WEBSITE.

13 Q. WHEN DID YOU GET THAT FEEDBACK?

14 A. WE HAVE GOTTEN THAT FROM OUR STAFF AND WE HAVE  
15 GOTTEN THAT FROM PROVIDERS. AND I CANNOT GIVE YOU AN  
16 EXACT DATE, BUT I WILL TELL YOU IN THE COURSE OF THE TWO  
17 YEARS I HAVE BEEN A COMMISSIONER, THAT IT'S REGULAR  
18 FEEDBACK THAT WE GET REGARDING OUR WEBSITE.

19 Q. IS ANY OF THAT FEEDBACK RELATED TO THE LANGUAGE  
20 ON YOUR WEBSITE THAT SAYS AGENCIES CAN HAVE SLIGHTLY  
21 DIFFERENT REQUIREMENTS?

22 A. I DIDN'T ANSWER THAT QUESTION.

23 Q. YOU DID OR DID NOT?

24 A. I DID NOT.

25 Q. OKAY. I AM ASKING YOU IF ANY OF THE FEEDBACK

1 YOU HAVE RECEIVED RELATES TO THE SENTENCE ON THE CITY'S  
2 WEBSITE THAT SAYS EACH AGENCY HAS SLIGHTLY DIFFERENT  
3 REQUIREMENTS .

4 A. WHAT ARE YOU REFERENCING NOW.

5 Q. NOW I AM BACK AT THE ORIGINAL WEBSITE THAT WE  
6 LOOKED AT. IT SAYS: BIRTH, MARRIAGE AND LIFE EVENTS ON  
7 THE FIRST PAGE. AND THEN IT HAS THIS BOX?

8 A. YES, THANK YOU.

9 Q. AND YOU SAID YOU HAVE RECEIVED FEEDBACK THAT THE  
10 INFORMATION ON YOUR WEBSITE IS DATED. AND I AM SIMPLY  
11 TRYING TO FIND OUT WHETHER ANY OF THAT FEEDBACK RELATES  
12 TO THE SENTENCE ON THE WEB PAGE THAT SAYS EACH AGENCY  
13 HAS SLIGHTLY DIFFERENT REQUIREMENTS, SPECIALTIES, AND  
14 TRAINING PROGRAMS .

15 A. IT HAS BEEN GENERAL FEEDBACK.

16 Q. NO ONE HAS SPECIFICALLY TOLD YOU THAT THAT  
17 SENTENCE ON YOUR WEBSITE WAS WRONG?

18 A. NOT THAT PARTICULAR SENTENCE.

19 Q. AND AS YOU SIT HERE TODAY, YOU DON'T HAVE ANY  
20 INTENTION OF CHANGING THAT, DO YOU?

21 A. I'M CERTAINLY GOING TO --

22 MR. FIELD: OBJECTION, CALLS FOR  
23 SPECULATION.

24 THE COURT: SUSTAINED.

25 MR. RIENZI: PERMISSION TO APPROACH, YOUR

1 HONOR.

2 THE COURT: YES.

3 BY MR. RIENZI:

4 Q. HANDING YOU A DOCUMENT LABELED PLAINTIFF'S  
5 EXHIBIT 18. AND IT'S THE WEBSITE FROM AN ORGANIZATION  
6 CALLED THE SECOND CHANCE.

7 A. A SECOND CHANCE.

8 Q. A SECOND CHANCE. ARE YOU FAMILIAR WITH A SECOND  
9 CHANCE?

10 A. I AM.

11 Q. WHAT ARE THEY?

12 A. THEY'RE A FOSTER CARE PROVIDER AGENCY AND THEY  
13 ALSO DO FAMILY GROUP DECISION-MAKING.

14 Q. WHAT IS FAMILY GROUP DECISION-MAKING?

15 A. IT'S BASICALLY A TEAMING PROCESS TO HELP  
16 DETERMINATION OF THE PROGRESS ON A CASE.

17 Q. I WOULD LIKE TO DIRECT YOUR ATTENTION TO THE  
18 SECOND SENTENCE IN THE BOX AT THE TOP OF THE PAGE UNDER  
19 KINSHIP CARES. AND IT READS: AS THE ONLY AGENCY IN THE  
20 COUNTRY THAT EXCLUSIVELY DELIVERS SERVICES TO THE ENTIRE  
21 KINSHIP TRIAD, CHILD, CAREGIVER, AND BIRTH PARENTS, ITS  
22 APPROACH IS PURE KINSHIP.

23 DO YOU SEE THAT?

24 A. I DO.

25 MR. FIELD: YOUR HONOR, I WOULD OBJECT TO



1 THE QUESTION BOTH ON RELEVANCE AND HEARSAY. THIS IS NOT  
2 A DHS DOCUMENT.

3 THE COURT: WELL, OVERRULED. I AM NOT  
4 QUITE SURE WHERE WE ARE GOING BUT --

5 MR. RIENZI: I WILL GET THERE QUICKLY,  
6 YOUR HONOR.

7 THE COURT: OKAY.

8 BY MR. RIENZI:

9 Q. A SECOND CHANCE SAYS ON ITS WEBSITE THAT IT  
10 EXCLUSIVELY DOES KIN CARE, CORRECT?

11 A. THAT'S THEIR TERMINOLOGY, YES.

12 Q. DO YOU BELIEVE IT WOULD VIOLATE THE PUBLIC  
13 ACCOMMODATIONS LAW FOR SECOND CHANCE TO EXCLUSIVELY DO  
14 KINSHIP CARE?

15 MR. FIELD: OBJECTION, CALLS FOR A LEGAL  
16 CONCLUSION.

17 THE COURT: SUSTAINED.

18 BY MR. RIENZI:

19 Q. HAVE YOU EVER INVESTIGATED A SECOND CHANCE FOR  
20 THE FACT THAT IT SAYS IT EXCLUSIVELY DOES KIN CARE?

21 MR. FIELD: OBJECTION TO THE EXTENT THAT  
22 IT ASSUMES DHS INVESTIGATES ON SUCH SUBJECTS.

23 THE COURT: OVERRULED. SHE CAN ANSWER.

24 THE WITNESS: CAN YOU REPEAT?

25 BY MR. RIENZI:

1 Q. HAVE YOU EVER INVESTIGATED A SECOND CHANCE FOR  
2 THE CLAIM ON ITS WEBSITE THAT IT EXCLUSIVELY DOES KIN  
3 CARE?

4 A. NO, BECAUSE THEY SERVE EVERYBODY WE SEND TO  
5 THEM.

6 Q. YOU DIDN'T CUT OFF REFERRALS TO A SECOND CHANCE?

7 A. THEY ACCEPT EVERYBODY WE SEND TO THEM.

8 Q. YOU DID NOT CUT OFF REFERRALS TO A SECOND  
9 CHANCE?

10 A. NO.

11 Q. FOR SECOND CHANCE YOU DECIDED THAT WHAT THEY  
12 ACTUALLY DO IS WHAT MATTERS, CORRECT?

13 THE COURT: SUSTAINED.

14 MR. FIELD: OBJECTION, YOUR HONOR.

15 BY MR. RIENZI:

16 Q. FOR SECOND CHANCE YOU DID NOT THINK THAT YOU  
17 SHOULD CUT OFF REFERRALS SIMPLY BASED ON THEIR STATEMENT  
18 ON THE WEBSITE, CORRECT?

19 A. CORRECT. AS A MARKETING DOCUMENT, NOT A DIRECT  
20 RESPONSE TO A QUESTION ASKED.

21 Q. IS IT YOUR TESTIMONY THAT SECOND CHANCE  
22 CURRENTLY DOES NONKINSHIP FOSTER CARE?

23 MR. FIELD: CAN YOU REPEAT THE QUESTION,  
24 PLEASE, COUNSEL?

25 BY MR. RIENZI:

1 Q. IS IT YOUR TESTIMONY THAT A SECOND CHANCE  
2 CURRENTLY DOES NONKINSHIP FOSTER CARE?

3 A. THAT'S NOT THE WORDS I USE.

4 Q. IS THAT TRUE?

5 A. THOSE ARE NOT THE WORDS I USE.

6 Q. IS -- DOES A SECOND CHANCE CURRENTLY DO  
7 NONKINSHIP FOSTER CARE?

8 A. YES.

9 Q. WHEN DID YOU FIND THAT OUT?

10 A. I DON'T HAVE -- I DON'T KNOW THAT I CAN TELL YOU  
11 A DATE.

12 Q. WAS IT WITHIN THE LAST MONTH OR FURTHER AGO THAN  
13 THAT?

14 A. PROBABLY AS LONG AS I HAVE KNOWN SECOND CHANCE.

15 Q. WHICH IS HOW LONG?

16 A. IN MY CAPACITY AS COMMISSIONER, TWO YEARS.

17 Q. WAS THERE A TIME WHEN SECOND CHANCE ONLY DID  
18 KINSHIP CARE?

19 A. I DON'T KNOW.

20 Q. YOU NEVER DID ANY INVESTIGATION TO FIND THAT  
21 OUT?

22 THE COURT: WELL, SHE NEVER DID ANY  
23 INVESTIGATION OF KINSHIP CARE.

24 BY MR. RIENZI:

25 Q. TO FIND OUT WHETHER SECOND CHANCE ONLY FOCUSED

1 ON KINSHIP CARE?

2 MR. FIELD: IT HAS BEEN ANSWERED, YOUR  
3 HONOR.

4 THE COURT: IT WAS. SUSTAINED.

5 BY MR. RIENZI:

6 Q. OTHER THAN YOUR CLAIM THAT IT IS IN THE  
7 CONTRACT, IS THE POLICY THAT A FOSTER CARE AGENCY MUST  
8 PROVIDE A HOME STUDY TO ANY COUPLE THAT WANTS IT WRITTEN  
9 DOWN ANYPLACE ELSE?

10 MR. FIELD: OBJECTION, YOUR HONOR. THAT  
11 IS NOT THE WITNESS'S TESTIMONY REGARDING THE CONTRACT.

12 THE COURT: OVERRULED.

13 THE WITNESS: THE CONTRACT -- BY THE  
14 NATURE OF A CONTRACT IS YOU'RE BOUND TO THE SERVICES  
15 THAT YOU HAVE AGREED TO DO ON BEHALF OF THE CITY OF  
16 PHILADELPHIA. IT CLEARLY INDICATES THAT SERVICES  
17 INCLUDE TRAINING, RECRUITMENT AND CERTIFICATION OF  
18 FOSTER HOME.

19 BY MR. RIENZI:

20 Q. AND THE CONTRACT DOES NOT SAY TO DO IT FOR ALL  
21 FAMILIES, DOES IT?

22 A. I THINK WE HAVE ALREADY ANSWERED THAT, THAT IT'S  
23 -- IN THIS VERY LONG DOCUMENT I CANNOT SPEAK TO THAT  
24 SPECIFIC.

25 Q. WE WILL LET THE CONTRACT SPEAK FOR ITSELF ON

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 A. THAT THEY CAN DISCRIMINATE AGAINST ONE  
2 PARTICULAR COMMUNITY?

3 Q. THAT THEY CAN ALLOW THE OTHER 28 OR 29 AGENCIES  
4 IN THE CITY TO DO THAT HOME STUDY. YOU WILL NOT ALLOW  
5 THEM AN EXCEPTION, CORRECT?

6 A. I BELIEVE I HAVE ANSWERED THAT. I WOULD NOT  
7 ALLOW ONE ORGANIZATION TO DISCRIMINATE IN THE WAY THAT I  
8 WOULD NOT ALLOW THE OTHER 28 TO CHOOSE THEN TO  
9 DISCRIMINATE AGAINST OTHER COMMUNITIES. IT'S CERTAINLY  
10 A VERY DANGEROUS PLACE FOR THE CITY TO ENTER INTO TO  
11 ALLOW DISCRIMINATION OF ANY COMMUNITY.

12 Q. YOU AGREE THAT TRANSFERRING FOSTER KIDS FROM  
13 THEIR HOMES IS NOT IN THEIR BEST INTEREST, CORRECT?

14 A. I DO AGREE WITH THAT.

15 Q. YOU AGREE IT WOULD BE TRAUMATIC TO TRANSFER KIDS  
16 FROM THEIR FOSTER HOMES?

17 MR. FIELD: OBJECTION, CALLS FOR  
18 SPECULATION, YOUR HONOR.

19 THE COURT: OVERRULED. YOU MAY ANSWER.

20 THE WITNESS: THAT'S NOT ALWAYS THE CASE.  
21 SO IT'S NOT A YES OR NO ANSWER.

22 BY MR. RIENZI:

23 Q. YOUR REASON -- STRIKE THAT.

24 YOU HAVE ALREADY TESTIFIED EARLIER TODAY  
25 AND I BELIEVE ON TUESDAY THAT YOU SHUT DOWN INTAKE AT

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 Q. AND FOR SOME CHILDREN IT WON'T BE IN THEIR BEST  
2 INTEREST TO BE TRANSFERRED FROM HOME TO HOME, CORRECT?

3 A. WELL, WE HOPE IN THE BEST INTEREST THAT WE  
4 ACTUALLY DON'T HAVE TO MOVE HOME TO HOME. WE BELIEVE  
5 VERY STRONGLY SINCE 50 PERCENT OF THE CATHOLIC SOCIAL  
6 SERVICES ARE WITH KIN, THAT KIN WOULD WANT TO CONTINUE  
7 TO TAKE CARE OF THEIR OWN KIN AND THAT THEY WOULD  
8 TRANSFER TO ANOTHER AGENCY. THAT'S CERTAINLY THE  
9 CONVERSATION WE WOULD HAVE WITH THE OTHER FOSTER PARENTS  
10 WHO ARE AMAZING AND ALSO EXPRESSED THAT THEIR GENERAL  
11 CARE -- AND EVERYBODY KNOWS THAT FOSTER PARENTS DO THIS  
12 BECAUSE THEY LOVE THE CHILDREN, AND THAT WOULD BE A VERY  
13 DIFFICULT POSITION TO HAVE TO PUT A FOSTER PARENT,  
14 BECAUSE ULTIMATELY IT WILL BE THE FOSTER PARENTS WHO  
15 WILL HAVE TO DECIDE WHETHER OR NOT THEY WANT TO MOVE TO  
16 ANOTHER FOSTER AGENCY OR IF THEY ARE WILLING TO NO  
17 LONGER HAVE A CHILD IN THEIR HOME.

18 Q. YOU HEARD SOME OF THEM TESTIFY ON MONDAY THAT  
19 THEY MAY NOT CHOOSE TO TRANSFER TO ANOTHER AGENCY,  
20 CORRECT?

21 MR. FIELD: OBJECTION, MISCHARACTERIZES  
22 PRIOR TESTIMONY.

23 THE COURT: SUSTAINED.

24 BY MR. RIENZI:

25 Q. WERE YOU IN THE ROOM WHEN THE FOSTER MOTHERS

1 TESTIFIED ON MONDAY?

2 A. I WAS.

3 Q. YOU HEARD THEM SAY THAT THEY DO NOT WANT TO  
4 TRANSFER AWAY FROM CATHOLIC, CORRECT?

5 A. I HEARD THEY WERE NOT SURE.

6 Q. YOU DIDN'T HEAR THEM SAY THAT THEY DON'T WANT TO  
7 DO IT?

8 A. THEY ALL SAID THAT THEY WERE NOT SURE. THEY  
9 COULD NOT STATE AT THIS TIME.

10 Q. THEY ALL STATED THAT THEY DID NOT WANT TO,  
11 CORRECT?

12 MR. FIELD: ASKED AND ANSWERED, YOUR  
13 HONOR.

14 THE COURT: SUSTAINED.

15 BY MR. RIENZI:

16 Q. THEY SAID THEY WERE NOT SURE WHAT THEY WOULD DO  
17 IF CATHOLIC WAS SHUT DOWN, BUT YOU AGREE THAT THEY ALL  
18 EXPRESSED A PREFERENCE TO REMAIN WITH CATHOLIC, CORRECT?

19 MR. FIELD: OBJECTION, YOUR HONOR.

20 THE COURT: SUSTAINED.

21 BY MR. RIENZI:

22 Q. YOU SAID THIS MORNING THAT YOUR REASON FOR  
23 CLOSING INTAKE WAS TO PROTECT THE BEST INTEREST OF THE  
24 CHILDREN, CORRECT?

25 A. YES, CORRECT.

1 Q. THAT WAS NOT YOUR EXPLANATION FOR THE FREEZE AT  
2 THE TIME YOU INSTITUTED IT, WAS IT?

3 A. I DON'T UNDERSTAND THE QUESTION.

4 Q. THAT EXPLANATION AS THE REASON FOR YOUR FREEZE  
5 WAS NOT THE REASON YOU GAVE AT THE TIME, WAS IT?

6 MR. FIELD: OBJECTION, GAVE TO WHOM?

7 MR. RIENZI: ANYBODY.

8 THE WITNESS: I DON'T KNOW. THAT'S NOT  
9 TRUE. I HAD PLENTY OF CONVERSATIONS INTERNALLY  
10 REGARDING THAT MATTER.

11 BY MR. RIENZI:

12 Q. WHO DID YOU TELL THAT IT WAS IN THE BEST  
13 INTEREST OF THE CHILDREN AND THAT'S WHY YOU WERE DOING  
14 THE FREEZE?

15 A. MY EXECUTIVE TEAM.

16 Q. AND WHO IS ON THAT TEAM?

17 A. YOU WANT ME TO NAME ALL OF THEM?

18 Q. HOW BIG IS IT?

19 A. IT'S ALL OF THE DEPUTIES AS WELL AS THE  
20 OPERATIONAL DIRECTORS. MY TEAM IS ABOUT 15 PEOPLE.

21 Q. FOR BOTH OF OUR GOOD, I WILL SAY NO THANK YOU.

22 A. OKAY.

23 Q. YOU AUTHORIZED COMMISSIONER ALI TO SEND THE  
24 E-MAIL TO CUA LEADERSHIP ON MARCH 26 TELLING THEM ABOUT  
25 THE SHUTDOWN, CORRECT?

1 A. I DID.

2 Q. AND THAT E-MAIL DID NOT TELL CUA LEADERSHIP THAT  
3 THE REASON FOR THE SHUTDOWN WAS THE BEST INTEREST OF THE  
4 CHILD, CORRECT?

5 A. WE NEVER PROVIDE FOR THE PURPOSES OF THE  
6 PROVIDERS THE REASONS WHY WE ARE CLOSING INTAKE FOR ANY  
7 PROVIDER. IT'S NOT FAIR TO THAT PROVIDER TO PUT OUT  
8 THEIR PERSONAL BUSINESS IN REGARDS TO WHAT IS HAPPENING  
9 TO THEM.

10 Q. YOU DIDN'T TELL CATHOLIC THAT THE REASON FOR THE  
11 SHUTDOWN WAS THE BEST INTEREST OF THE CHILDREN, DID YOU?

12 A. NO. WE EXPLAINED THAT WE HAD TO INVESTIGATE  
13 THIS FURTHER.

14 Q. AND YOU TOLD THEM THE REASON FOR THE SHUTDOWN  
15 WAS THE POSSIBILITY THAT THEY WOULD NOT DO A HOME STUDY  
16 FOR SAME-SEX COUPLES, CORRECT?

17 A. VIOLATION OF THE FAIR PRACTICES ORDINANCE, YES.

18 Q. DO YOU UNDERSTAND THAT SOME FOSTER MOTHERS AND  
19 FOSTER CHILDREN WOULD BE HARMED IF CATHOLIC IS FORMED TO  
20 CLOSE -- FORCED TO CLOSE?

21 THE COURT: WHAT DO YOU MEAN BY "HARMED"?

22 MR. FIELD: OBJECTION TO SPECULATION,  
23 YOUR HONOR.

24 THE COURT: SUSTAINED.

25 BY MR. RIENZI:

1 Q. DID YOU HEAR MS. SIMMS-BUSCH TESTIFY ABOUT HOW  
2 HER CHILDREN WOULD LOSE THE SOCIAL WORKER THEY HAVE  
3 BONDED WITH IF CATHOLIC IS FORCED TO CHOSE?

4 MR. FIELD: OBJECTION, YOUR HONOR,  
5 MISCHARACTERIZES THE WITNESS'S TESTIMONY. SHE  
6 REPRESENTED SHE WOULD NOT -- SHE DID NOT KNOW WHAT SHE  
7 WOULD DO IF CATHOLIC WAS FORCED TO CLOSE.

8 BY MR. RIENZI:

9 Q. DID YOU HEAR MS. SIMMS-BUSCH TESTIFY THAT HER  
10 CHILDREN WOULD LOSE THE SOCIAL WORKER WHO HAS A BOND  
11 WITH HER KIDS IF CATHOLIC IS FORCED TO CLOSE? DID YOU  
12 HEAR THAT?

13 THE COURT: OVERRULED. YOU MAY ANSWER.

14 THE WITNESS: JUST TO CLARIFY, YOU'RE  
15 TALKING ABOUT THE SOCIAL WORKER VERSUS THE FOSTER  
16 PARENT?

17 BY MR. RIENZI:

18 Q. YES. FOR THAT QUESTION I AM TALKING ABOUT THE  
19 SOCIAL WORKER WHO MS. SIMMS-BUSCH TESTIFIED ABOUT, THE  
20 CATHOLIC SOCIAL WORKER.

21 A. SO COULD YOU REPEAT? I JUST WANTED TO CLARIFY  
22 YOU WERE TALKING ABOUT THE SOCIAL WORKER.

23 Q. SURE. YOU HEARD MS. SIMMS-BUSCH TESTIFY THAT  
24 HER CHILDREN WOULD LOSE THE CATHOLIC SOCIAL WORKER WHO  
25 HAS A BOND WITH THEM IF CATHOLIC IS FORCED TO CLOSE?

1 A. I DID HEAR THAT, YES.

2 Q. YOU HEAR MS. PAUL TESTIFY ABOUT HOW SHE WOULD  
3 LOSE THE ABILITY TO RELY ON THE SOCIAL WORKERS SHE HAS  
4 TRUSTED FOR DECADES, CORRECT?

5 A. THAT IS CORRECT.

6 Q. YOU HEARD MS. PAUL TESTIFY ABOUT HOW HER HOME IS  
7 AVAILABLE RIGHT NOW, CORRECT?

8 A. I DID HEAR THAT, YES.

9 Q. AND YOU HEARD MS. FULTON TESTIFY ABOUT HER --  
10 HOW HER CHILDREN MAY BE TRANSFERRED AWAY FROM HER IF  
11 CATHOLIC CLOSES, CORRECT?

12 A. ONLY IF SHE CHOOSES TO NOT TRANSFER TO ANOTHER  
13 AGENCY.

14 Q. WHICH SHE SAID SHE MIGHT CHOOSE TO DO, CORRECT?

15 A. AND SHE SAID SHE WAS NOT SURE.

16 Q. BUT YOU HEARD HER TESTIFY ABOUT HOW HER CHILDREN  
17 MIGHT BE TRANSFERRED AWAY FROM HER IF CATHOLIC CLOSES,  
18 CORRECT?

19 A. I HEARD THAT THEY MIGHT.

20 Q. AND YOU HEARD HOW DHS IN THE PAST HAS BEEN  
21 UNABLE TO FIND A HOME FOR ONE OF THOSE CHILDREN,  
22 CORRECT?

23 A. NO.

24 Q. YOU DIDN'T HEAR THAT?

25 A. I DON'T RECALL THAT.

1 Q. OKAY.

2 A. I MEAN, IF YOU HAVE IT AND YOU WOULD LIKE ME TO  
3 SEE THE TRANSCRIPT.

4 Q. THAT'S FINE.

5 AT A MINIMUM, ALL OF THESE FOSTER MOTHERS  
6 WOULD BE FORCED TO GO TO AN AGENCY THAT IS NOT THEIR  
7 FIRST CHOICE IF CATHOLIC IS CLOSED, CORRECT?

8 A. THAT IS CORRECT.

9 Q. DON'T THESE WOMEN HAVE A RIGHT TO BE AT THE  
10 FOSTER AGENCY THAT IS THEIR FIRST CHOICE?

11 A. THEY HAVE THE RIGHT TO BE AT THE FOSTER CARE  
12 AGENCY THEY CHOOSE.

13 Q. BUT IF THE CITY FORCES CATHOLIC TO SHUT DOWN,  
14 THESE WOMEN WILL NOT BE ALLOWED TO BE AT THE AGENCY THAT  
15 THEY TESTIFIED IS THEIR FIRST CHOICE, CORRECT?

16 A. IF CATHOLIC CHOOSES NOT TO ENTER INTO A FULL  
17 CONTRACT, THEN YES, THEY'RE GOING TO HAVE TO FIND NEW  
18 HOMES.

19 Q. AND TO YOUR KNOWLEDGE, THE ONLY REASON THAT  
20 CATHOLIC WOULD REFUSE TO DO THAT IS BECAUSE THE CITY IS  
21 INSISTING ON ITS POLICY ABOUT DOING HOME STUDIES FOR  
22 ANYONE WHO ASKS, CORRECT?

23 A. THE CITY IS INSISTING THAT CATHOLIC SOCIAL  
24 SERVICES COMPLY WITH THEIR CONTRACT.

25 Q. AND THE ONLY PIECE OF YOUR VIEW OF THE CONTRACT

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 ABOUT NEGOTIATIONS THAT THEY HAVE HAD, AND I SIMPLY WANT  
2 TO NARROW THE FIELD AND BE CLEAR. I THINK HER TESTIMONY  
3 IS THAT THE ONLY ISSUE THAT CATHOLIC HAS RAISED IS THIS  
4 ONE ISSUE. AND I WOULD JUST LIKE CONFIRMATION THAT IT  
5 IS NOT ANYTHING ELSE, THAT -- IT'S A REASONABLE QUESTION  
6 ABOUT DISCUSSIONS SHE HAS HAD.

7 THE COURT: OVERRULED.

8 THE WITNESS: THAT WAS UP UNTIL  
9 YESTERDAY. THERE HAS BEEN TESTIMONY PROVIDED THAT WAS  
10 NEW INFORMATION TO US THAT HAS CERTAINLY CAUSED SOME  
11 CONCERN.

12 BY MR. RIENZI:

13 Q. I AM ASKING YOU ABOUT CATHOLIC'S NEGOTIATIONS  
14 WITH YOU. HAS CATHOLIC TOLD YOU THERE IS ANYTHING ELSE  
15 THAT WOULD STOP THEM FROM ENTERING INTO THAT CONTRACT  
16 OTHER THAN --

17 A. AND I AM ANSWERING YES, BECAUSE YESTERDAY THEY  
18 INDICATED A NEW REQUIREMENT THAT THEY HAVE WITH A FOSTER  
19 PARENT THAT WE WERE COMPLETELY UNAWARE OF UNTIL IT WAS  
20 PROVIDED IN TESTIMONY BY JAMES AMATO YESTERDAY.

21 Q. YOU WERE UNAWARE THAT CATHOLIC -- STRIKE THAT.

22 MR. RIENZI: PERMISSION TO APPROACH, YOUR  
23 HONOR.

24 THE COURT: YES.

25 BY MR. RIENZI:

1 Q. I AM GOING TO HAND YOU A DOCUMENT LABELED  
2 EXHIBIT 2, WHICH IS -- IT WAS AN ATTACHMENT TO A BRIEF  
3 THE CITY FILED, WHICH IS A COPY OF YOUR DECLARATION. I  
4 JUST ASK YOU TO LOOK AT THAT AND TELL ME IF YOU HAVE  
5 SEEN IT BEFORE.

6 A. I HAVE.

7 Q. AND THAT'S YOUR DECLARATION?

8 A. IT IS.

9 Q. AND YOU SIGNED IT?

10 A. I DID.

11 Q. CAN YOU TURN TO PAGE 6, PLEASE. IN PARAGRAPH 28  
12 YOU SAY THAT YOU DECIDED TO SUSPEND REFERRALS AND YOU  
13 SAY: I DID THIS BECAUSE CSS TOLD US IT COULD NOT COMPLY  
14 WITH ITS CONTRACT. DO YOU SEE THAT?

15 A. I DO.

16 Q. CSS NEVER USED THE WORDS "COULD NOT COMPLY WITH  
17 ITS CONTRACT," DID IT?

18 A. THIS IS MY DECLARATION, SO MY INTERPRETATION  
19 OF --

20 Q. THAT'S WHAT I WANTED TO BE CLEAR ON. WHEN YOU  
21 SAY COULD NOT COMPLY WITH ITS CONTRACT, THAT'S YOUR  
22 INTERPRETATION, CORRECT?

23 A. THAT IN CONSULTATION WITH OUR LEGAL COUNSEL.

24 Q. THAT'S FINE. BUT YOU ARE NOT TELLING THE COURT  
25 THAT CSS SAID IT CAN'T COMPLY WITH ITS CONTRACT,

1 CORRECT?

2 A. WELL, THEY SAID THEY WON'T DELIVER A SERVICE, SO  
3 IF YOU CAN'T DELIVER PART OF YOUR CONTRACT, I DON'T KNOW  
4 HOW ELSE TO DEFINE THAT.

5 MR. FIELD: YOUR HONOR, I OBJECT TO THIS  
6 LINE OF QUESTIONING. THIS AFFIDAVIT PARAGRAPH DOES NOT  
7 CONTRADICT ANY OF HER PRIOR TESTIMONY.

8 MR. RIENZI: YOUR HONOR, I AM NOT ASKING  
9 HER IF IT DOES. I AM SIMPLY TRYING TO FIGURE OUT WHAT  
10 SHE MEANT AND GET CLARITY THAT WHEN SHE SAID CSS TOLD US  
11 IT COULD NOT COMPLY WITH ITS CONTRACT, THAT IN FACT  
12 THAT'S AN INTERPRETATION. THAT IS NOT WHAT CSS ACTUALLY  
13 SAID.

14 THE COURT: IT'S NOT THE WORDS THAT THEY  
15 USED.

16 MR. RIENZI: YES. THAT'S WHAT I AM JUST  
17 TRYING TO GET CLARITY ON.

18 MR. FIELD: IT WAS ASKED AND ANSWERED,  
19 YOUR HONOR.

20 THE COURT: I THINK SHE HAS ANSWERED.

21 MR. RIENZI: YES.

22 BY MR. RIENZI:

23 Q. RIGHT NOW, INTAKES ARE FROZEN?

24 MR. FIELD: OBJECTION TO THE  
25 CHARACTERIZATION OF "FROZEN."

1 BY MR. RIENZI:

2 Q. I'M SORRY. WHAT IS THE RIGHT PHRASE?

3 A. INTAKE IS CLOSED.

4 Q. INTAKE IS CLOSED RIGHT NOW, CORRECT?

5 A. THAT'S CORRECT.

6 Q. WHICH IS EASIER FOR THE CENTRAL REFERRAL UNIT,  
7 MAKING A PLACEMENT TO ONE OF CATHOLIC'S HOMES WHEN  
8 INTAKE IS CLOSED OR WHEN INTAKE IS NOT CLOSED?

9 A. IT HAS NOT HAD AN IMPACT.

10 Q. I'M SORRY?

11 A. IT HAS NOT HAD AN IMPACT.

12 Q. ARE YOU SURE OF THAT? IT HAS HAD NO IMPACT?

13 A. IT HAS NOT IMPACTED OUR CONGREGATE CARE OR THE  
14 USE OF OUR CHILD CARE ROOM. SO YES, I AM SURE OF THAT.

15 Q. HOW DO YOU KNOW THAT?

16 A. WELL, AVAILABILITY OF -- WELL, I KNOW THAT  
17 THROUGH DATA.

18 Q. HOW DO YOU KNOW THAT? WHAT DATA TELLS YOU THAT?

19 A. I LOOK AT WEEKLY DATA.

20 Q. AND THAT WEEKLY DATA TELLS THAT YOU THE CLOSURE  
21 OF INTAKE HAS HAD NO EFFECT ON CONGREGATE CARE?

22 A. THAT'S CORRECT.

23 Q. WHAT DO YOU LOOK AT IN THE DATA TO KNOW THAT?

24 A. LOOK AT THE NUMBER OF YOUTH THAT ARE IN  
25 CONGREGATE CARE AND WHERE THEY ARE LOCATED.

1 Q. HOW DO YOU KNOW THAT THERE HAS BEEN NO IMPACT  
2 FROM THE CLOSURE OF INTAKE?

3 A. BECAUSE THE NUMBER HAS REMAINED THE SAME OR  
4 REDUCED.

5 Q. THERE'S A LOT OF VARIABLES THAT GO INTO THAT  
6 NUMBER, AREN'T THERE?

7 A. YES. AND I HAVE A PRETTY AMAZING PERFORMANCE  
8 AND TECHNOLOGY TEAM THAT ACTUALLY HAVE REALLY GREAT  
9 DETAILED DATA ON THIS.

10 Q. TERRIFIC. HOW MANY KIDS ARE IN CONGREGATE CARE  
11 RIGHT NOW?

12 A. I DON'T WANT TO -- SO WE HAVE DEPENDENT AND  
13 DELINQUENT. AND SO WE ARE TALKING ABOUT JUST  
14 DEPENDENCY. WE HAVE SOMEWHERE AROUND 715, 17.

15 Q. OKAY. AND ABOUT HOW MANY OF THOSE IN CONGREGATE  
16 CARE COULD BE LIVING WITH FOSTER FAMILIES?

17 A. I COULD NOT SAY BECAUSE NOT ALL CHILDREN THAT  
18 ARE IN CONGREGATE CARE ARE APPROPRIATE FOR FOSTER CARE  
19 PLACEMENT.

20 Q. BUT SOME OF THEM ARE, CORRECT?

21 A. IT COULD BE.

22 Q. YOU'VE STATED PUBLICLY THAT ABOUT 250 OF THEM  
23 COULD BE IN FAMILY HOMES, HAVEN'T YOU?

24 A. I STATED THAT WE WOULD WANT TO WORK TO INCREASE  
25 THE AMOUNT.

1 MR. RIENZI: PERMISSION TO APPROACH, YOUR  
2 HONOR.

3 THE COURT: YES.

4 BY MR. RIENZI:

5 Q. I AM HANDING THE WITNESS A DOCUMENT LABELED  
6 EXHIBIT 19.

7 MS. FIGUEROA, I WOULD ASK YOU IF YOU ARE  
8 FAMILIAR WITH THAT DOCUMENT.

9 A. I AM FAMILIAR WITH THAT DOCUMENT.

10 Q. YOU READ IT AROUND THE TIME IT CAME OUT?

11 A. I AM SURE I READ IT CLOSELY.

12 Q. WHAT IS IT?

13 A. IT'S A STORY IN REGARD TO OUR FOSTER CARE  
14 RECRUITMENT EFFORT, WHICH I BELIEVE INITIATED THIS WHOLE  
15 PROCESS.

16 MR. FIELD: YOUR HONOR, I JUST OBJECT TO  
17 THIS EXHIBIT. IT'S A NEWSPAPER ARTICLE. IT'S NOT  
18 AUTHORED BY THE DOCUMENT AND PUBLISHED BY -- LOOKS LIKE  
19 PHILLY.COM.

20 MR. RIENZI: YOUR HONOR, NEWSPAPER  
21 ARTICLES ARE SELF-AUTHENTICATING UNDER RULE 902. AND I  
22 AM SIMPLY LOOKING TO ASK THE WITNESS A QUESTION ABOUT A  
23 QUOTE THAT SHE GAVE IN THE ARTICLE.

24 MR. FIELD: THE QUOTES FROM THE ARTICLE  
25 WOULD STILL BE HEARSAY, YOUR HONOR.

1 THE COURT: OVERRULED.

2 BY MR. RIENZI:

3 Q. MS. FIGUEROA, IF YOU WOULD TURN TO PAGE 3 OF  
4 THAT PRINTOUT. DO YOU SEE A BOX AROUND SOME LANGUAGE IN  
5 THE ARTICLE?

6 A. MM-HMM.

7 Q. CAN YOU READ THAT LANGUAGE ALOUD, PLEASE?

8 MR. FIELD: COUNSEL, CAN I JUST ASK  
9 WHETHER THE BOX IS IN THE ORIGINAL PUBLICATION.

10 MR. RIENZI: THE BOX IS SOMETHING I PUT  
11 TO INDICATE --

12 MR. FIELD: THANK YOU. SORRY ABOUT THAT.

13 MR. RIENZI: I PUT THE BOX ON IT TO  
14 INDICATE THE LANGUAGE I WANTED TO DIRECT THE WITNESS TO.  
15 THE BOX IS ESSENTIALLY -- CONSIDER IT HIGHLIGHTING,  
16 PLEASE.

17 MR. FIELD: SO THIS IS NOT THE ORIGINAL  
18 ARTICLE.

19 THE COURT: TO THE EXTENT HE PLACED THE  
20 BOX AROUND --

21 MR. RIENZI: THE BOX WAS PLACED ON THE  
22 ORIGINAL ARTICLE.

23 THE COURT: -- THE SENTENCE.

24 BY MR. RIENZI:

25 Q. COMMISSIONER FIGUEROA, CAN YOU READ THE LANGUAGE



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 NEGLECTED EVERY DAY. THEY END UP IN OUR PLACEMENT, IN  
2 OUR CARE, BECAUSE THEIR FAMILIES CAN'T CARE FOR THEM.  
3 WE ARE INCREDIBLY FORTUNATE THAT WE HAVE FOSTER CARE  
4 AGENCIES, BUT IT'S NOT A ONE TO ONE. SO TO ASSUME THAT  
5 BECAUSE THERE IS AVAILABILITY WILL REDUCE THE CONGREGATE  
6 CARE IS AN OVEREXAGGERATION OF THE COMPLICATION OF OUR  
7 WORK.

8 Q. I UNDERSTAND THAT IT'S COMPLICATED, AND I VERY  
9 MUCH UNDERSTAND THAT THOSE KIDS HAVE BEEN ABUSED AND  
10 BEEN THROUGH TERRIBLE TIMES. I AM TRYING TO GET CLARITY  
11 ON YOUR PREVIOUS STATEMENTS THAT YOU WANT TO REDUCE THE  
12 NUMBER OF KIDS IN CONGREGATE CARE, YOUR PREVIOUS  
13 STATEMENT THAT 250 COULD BE LIVING WITH FAMILIES, AND  
14 YOUR STATEMENT THAT THERE IS NO IMPACT AT ALL FROM NOT  
15 SENDING ANY KIDS TO THE, SAY, 25 OR SO FAMILIES THAT ARE  
16 AVAILABLE IN CATHOLIC SOCIAL SERVICES. CAN YOU EXPLAIN  
17 TO ME HOW WE CAN CONNECT THOSE DOTS AND MAKE IT MAKE  
18 SENSE?

19 A. THE ONLY DOT I COULD CONNECT IS THAT IF WE COME  
20 BACK HERE IN THREE MONTHS I'M HOPING THAT ALL THESE  
21 CERTIFIED HOMES, THAT WE WILL GREATLY REDUCE THAT  
22 NUMBER. BUT THE NUMBERS THAT I AM PRESENTING ARE THE  
23 NUMBERS THAT THE SYSTEM IS DEALING WITH TODAY.

24 Q. AND THOSE NUMBERS AGAIN ARE THE SAME AS THEY  
25 WERE IN MARCH?

1 A. THEY HAVE NOT INCREASED SINCE THE CLOSURE. SO  
2 OUR NEED FOR CATHOLIC SOCIAL SERVICES AVAILABILITY  
3 CERTAINLY HAS NOT IMPACTED THE CONGREGATE CARE NUMBER.

4 Q. THERE ARE REAL KIDS WHO COULD BE IN THOSE HOMES  
5 RIGHT NOW, AREN'T THERE?

6 A. I CAN'T SAY THAT WITHOUT A JUDICIAL DECISION.

7 Q. YOU CAN'T SAY EITHER WAY WHETHER THERE ARE REAL  
8 KIDS WHO ARE IN CONGREGATE HOMES WHO COULD BE AT  
9 CATHOLIC RIGHT NOW?

10 MR. FIELD: CALLS FOR SPECULATION, YOUR  
11 HONOR.

12 THE COURT: SUSTAINED.

13 BY MR. RIENZI:

14 Q. THE REASON FOR YOUR DRIVE WAS TO GET FAMILIES  
15 WHO COULD TAKE KIDS, SOME OF WHOM ARE IN CONGREGATE  
16 CARE, CORRECT?

17 MR. FIELD: ASKED AND ANSWERED, YOUR  
18 HONOR.

19 THE COURT: SUSTAINED.

20 BY MR. RIENZI:

21 Q. YOU DON'T KNOW EITHER WAY WHETHER THE  
22 AVAILABILITY OF THOSE BEDS IN HOMES WITH CATHOLIC WOULD  
23 HELP CHILDREN?

24 MR. FIELD: CALLS FOR SPECULATION, YOUR  
25 HONOR.

1 THE COURT: SUSTAINED.

2 MR. RIENZI: YOUR HONOR, THE ENTIRE CASE  
3 IS ABOUT HER PREDICTION OF THE BEST INTERESTS OF  
4 CHILDREN.

5 MR. FIELD: MISCHARACTERIZES THE ENTIRE  
6 CASE, YOUR HONOR.

7 THE COURT: SUSTAINED. SUSTAINED.

8 BY MR. RIENZI:

9 Q. WHEN THERE ARE NOT ENOUGH FOSTER HOME FOR KIDS,  
10 CHILDREN SUFFER?

11 MR. FIELD: OBJECTION, YOUR HONOR.

12 THE COURT: SUSTAINED.

13 BY MR. RIENZI:

14 Q. TOO FEW FOSTER HOMES CAN RESULT IN CHILDREN  
15 BEING MOVED AROUND?

16 MR. FIELD: CAN YOU REPEAT THE QUESTION,  
17 COUNSELOR?

18 BY MR. RIENZI:

19 Q. TOO FEW FOSTER HOMES CAN RESULT IN CHILDREN  
20 BEING MOVED AROUND?

21 MR. FIELD: CALLS FOR SPECULATION, YOUR  
22 HONOR.

23 THE COURT: SUSTAINED.

24 MR. RIENZI: YOUR HONOR, SHE RUNS THIS  
25 SYSTEM, AND I AM TRYING TO FIGURE OUT THE RELATIONSHIP

1 BETWEEN THE NUMBER OF HOMES AND THE IMPACT ON CHILDREN.  
2 I AM SIMPLY TRYING TO GET HER TO TELL ME WHAT THE IMPACT  
3 IS OF TOO FEW FOSTER HOMES. I WILL TRY AGAIN.

4 BY MR. RIENZI:

5 Q. DO YOU KNOW ANYTHING ABOUT THE IMPACT OF NOT  
6 HAVING ENOUGH FOSTER HOMES?

7 A. NO. I MEAN, I DON'T UNDERSTAND THE QUESTION.

8 Q. YOU DON'T UNDERSTAND ANYTHING ABOUT THE  
9 RELATIONSHIP BETWEEN THE NUMBER OF FOSTER HOMES  
10 AVAILABLE AND THE WELL-BEING OF THE CHILDREN IN YOUR  
11 CARE? YOU DON'T KNOW ABOUT A RELATIONSHIP BETWEEN THOSE  
12 TWO THINGS?

13 THE COURT: THAT WASN'T YOUR QUESTION.

14 BY MR. RIENZI:

15 Q. DO YOU KNOW ANYTHING ABOUT THE RELATIONSHIP  
16 BETWEEN THE NUMBER OF FOSTER HOMES AND THE WELL-BEING OF  
17 THE CHILDREN IN YOUR CARE?

18 A. YES.

19 Q. AND WHAT IS THAT RELATIONSHIP?

20 A. THAT WE WOULD LIKE TO HAVE HOMES AVAILABLE FOR  
21 CHILDREN WHO ARE IN OUR CARE.

22 Q. MORE FOSTER HOMES IS BETTER FOR THE KIDS IN YOUR  
23 CARE, CORRECT?

24 A. MORE APPROPRIATE FOSTER HOMES ARE AVAILABLE FOR  
25 KIDS IN OUR CARE THAT IS IN OUR BEST INTEREST, YES.



1 Q. AND YOU DON'T HAVE ANY REASON TO THINK THAT THE  
2 HOMES CERTIFIED THROUGH CATHOLIC ARE INAPPROPRIATE, DO  
3 YOU?

4 A. NO.

5 Q. BETWEEN 2016 AND 2017 THE STATE ACTUALLY PUT DHS  
6 ON A PROVISIONAL LICENSE, DIDN'T IT?

7 A. IT WAS PRIOR TO MY ARRIVAL. SO WE -- I BELIEVE  
8 JUNE OF 2017, I AM NOT SURE OF THE EXACT DATE, SO IT WAS  
9 UNDER A -- WITHIN LESS THAN A YEAR OF MY TENURE THAT WE  
10 RECEIVED A FULL LICENSE.

11 Q. SO WHEN YOU CAME IN, THAT WAS SOMETHING THAT  
12 NEEDED YOUR ATTENTION, WASN'T IT?

13 A. YES. I ACTUALLY TOOK THE JOB HAVING WORKED IN A  
14 NONPROFIT PREDOMINANTLY BECAUSE I FELT I COULD MAKE A  
15 SIGNIFICANT DIFFERENCE, AND THE AGENCY WAS GOING THROUGH  
16 A DIFFICULT TIME.

17 Q. AND ONE OF THE REASONS IT WAS ON A PROVISIONAL  
18 LICENSE WAS THAT THE STATE FOUND MULTIPLE FAILURES TO  
19 APPLY WITH APPLICABLE STATE REGULATIONS, CORRECT?

20 MR. FIELD: OBJECTION, YOUR HONOR. THE  
21 WITNESS SAID SHE WAS NOT WITH THE AGENCY AT THAT TIME.

22 THE COURT: SUSTAINED.

23 BY MR. RIENZI:

24 Q. PART OF THE REASON YOU TOOK THE JOB WAS TO FIX  
25 THIS PROBLEM, WASN'T IT, MS. FIGUEROA?

1 A. IT WAS.

2 Q. SO ARE YOU FAMILIAR WITH THE SCOPE OF THE  
3 PROBLEM THAT LED TO THE PROVISIONAL LICENSE?

4 A. I AM FAMILIAR WITH THE ISSUES THAT THE STATE  
5 PRESENTED, YES.

6 Q. AND ONE OF THOSE ISSUES WAS THE STATE SAYING  
7 THAT THERE WERE MULTIPLE FAILURES TO COMPLY WITH  
8 APPLICABLE STATE REGULATIONS, CORRECT?

9 A. I BELIEVE THAT MISCHARACTERIZES THE LICENSING  
10 PROCESS.

11 Q. THE STATE TOLD YOU WHEN IT GAVE YOU A  
12 PROVISIONAL LICENSE THAT DHS HAD FAILED TO COMPLY WITH  
13 STATE REGULATIONS, DIDN'T IT?

14 A. IT CITES SPECIFIC REGULATIONS, YES.

15 Q. AND ONE OF THE FAILURES WAS ALLOWING CHILDREN TO  
16 SLEEP OVERNIGHT TOO LONG IN THE DHS FACILITY WITHOUT  
17 ADEQUATE AND TIMELY PLACEMENT, CORRECT?

18 A. THAT IS CORRECT.

19 Q. HAVING MORE FOSTER HOMES WOULD HELP YOU DEAL  
20 WITH THAT PROBLEM, WOULDN'T IT?

21 A. WE GOT OUR LICENSE BACK BECAUSE WE REDUCED THE  
22 UTILIZATION OF THE CHILD CARE ROOM.

23 Q. YOU STILL USE IT SOMETIMES THOUGH, HUH?

24 A. IN THE EVENT OF AN EMERGENCY WHEN A CHILD  
25 ARRIVES AT 2 O'CLOCK IN THE MORNING.

1 Q. YOU ALSO USE IT SOMETIMES WHEN A CHILD DOESN'T  
2 ARRIVE IN THE MIDDLE OF THE NIGHT, DON'T YOU?

3 A. WE -- THE UNFORTUNATE TIMES IS THERE IS A  
4 TREMENDOUS COMPLEXITY. THERE'S USUALLY A LOT OF  
5 INTELLECTUAL DISABILITY OR SIGNIFICANT VIOLENT BEHAVIORS  
6 WHERE THE CHILD CAN'T BE IN A HOME, AND MOST FOSTER  
7 PARENTS WON'T ACCEPT CHILDREN AT THAT HOUR WHO HAVE  
8 SIGNIFICANT SEXUAL ACTING OUT, FIRE STARTERS, CUTTERS OR  
9 HAVE VIOLENT TENDENCIES. THOSE ARE CHILDREN THAT  
10 GENERALLY DO NOT END UP IN A FOSTER HOME. SO JUST TO BE  
11 CLEAR, THE CHILDREN WHO ARE GENERALLY SPENDING OVERNIGHT  
12 ARE NOT KIDS WHO END UP GOING INTO A GENERAL FOSTER CARE  
13 PLACEMENT.

14 Q. YOU KEEP SAYING GENERALLY. SOME OF THOSE  
15 CHILDREN DO END UP IN FOSTER CARE PLACEMENT, CORRECT?

16 A. SOME DO, YES.

17 Q. AND HAVING MORE HOMES WOULD MAKE IT LESS LIKELY  
18 THAT YOU WOULD HAVE TO HAVE CHILDREN SLEEPING IN THE DHS  
19 OFFICE, WOULDN'T IT?

20 MR. FIELD: OBJECTION, CALLS FOR  
21 SPECULATION.

22 THE WITNESS: NOT NECESSARILY.

23 BY MR. RIENZI:

24 Q. BUT IT MIGHT, CORRECT?

25 MR. FIELD: OBJECTION, CALLS FOR

1 SPECULATION.

2 THE COURT: SUSTAINED.

3 BY MR. RIENZI:

4 Q. IT'S PRIORITY FOR DHS TO RECRUIT LGBTQ FOSTER  
5 PARENTS, CORRECT?

6 A. AFFIRMING HOMES.

7 Q. SO ONE OF THEM IS TO RECRUIT LGBTQ AFFIRMING  
8 HOMES, CORRECT?

9 A. CORRECT.

10 Q. YOU ALSO HAVE A PRIORITY OF RECRUITING MORE  
11 LGBTQ FOSTER PARENTS, CORRECT?

12 A. CORRECT.

13 Q. YOU HAVE WORKED WITH THE MAYOR'S OFFICE OF LGBT  
14 AFFAIRS ON SOME OF THAT RECRUITMENT?

15 A. ALONG WITH OTHER PROVIDERS, YES.

16 Q. AND SO RECRUITING EVENTS CAN BE AIMED AT  
17 PARTICULAR SEGMENTS OF THE POPULATION?

18 A. AT ALL SEGMENTS, YES.

19 Q. THEY CAN ALSO BE AIMED AT PARTICULAR SEGMENTS,  
20 CORRECT?

21 A. YES.

22 Q. AGENCIES ARE NOT OBLIGATED TO RECRUIT EVERYONE  
23 ALL THE TIME, ARE THEY?

24 MR. FIELD: OBJECTION, YOUR HONOR. THAT  
25 TESTIMONY IS NOT REGARDING AGENCIES AT THE MOMENT.

1 THE COURT: SUSTAINED. I THINK WE HAVE  
2 BEEN THROUGH THIS ALREADY.

3 BY MR. RIENZI:

4 Q. ARE YOU FAMILIAR WITH THE MAYOR'S OFFICE OF LGBT  
5 AFFAIRS?

6 A. I AM.

7 Q. YOU FOLLOW THAT OFFICE ON TWITTER?

8 A. I DO.

9 Q. IT'S AN OFFICE OF THE CITY GOVERNMENT?

10 A. IT IS.

11 Q. THAT OFFICE EXISTS TO HELP PEOPLE OF PARTICULAR  
12 SEXUAL ORIENTATIONS?

13 MR. FIELD: OBJECTION, YOUR HONOR, TO THE  
14 EXTENT THE WITNESS IS AWARE OF THE OFFICE'S PURPOSE.

15 MR. RIENZI: YES. I AM ASKING THE  
16 QUESTION.

17 THE COURT: IF YOU KNOW.

18 THE WITNESS: I DON'T HAVE THE DEFINITION  
19 OF THEIR MISSION STATEMENT ON THERE, BUT THAT SOUNDS  
20 ABOUT RIGHT.

21 BY MR. RIENZI:

22 Q. I BELIEVE YOU SAID WHEN YOU DID YOUR  
23 INVESTIGATION -- AND I'M MOVING BACK UP SO I CAN SITUATE  
24 YOU. THIS MORNING YOU STARTED YOUR TESTIMONY BY TALKING  
25 ABOUT YOUR INVESTIGATION AFTER HEARING FROM THE PHILLY

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 ON TWITTER ABOUT THE ARCHDIOCESE AND ABOUT THE POPE, WHO  
2 SHE TOLD THE ARCHDIOCESE IN A GOVERNMENT BUILDING WHO  
3 THEY SHOULD LISTEN TO. IT'S HIGHLY RELEVANT, YOUR  
4 HONOR.

5 MR. FIELD: YOUR HONOR, THIS STATEMENT IS  
6 FROM 14TH OF NOVEMBER 2014. THE WITNESS TESTIFIED SHE  
7 LEARNED ABOUT THIS MATERIAL THROUGH PLAINTIFF'S FILING  
8 IN THIS LITIGATION. I AM NOT CLEAR HOW IT'S RELEVANT TO  
9 THE TIMELINE OF THE QUESTIONS THAT COUNSEL IS ASKING  
10 HER.

11 THE COURT: I'M GOING TO SUSTAIN THE  
12 OBJECTION.

13 BY MR. RIENZI:

14 Q. MS. FIGUEROA, WHAT DO YOU KNOW ABOUT THE MAYOR'S  
15 VIEWS ABOUT THE ARCHDIOCESE, OTHER THAN WHAT YOU HAVE  
16 LEARNED IN THIS CASE?

17 A. NONE.

18 Q. NOTHING. SO UNTIL THIS CASE YOU HAD NO IDEA OF  
19 THE MAYOR'S VIEWS ABOUT THE CATHOLIC CHURCH?

20 A. THAT'S CORRECT.

21 Q. YOU FOLLOW MAYOR KENNEY ON TWITTER?

22 A. I FOLLOW A LOT OF PEOPLE ON TWITTER, YES.

23 Q. AND YOU FOLLOW MAYOR KENNEY ON TWITTER?

24 A. I DO.

25 Q. WHEN YOU SEE AT THE TOP OF THAT DOCUMENT IT SAYS

1 JIM KENNEY, AT JIM S. KENNEY --

2 MR. FIELD: YOUR HONOR, THIS DOCUMENT IS  
3 NOT IN THE RECORD. I'VE ALREADY OBJECTED TO IT.

4 THE COURT: AND I SUSTAINED THE  
5 OBJECTION.

6 MR. RIENZI: AND I'M JUST ASKING HER TO  
7 TELL ME IF SHE RECOGNIZES THE TWITTER HANDLE AS ONE THAT  
8 SHE FOLLOWS.

9 THE WITNESS: I'VE FOLLOWED THE MAYOR  
10 SINCE HE BECAME MAYOR, SO I WOULD NOT HAVE BEEN PRIVY TO  
11 THIS ONE.

12 BY MR. RIENZI:

13 Q. WHEN DID YOU GET ON TWITTER?

14 MR. FIELD: OBJECTION TO THE RELEVANCE OF  
15 THIS ENTIRE LINE OF QUESTIONING, YOUR HONOR.

16 THE COURT: SUSTAINED.

17 MR. RIENZI: YOUR HONOR, I WOULD LIKE TO  
18 MAKE AN OFFER OF PROOF ABOUT THE DOCUMENTS FROM THE  
19 MAYOR'S TWITTER ACCOUNT. I UNDERSTAND THAT YOU REJECTED  
20 THAT. I WOULD JUST LIKE TO MAKE AN OFFER SO THAT IT IS  
21 IN THE RECORD. MAY I DO THAT?

22 THE COURT: YES.

23 MR. RIENZI: MY OFFER OF PROOF IS AS  
24 FOLLOWS, YOUR HONOR. I WOULD LIKE TO QUESTION THE  
25 WITNESS ABOUT SEVERAL STATEMENTS HER BOSS, THE MAYOR,

1 HAS MADE ABOUT THE ARCHDIOCESE AND THE CATHOLIC CHURCH.  
2 AND THERE ARE JUST SEVERAL TWEETS THAT I PROPOSE TO ASK  
3 THE WITNESS ABOUT. THE FIRST ONE IS FROM NOVEMBER 14TH,  
4 2014 SAYING: THE ARCH DON'T CARE ABOUT PEOPLE. IT'S  
5 ABOUT IMAGE AND MONEY. POPE FRANCIS NEEDS TO KICK SOME  
6 A-S-S HERE.

7 THE SECOND ONE IS A TWEET FROM THE MAYOR  
8 FROM JUNE 25TH, 2012 THAT SAYS: I COULD CARE LESS ABOUT  
9 THE PEOPLE AT THE ARCHDIOCESE.

10 THE NEXT ONE IS A TWEET FROM JULY 6TH,  
11 2016 SAYING THAT: ARCHBISHOP CHAPUT'S, QUOTE, ACTIONS  
12 ARE NOT CHRISTIAN.

13 AND OUR ARGUMENT ABOUT THE RELEVANCE OF  
14 THOSE DOCUMENTS, YOUR HONOR, IS SIMPLY THAT THIS IS A  
15 CASE ABOUT RELIGIOUS DISCRIMINATION. THESE ARE  
16 STATEMENTS FROM THE WITNESS'S BOSS. AND SEVERAL CASES  
17 QUITE RECENTLY, ACTUALLY, INCLUDING SOME THAT MAY GET  
18 CITED BY THE SUPREME COURT THIS MORNING, HAVE TAKEN  
19 JUDICIAL NOTICE OF AND ALLOWED INTRODUCTION OF TWEETS  
20 FROM EXECUTIVES, OFFICE OF THE PRESIDENT OF THE UNITED  
21 STATES. AND I WOULD JUST POINT THE COURT TO  
22 INTERNATIONAL REFUGEE ASSISTANCE PROJECT VERSUS TRUMP,  
23 IN THE 4TH CIRCUIT, 883 F.3RD 233; COMMONWEALTH V  
24 BRADSHEER IN PENNSYLVANIA SUPERIOR COURT 2016 WL  
25 7495120; AND HAWAII V TRUMP, WHICH FOR ALL I KNOW HAS



1 BEEN DECIDED BY THE SUPREME COURT THIS MORNING. OUR  
2 ARGUMENT IS THAT IN A RELIGIOUS DISCRIMINATION CASE  
3 ABOUT RELIGIOUS DISCRIMINATION BY THE CITY AGAINST THE  
4 ARCHDIOCESE, THAT THE WITNESS'S BOSS'S VIEWS ON THE  
5 ARCHDIOCESE ARE HIGHLY RELEVANT.

6 MR. FIELD: YOUR HONOR, I RENEW MY  
7 OBJECTION OF THESE DOCUMENTS THAT WERE ADDRESSED AT  
8 SIDEBAR YESTERDAY. I WOULD LIKE TO TRY TO INTRODUCE  
9 THEM AND THE PERIODIZATION OF MY PRIOR OBJECTION DOES  
10 NOT CHANGE. THESE ALL PREDATE THE DECISION AT ISSUE AND  
11 THE WITNESS HAS ALREADY TESTIFIED THAT SHE WAS NOT AWARE  
12 OF THIS INFORMATION AT THAT TIME.

13 THE COURT: SO THE OBJECTION IS  
14 SUSTAINED.

15 BY MR. RIENZI:

16 Q. YOU TESTIFIED YESTERDAY THAT PART OF YOUR JOB IS  
17 COMPLYING WITH STATE MANDATES, CORRECT?

18 A. THAT IS CORRECT.

19 Q. AND ONE OF THOSE STATE MANDATES IS  
20 PENNSYLVANIA'S RELIGIOUS FREEDOM PROTECTION ACT,  
21 CORRECT?

22 A. THAT IS CORRECT.

23 Q. AND YOU KNOW YOU HAVE OBLIGATIONS UNDER THAT  
24 LAW, CORRECT?

25 A. I DO.

1 Q. WHAT ARE YOUR OBLIGATIONS UNDER THAT LAW?

2 A. I DON'T KNOW THAT OFF THE TOP OF MY HEAD SO....

3 Q. OKAY. WHAT DOES THE DEPARTMENT DO TO ENSURE  
4 THAT IT COMPLIES WITH THAT LAW?

5 A. I AM NOT SURE. I DON'T KNOW.

6 Q. DO YOU UNDERSTAND THAT UNDER STATE LAW YOU CAN  
7 ONLY BURDEN SOMEONE'S RELIGIOUS EXERCISE IF YOU HAVE A  
8 COMPELLINGLY IMPORTANT REASON?

9 MR. FIELD: OBJECTION, YOUR HONOR. SHE  
10 ALREADY SAID SHE WAS NOT AWARE OF HER OBLIGATIONS UNDER  
11 THAT LAW.

12 MR. RIENZI: I DON'T BELIEVE THAT'S WHAT  
13 SHE SAID.

14 THE COURT: OVERRULED.

15 MR. RIENZI: I BELIEVE SHE SAID SHE IS  
16 AWARE.

17 THE COURT: OVERRULED.

18 BY MR. RIENZI:

19 Q. ARE YOU AWARE THAT UNDER THE RELIGIOUS FREEDOM  
20 PROTECTION ACT DHS CAN ONLY BURDEN SOMEONE'S RELIGIOUS  
21 EXERCISE IF THEY HAVE A COMPELLINGLY IMPORTANT REASON?

22 A. DO I UNDERSTAND IS THE QUESTION?

23 Q. DO YOU UNDERSTAND THAT THAT'S YOUR OBLIGATION?

24 A. I UNDERSTAND THAT, YES.

25 Q. HAVE YOU DONE ANYTHING TO ENSURE YOUR COMPLIANCE

1 WITH THAT OBLIGATION?

2 A. I AM NOT SURE THAT I UNDERSTAND THE QUESTION.

3 Q. AS YOU RUN YOUR DEPARTMENT, DO YOU DO ANYTHING  
4 TO MAKE SURE THAT YOU DON'T BURDEN PEOPLE'S RELIGIOUS  
5 EXERCISE?

6 A. YEAH, I AM NOT SURE I KNOW HOW TO ANSWER THAT  
7 QUESTION.

8 Q. CAN YOU NAME ANYTHING THAT YOUR DEPARTMENT DOES  
9 TO ENSURE THAT IT DOESN'T BURDEN PEOPLE'S RELIGIOUS  
10 EXERCISE?

11 A. SURE. WE DON'T PRAY BEFORE OUR MEETINGS.

12 Q. OKAY. WHAT ELSE?

13 A. WE DON'T HAVE ANY RELIGIOUS ARTIFACTS IN OUR  
14 OFFICES. WE DON'T REQUIRE OUR STAFF TO SIGN A PASTORAL  
15 REFERENCE TO WORK AT THE DEPARTMENT. I THINK THOSE ARE  
16 SOME GENERAL EXAMPLES OF WHAT THE CITY WOULD NOT DO AS A  
17 CITY EMPLOYEE.

18 Q. YOU KNOW THAT YOUR BOSS, THE MAYOR, HAS TAKEN A  
19 PUBLIC POSITION THAT HE DOES NOT LIKE RELIGIOUS FREEDOM  
20 LAWS, LIKE THE RELIGIOUS FREEDOM PROTECTION ACT?

21 A. I DON'T KNOW THAT PERSONALLY.

22 Q. YOU DON'T KNOW ANYTHING ABOUT HIS VIEWS ON  
23 RELIGIOUS LIBERTY LAWS?

24 A. I HAVE ANSWERED THAT BASED ON WHAT YOU HAVE  
25 PRESENTED HERE, BUT NOT WHAT YOU ARE ASKING.

1 Q. THE MAYOR NEVER TOLD YOU THAT ENFORCING THE  
2 RELIGIOUS FREEDOM PROTECTION ACT IS A PRIORITY OF HIS  
3 ADMINISTRATION?

4 MR. FIELD: OBJECTION, YOUR HONOR. WHAT  
5 IS THE RELEVANCE OF THIS LINE OF QUESTIONING?

6 THE COURT: SUSTAINED.

7 MR. FIELD: MOVE TO STRIKE.

8 THE COURT: WELL, SHE HAS NOT ANSWERED.

9 BY MR. RIENZI:

10 Q. YOU HAVE ASSERTED THAT YOU HAVE AN INTEREST IN  
11 COMPLYING WITH THE CITY'S FAIR PRACTICES ORDINANCE,  
12 CORRECT?

13 A. YES.

14 Q. AND YOU TESTIFIED YESTERDAY THAT YOU ARE  
15 RESPONSIBLE FOR MEETING FEDERAL MANDATES RELATED TO  
16 CHILD WELFARE WORK, CORRECT?

17 A. THAT'S CORRECT.

18 Q. YOU RECEIVED FEDERAL TANF FUNDING -- THAT'S  
19 TEMPORARY AID TO NEEDY FAMILIES FUNDING -- FOR YOUR  
20 FOSTER CARE PROGRAM, CORRECT?

21 A. THAT IS CORRECT.

22 Q. DHS HAS TO MAKE STATEMENTS TO THE FEDERAL  
23 GOVERNMENT ABOUT ITS COMPLIANCE WITH TANF REGULATIONS TO  
24 RECEIVE THAT MONEY, CORRECT?

25 A. THAT IS CORRECT.

1 Q. WHEN WAS THE LAST ONE YOU FILED?

2 A. I HAVE NO IDEA. MY FINANCE TEAM DOES THAT.

3 Q. DO YOU KNOW WHO SIGNS THAT?

4 MR. FIELD: OBJECTION TO RELEVANCE, YOUR  
5 HONOR.

6 MR. RIENZI: I WILL GET TO THAT IN A  
7 SECOND, YOUR HONOR.

8 THE COURT: OVERRULED.

9 THE WITNESS: THEY ARE PREPARED BY THE  
10 FINANCE DEPARTMENT, AND I SIGN THE TANF DOCUMENT THAT  
11 GETS SUBMITTED.

12 BY MR. RIENZI:

13 Q. AND YOU DON'T KNOW WHEN THE LAST ONE YOU SIGNED  
14 WAS?

15 A. I DON'T RECALL THE DATE.

16 Q. DO YOU REMEMBER ROUGHLY?

17 A. NO.

18 Q. DO YOU REMEMBER IF IT WAS BEFORE OR AFTER  
19 CLOSING INTAKE AT CATHOLIC?

20 A. THAT I DEFINITELY DON'T KNOW.

21 Q. OKAY. ARE YOU AWARE THAT UNDER FEDERAL FUNDING  
22 REQUIREMENTS YOU HAVE AN OBLIGATION NOT TO INTERFERE  
23 WITH A RELIGIOUS ORGANIZATION'S DEFINITION, PRACTICE OR  
24 EXPRESSION OF ITS RELIGIOUS BELIEFS?

25 MR. FIELD: OBJECTION TO THE EXTENT IT

1 CALLS FOR A LEGAL CONCLUSION.

2 THE COURT: OVERRULED. SHE CAN ANSWER.

3 THE WITNESS: TO THE EXTENT THE  
4 DEPARTMENT OF HUMAN SERVICES -- SO WE ARE A STATE  
5 LICENSED COUNTY ADMINISTERED SO THE COUNTY  
6 ADMINISTRATION CAN INDICATE ITS DELIVERED CHILD WELFARE  
7 SERVICES, SO WHILE THERE'S FEDERAL FUNDING AND STATE  
8 FUNDING, IT IS A COUNTY RUN SYSTEM.

9 BY MR. RIENZI:

10 Q. YOU MAKE CERTIFICATIONS TO THE FEDERAL  
11 GOVERNMENT ABOUT YOUR COMPLIANCE WITH TANF REGULATIONS,  
12 CORRECT?

13 A. THAT'S CORRECT.

14 Q. THAT INCLUDES CERTIFYING THAT YOU FOLLOW FEDERAL  
15 LAW ASSOCIATED WITH THOSE FUNDS, CORRECT?

16 A. YES.

17 Q. AND ARE YOU AWARE THAT ONE OF THE FEDERAL LAWS  
18 ASSOCIATED WITH RECEIVING THOSE FUNDS, WHICH YOU CERTIFY  
19 THAT YOU FOLLOW, REQUIRES YOU TO ALLOW RELIGIOUS GROUPS  
20 TO RETAIN INDEPENDENCE IN THE DEFINITION, PRACTICE AND  
21 EXPRESSION OF THEIR RELIGIOUS BELIEFS?

22 A. YES.

23 Q. BUT YOU DON'T KNOW WHETHER YOU HAVE MADE THAT  
24 CERTIFICATION SINCE THE INTAKE CLOSURE AT CATHOLIC?

25 A. I DON'T. THEY HAPPEN QUARTERLY, SO I DON'T

1 RECALL WHEN THE LAST -- AND IT'S NOT ON A REGULAR  
2 STANDING SCHEDULE.

3 Q. WHEN YOU SIGNED THE LAST ONE, DID YOU DO ANY  
4 ANALYSIS OF WHETHER YOU HAD VIOLATED IT BY CLOSING  
5 INTAKE AT CATHOLIC?

6 MR. FIELD: OBJECTION, ASSUMES FACTS NOT  
7 IN RECORD.

8 THE COURT: YES, SUSTAINED.  
9 BY MR. RIENZI:

10 Q. HAVE YOU THOUGHT ABOUT WHETHER YOU VIOLATED YOUR  
11 TANF FUNDING REQUIREMENTS TO THE FEDERAL GOVERNMENT BY  
12 CLOSING INTAKE AT CATHOLIC?

13 A. HAVE I HAD A THOUGHT ABOUT IT?

14 Q. HAVE YOU EVER THOUGHT ABOUT THAT?

15 A. I CAN'T SAY THAT I HAVE THOUGHT ABOUT THAT.

16 Q. OKAY. AND I SUPPOSE YOU HAVE NOT FIGURED OUT  
17 WHAT YOU ARE GOING TO SAY THE NEXT TIME YOU HAVE TO MAKE  
18 THAT CERTIFICATION?

19 A. WELL, CERTAINLY --

20 MR. FIELD: OBJECTION, CALLS FOR  
21 SPECULATION.

22 THE COURT: SUSTAINED.

23 BY MR. RIENZI:

24 Q. DO YOU KNOW WHAT THE CONSEQUENCES ARE OF MAKING  
25 FALSE STATEMENTS TO THE FEDERAL GOVERNMENT IN THE

1 CONTEXT OF FEDERAL FUNDING?

2 A. NOT OFF THE TOP OF MY HEAD.

3 Q. DO YOU KNOW THAT YOUR AGENCY COULD LOSE ITS  
4 FEDERAL FUNDING IF IT MAKES FALSE STATEMENTS TO THE  
5 FEDERAL GOVERNMENT ABOUT ITS COMPLIANCE WITH TANF  
6 REGULATIONS?

7 A. THAT SOUNDS PROBABLY ABOUT RIGHT.

8 Q. YOU UNDERSTAND YOU DO HAVE AN OBLIGATION TO OBEY  
9 FEDERAL LAW?

10 A. I DO.

11 Q. WOULD YOU AGREE WITH ME THAT IT'S A COMPELLINGLY  
12 IMPORTANT INTEREST OF YOURS TO OBEY FEDERAL LAW?

13 THE COURT: COMPELLING?

14 MR. RIENZI: COMPELLING.

15 BY MR. RIENZI:

16 Q. HOW ABOUT, WOULD YOU AGREE WITH ME YOU HAVE A  
17 REALLY IMPORTANT --

18 MR. FIELD: OBJECTION, CALLS FOR A LEGAL  
19 CONCLUSION, YOUR HONOR.

20 BY MR. RIENZI:

21 Q. WOULD YOU AGREE WITH ME THAT YOU HAVE A REALLY  
22 IMPORTANT INTEREST --

23 MR. FIELD: ASKING FOR AN OFFER OF PROOF  
24 OF THIS LINE OF QUESTIONING, YOUR HONOR.

25 THE COURT: SHE SAYS SHE HAS AN INTEREST.



1 MR. RIENZI: IN FOLLOWING FEDERAL LAW?

2 DID I GET THAT ANSWER? I APOLOGIZE.

3 THE COURT: SHE DID.

4 THE WITNESS: I DID.

5 MR. RIENZI: TERRIFIC. THANK YOU.

6 BY MR. RIENZI:

7 Q. HAS DHS INFORMED THE FEDERAL GOVERNMENT ABOUT  
8 ITS INTAKE FREEZE AT CATHOLIC?

9 A. NO. WE INFORMED THE STATE.

10 Q. BUT YOU HAVE NOT INFORMED THE FEDERAL DEPARTMENT  
11 OF HEALTH AND HUMAN SERVICES WHO ADMINISTERS YOUR TANF  
12 FUNDING?

13 A. THE STATE ACTUALLY WORKS WITH THE FEDS IN  
14 REGARDS TO OUR TANF FUNDING.

15 Q. DO YOU KNOW IF THE STATE HAS INFORMED THE  
16 FEDERAL GOVERNMENT ABOUT --

17 A. I DON'T.

18 Q. -- YOUR INTAKE CLOSURE?

19 A. I DON'T.

20 MR. RIENZI: IF I CAN JUST HAVE A BRIEF  
21 MINUTE, YOUR HONOR.

22 THE COURT: YES.

23 (PAUSE.)

24 THE COURT: COUNSEL, HOW LONG WILL YOU  
25 BE? WE NEED TO TAKE A BREAK.

1 MR. RIENZI: YOUR HONOR, CAN WE TAKE A  
2 VERY SHORT BREAK HOWEVER LONG YOU WANT, AND I WILL BE  
3 READY BY THE TIME YOU SAY WE SHOULD GO.

4 THE COURT: WE WILL TAKE A FIVE MINUTE  
5 RECESS.

6 MR. RIENZI: THANK YOU, YOUR HONOR.

7 THE CLERK: ALL RISE.

8 (BREAK TAKEN.)

9 THE COURT: YOU MAY BE SEATED. GOOD  
10 AFTERNOON, COUNSEL. YOU CAN CONTINUE.

11 MR. RIENZI: THANK YOU, YOUR HONOR.

12 BY MR. RIENZI:

13 Q. MS. FIGUEROA, EARLIER YOU SAID THAT YOU THOUGHT  
14 CATHOLIC VIOLATED THE CONTRACT AND YOU REFERRED TO THE  
15 FAIR PRACTICES ORDINANCE PORTION OF THE CONTRACT. DO  
16 YOU RECALL THAT?

17 A. THEY DIDN'T COMPLY WITH THE CONTRACT.

18 Q. YES. AND YOU SAID ONE OF THE PORTIONS YOU  
19 BELIEVE THEY DID NOT COMPLY WITH IS THE FAIR PRACTICES  
20 ORDINANCE PART OF THE CONTRACT, IS THAT CORRECT?

21 A. YES, THAT'S RIGHT.

22 Q. CAN I DIRECT YOUR ATTENTION --

23 MR. RIENZI: MAY I APPROACH, YOUR HONOR?

24 THE COURT: YES.

25 BY MR. RIENZI:

1 Q. I JUST DON'T KNOW WHAT EXHIBIT NUMBER THE  
2 CONTRACT IS. SO PAGE 97 OF EXHIBIT 15, PLEASE. I WOULD  
3 PARTICULARLY LIKE TO DIRECT YOUR ATTENTION TO PARAGRAPH  
4 15.1.

5 A. YES.

6 Q. AND JUST ASK, IS THAT THE PROVISION YOU HAD IN  
7 MIND WHEN YOU TESTIFIED EARLIER?

8 MR. FIELD: OBJECTION TO THE EXTENT IT  
9 CALLS FOR A LEGAL CONCLUSION.

10 THE COURT: OVERRULED.

11 THE WITNESS: I'M SORRY.

12 BY MR. RIENZI:

13 Q. IS 15.1 THE PROVISION YOU HAD IN MIND EARLIER  
14 WHEN YOU SAID CATHOLIC HAD VIOLATED THE FAIR PRACTICES  
15 PORTION OF THE CONTRACT?

16 MR. FIELD: OBJECTION. IT  
17 MISCHARACTERIZES THE WITNESS'S TESTIMONY. I DON'T  
18 BELIEVE SHE SAID SHE HAD A SPECIFIC PROVISION IN MIND,  
19 YOUR HONOR.

20 THE COURT: WELL, THE QUESTION IS, IS  
21 THAT THE PROVISION?

22 THE WITNESS: 15.1 REFERENCES THE FAIR  
23 PRACTICES ORDINANCE.

24 BY MR. RIENZI:

25 Q. IS THAT THE PROVISION YOU HAD IN MIND WHEN YOU

1 SAID THAT YOU THOUGHT THEY VIOLATED THE FAIR PRACTICES  
2 PORTION OF THE CONTRACT?

3 A. THIS IS ONE REFERENCE TO THE NONDISCRIMINATION  
4 FAIR PRACTICE.

5 Q. YOU DON'T KNOW EITHER WAY WHETHER THIS IS THE  
6 PROVISION YOU HAD IN MIND?

7 A. I THINK WE VISITED THE FACT THAT THIS IS A VERY  
8 LONG DOCUMENT AND SO WITHOUT GOING INTO EVERY SINGLE  
9 PAGE WHERE ELSE IT'S REFERENCED I CANNOT CITE RIGHT NOW.

10 Q. BUT YOU DON'T KNOW ANY OTHER ONE THAT YOU WERE  
11 THINKING OF BEFORE?

12 A. THAT'S NOT WHAT I SAID.

13 Q. I'M SORRY. I AM JUST TRYING TO GET A SENSE OF  
14 WHAT YOU WERE THINKING OF WHEN YOU TOLD ME THAT THEY  
15 VIOLATED THE FAIR PRACTICES PORTION OF THE CONTRACT.

16 A. THAT'S THE FAIR PRACTICE ORDINANCE ITSELF, AND I  
17 ALSO REFERENCED TO THE SERVICES PORTION OF THEIR  
18 CONTRACT AND THE DEFINITION OF SERVICES.

19 Q. NOTHING ELSE THAT YOU CAN THINK OF?

20 A. AS IT RELATES TO WHAT?

21 Q. AS IT RELATES TO YOUR CLAIM THAT CATHOLIC  
22 VIOLATED THE CONTRACT.

23 A. I DON'T THINK THAT'S ACTUALLY WHAT I SAID. I  
24 SAID THAT -- IF WE ARE TALKING ABOUT INTAKE CLOSURE OR  
25 IN TERMS OF THE MAKING OF THIS DECISION. COULD YOU BE

1 MORE CLEAR?

2 Q. WE ARE TALKING ABOUT YOUR CLAIM EARLIER THAT  
3 CATHOLIC VIOLATED THE CONTRACT.

4 A. I DIDN'T USE THE TERM. I SAID THAT THEY WERE --  
5 INABILITY TO COMPLY, AND I SAID THAT IT WAS CLEAR THAT  
6 THEY COULD BE VIOLATING.

7 Q. SO YOU ARE NOT SURE WHETHER YOU THINK CATHOLIC  
8 HAS VIOLATED THIS CONTRACT YET?

9 A. WELL, THEY HAVE ISSUED STATEMENTS CLEARLY THEIR  
10 POSITION.

11 Q. BUT IT'S POSSIBLE THEY HAVE NOT VIOLATED THE  
12 CONTRACT YET?

13 MR. FIELD: OBJECTION TO THE EXTENT IT  
14 CALLS FOR A LEGAL CONCLUSION, YOUR HONOR.

15 THE COURT: SUSTAINED.

16 BY MR. RIENZI:

17 Q. IS YOUR TESTIMONY THAT THEY HAVE VIOLATED IT OR  
18 THAT THEY MIGHT VIOLATE THE CONTRACT?

19 A. ARE YOU ASKING MY OPINION AS OF RIGHT NOW OR ARE  
20 YOU ASKING YOU ME MY OPINION AS IT RELATES TO CLOSING  
21 INTAKE?

22 Q. AS IT RELATES TO CLOSING INTAKE. WAS YOUR  
23 OPINION THAT THEY HAD VIOLATED THE CONTRACT OR MIGHT  
24 VIOLATE THE CONTRACT?

25 A. WHEN I CLOSED INTAKE IT WAS THAT THEY MAY HAVE

1 VIOLATED THEIR CONTRACT.

2 Q. AND HAVE YOU COME TO THE VIEW OR HAVE YOU COME  
3 TO A VIEW AS TO WHETHER THE FAILURE TO DO HOME STUDIES  
4 FOR SAME-SEX COUPLES THAT YOU CITED EARLIER IS A  
5 VIOLATION OF THE CONTRACT?

6 MR. FIELD: OBJECTION, TO THE EXTENT IT  
7 CALLS FOR A LEGAL CONCLUSION, YOUR HONOR.

8 THE COURT: SUSTAINED.

9 BY MR. RIENZI:

10 Q. DO YOU HAVE A VIEW TODAY AS TO WHETHER  
11 CATHOLIC'S POSITION ON NOT DOING HOME STUDIES FOR  
12 SAME-SEX COUPLES IS A VIOLATION --

13 MR. FIELD: OBJECTION, TO THE EXTENT IT  
14 CALLS FOR A LEGAL CONCLUSION, YOUR HONOR.

15 THE COURT: SUSTAINED.

16 MR. RIENZI: YOUR HONOR, SHE SIGNED THIS  
17 CONTRACT. I AM JUST ASKING HER WHETHER SHE THINKS IT  
18 HAS BEEN VIOLATED OR MIGHT BE VIOLATED. THOSE ARE TWO  
19 VERY DIFFERENT THINGS, AND SHE IS THE SIGNER OF THE  
20 CONTRACT.

21 MR. FIELD: YOUR HONOR, HE CAN ASK HER  
22 ABOUT HER VIEW OF HOME STUDIES AND CATHOLIC'S  
23 OBLIGATION, BUT HE'S ASKING FOR A LEGAL DETERMINATION  
24 UNDER THE CONTRACT, WHICH SPEAKS FOR ITSELF.

25 THE COURT: SUSTAINED.

1 BY MR. RIENZI:

2 Q. DOES DHS HAVE A POSITION ABOUT WHETHER CATHOLIC  
3 HAS VIOLATED THIS CONTRACT IN REGARDS TO HOME STUDIES  
4 FOR SAME-SEX PARENTS?

5 MR. FIELD: SAME OBJECTION, YOUR HONOR.

6 THE COURT: SUSTAINED.

7 BY MR. RIENZI:

8 Q. DO YOU UNDERSTAND UNDER THIS CONTRACT THAT THE  
9 FAIR PRACTICES ORDINANCE ONLY APPLIES IF FOSTER CARE IS  
10 A PUBLIC ACCOMMODATION?

11 MR. FIELD: OBJECTION, TO THE EXTENT IT  
12 CALLS FOR A LEGAL CONCLUSION, YOUR HONOR.

13 THE COURT: YES, SUSTAINED.

14 BY MR. RIENZI:

15 Q. DO YOU UNDERSTAND THAT THE DIRECT PROHIBITION OF  
16 DISCRIMINATION, 15.1, ONLY APPLIES TO RACE, COLOR,  
17 RELIGION AND NATIONAL ORIGIN?

18 MR. FIELD: OBJECTION, CALLS FOR A LEGAL  
19 CONCLUSION, YOUR HONOR.

20 THE COURT: SUSTAINED.

21 MR. RIENZI: YOUR HONOR, IF I MAY ARGUE  
22 THE POINT FOR A MOMENT.

23 THE COURT: NO.

24 BY MR. RIENZI:

25 Q. MS. FIGUEROA, YOU TESTIFIED EARLIER THAT THE CRU

1 REFERRAL PROCESS -- STRIKE THAT.

2 YOU TESTIFIED EARLIER, I BELIEVE, THAT  
3 THERE HAS BEEN NO IMPACT ON THE CRU REFERRAL PROCESS  
4 FROM THE CLOSURE OF INTAKE, IS THAT CORRECT?

5 MR. FIELD: OBJECTION, MISCHARACTERIZES  
6 THE WITNESS'S TESTIMONY.

7 THE COURT: OVERRULED. SHE CAN ANSWER.

8 THE WITNESS: I DON'T BELIEVE THAT'S WHAT  
9 I SAID.

10 BY MR. RIENZI:

11 Q. HAS THE INTAKE CLOSURE MADE IT MORE DIFFICULT  
12 FOR CRU TO PLACE CHILDREN WITH FAMILIES THROUGH  
13 CATHOLIC?

14 A. NO.

15 Q. AND YOUR REASON FOR SAYING NO IS THAT YOU HAVE  
16 SET UP A PROCESS BY WHICH PEOPLE CAN ASK DHS TO MAKE  
17 EXCEPTIONS, IS THAT CORRECT?

18 MR. FIELD: OBJECTION, YOUR HONOR. IF I  
19 CAN JUST ASK FOR A CLARIFICATION IF COUNSEL IS TALKING  
20 ABOUT CATHOLIC CUA OR CATHOLIC SOCIAL SERVICES.

21 MR. RIENZI: CATHOLIC SOCIAL SERVICES.

22 THE COURT: OKAY. YOU MAY ANSWER.

23 THE WITNESS: CAN YOU REPEAT THE  
24 QUESTION.

25 BY MR. RIENZI:



1 Q. SURE. YOU HAVE CLOSED INTAKE AT CATHOLIC SOCIAL  
2 SERVICES, CORRECT?

3 A. FOSTER CARE.

4 Q. FOSTER CARE INTAKE AT CATHOLIC SOCIAL SERVICES,  
5 CORRECT?

6 A. THAT'S CORRECT.

7 Q. AND I BELIEVE YOUR TESTIMONY IS THAT THERE HAS  
8 BEEN NO IMPACT ON THE ABILITY OF THE CRU TO PLACE  
9 CHILDREN IN FAMILIES WORKING WITH CATHOLIC, IS THAT  
10 CORRECT?

11 A. NO. I DON'T UNDERSTAND THE LAST PART OF YOUR  
12 QUESTION.

13 Q. THE CLOSURE OF INTAKE MAKES IT HARDER TO PLACE  
14 CHILDREN IN FAMILIES THROUGH CATHOLIC, CORRECT?

15 A. THE CLOSURE OF INTAKE MAKES IT HARDER FOR CRU?

16 Q. YES.

17 A. NO.

18 Q. WHY DO YOU SAY NO?

19 A. BECAUSE WE HAVE NOT SEEN AN IMPACT IN OUR NUMBER  
20 OF AVAILABILITY OR THE IMPACT IT'S HAD ON CONGREGATE  
21 CARE OR THE USE OF THE CHILD CARE ROOM.

22 Q. WHEN YOU'VE PLACED CHILDREN AT CATHOLIC DURING  
23 THE CLOSURE OF INTAKE, THAT HAS NOT BEEN THROUGH THE  
24 NORMAL CRU REFERRAL PROCESS, HAS IT?

25 MR. FIELD: OBJECTION TO THE

1 CHARACTERIZATION OF THE NORMAL PROCESS, YOUR HONOR.

2 THE COURT: OVERRULED.

3 THE WITNESS: REPEAT THE QUESTION.

4 BY MR. RIENZI:

5 Q. WHEN YOU HAVE PLACED CHILDREN IN FAMILIES  
6 THROUGH CATHOLIC DURING THE INTAKE CLOSURE, THAT HAS NOT  
7 OCCURRED THROUGH THE USUAL CRU REFERRAL PROCESS,  
8 CORRECT?

9 A. DO YOU MEAN IN TERMS OF HAVING A WAIVER OR AN  
10 EXCEPTION RELATED TO SPECIAL CASES?

11 Q. I WOULD LIKE YOU TO COMPARE WHAT IT WAS LIKE  
12 BEFORE THE INTAKE CLOSURE TO WHAT IT IS LIKE NOW.

13 A. I AM NOT SURE WHAT YOU ARE ASKING ME TO COMPARE.

14 Q. BEFORE THE INTAKE CLOSURE DID YOU OR MS. ALI  
15 NEED TO BE CONSULTED EVERY TIME A CHILD WOULD BE PLACED  
16 WITH CATHOLIC?

17 A. WE'RE CONSULTED EVERY TIME THERE IS A CONGREGATE  
18 CARE PLACEMENT, YES.

19 Q. DID YOU AND MS. ALI NEED TO BE CONSULTED EVERY  
20 TIME THERE WAS A PLACEMENT WITH CATHOLIC BEFORE INTAKE  
21 CLOSURE?

22 A. NOT EVERY TIME.

23 Q. AFTER THE INTAKE CLOSURE YOU OR MS. ALI MUST BE  
24 CONTACTED EVERY TIME THERE IS A PLACEMENT WITH CATHOLIC,  
25 CORRECT?

1 A. THAT'S CORRECT, ALONG WITH OTHER PROVIDERS THAT  
2 HAVE THEIR INTAKE CLOSED.

3 Q. WHO ELSE HAS THEIR INTAKE CLOSED?

4 A. CAN WE PUBLICLY SAY THAT, SINCE THERE'S -- I  
5 MEAN, THAT'S NOT SOMETHING WE -- I AM JUST ASKING.

6 Q. I DON'T KNOW THE ANSWER TO THAT. I AM HAPPY TO  
7 --

8 MR. FIELD: YOUR HONOR, CAN WE HAVE A  
9 MINUTE?

10 MR. RIENZI: LET ME ASK A MORE GENERAL  
11 QUESTION TO SEE IF I CAN --

12 BY MR. RIENZI:

13 Q. YOU HAVE ALREADY MENTIONED BETHANY AS HAVING AN  
14 INTAKE CLOSURE, WHICH I BELIEVE IS A PUBLICLY KNOWN  
15 FACT, CORRECT?

16 A. THAT'S CORRECT, AND THERE IS, I BELIEVE, AT  
17 LEAST TWO TO THREE OTHER ORGANIZATIONS RIGHT NOW THAT  
18 HAVE THEIR INTAKE CLOSED.

19 Q. THANK YOU.

20 YOU SPOKE BEFORE ABOUT A WAIVER OR  
21 EXCEPTIONS POLICY, CORRECT?

22 A. PRACTICE, YES.

23 Q. OKAY. IS THERE ANY WRITTEN POLICY THAT GOVERNS  
24 HOW THAT PRACTICE WORKS?

25 A. NO.

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 THAT'S A LETTER FROM THE LAW DEPARTMENT, WHO ARE YOUR  
2 LAWYERS IN THIS CASE, CORRECT?

3 A. YES. THIS IS THE LETTER PRIOR TO SENDING THE  
4 AWARD LETTER. SO THIS IS DATED IN REGARDS TO THE LINE  
5 OF QUESTIONS YOU ARE ASKING ME.

6 Q. I WOULD LIKE TO TURN TO PAGE 2 OF THAT DOCUMENT,  
7 PLEASE. IN THE THIRD FULL PARAGRAPH FROM THE TOP, THE  
8 LAST SENTENCE OF THAT PARAGRAPH READS: WE BELIEVE OUR  
9 CURRENT CONTRACT WITH CSS IS QUITE CLEAR THAT THIS IS  
10 ALL RIGHT.

11 A. DID YOU SAY SECOND OR THIRD PARAGRAPH?

12 Q. THIRD PARAGRAPH FROM THE TOP, SECOND PAGE, THIRD  
13 PARAGRAPH FROM THE TOP. THE PARAGRAPH BEGINS "PLEASE  
14 ALSO NOTE."

15 A. SORRY, THAT'S PAGE 3.

16 Q. I APOLOGIZE. SORRY ABOUT THAT.

17 A. GO AHEAD. SORRY.

18 Q. THE LAST SENTENCE OF THE THIRD PARAGRAPH READS:  
19 WE BELIEVE OUR CURRENT CONTRACT WITH CSS IS QUITE CLEAR  
20 THAT THIS IS ALL RIGHT, BUT PLEASE BE ADVISED THAT ANY  
21 FURTHER CONTRACTS WITH CSS WILL BE EXPLICIT IN THIS  
22 REGARD. DO YOU SEE THAT?

23 A. I DO.

24 Q. AND ANY FUTURE CONTRACT THAT YOU ENTER INTO WITH  
25 CSS YOU HAVE TOLD CSS YOU PLAN TO HAVE A MORE EXPLICIT



1 DISCRIMINATION POLICY IN THAT CONTRACT, CORRECT?

2 A. THE CLARITY REGARDING THE POLICY WILL BE MADE  
3 AVAILABLE TO ALL CONTRACTED PROVIDERS, NOT JUST CSS.

4 Q. AND WHEN YOU SAID BETHANY IS GOING TO ENTER INTO  
5 A NEW CONTRACT, THAT NEW CONTRACT IS NOT THE SAME AS  
6 THEIR OLD CONTRACT, IS IT?

7 A. IT IS THE SAME CONTRACT WITH EXPLICIT LANGUAGE  
8 DEFINING THE EXPECTATIONS.

9 Q. SO IT'S THE SAME, BUT WITH DIFFERENT LANGUAGE ON  
10 THE KEY ISSUE, CORRECT?

11 MR. FIELD: OBJECTION TO THE REFERENCE  
12 "KEY ISSUE," YOUR HONOR.

13 THE COURT: SUSTAINED.

14 BY MR. RIENZI:

15 Q. IT'S THE SAME WITH DIFFERENT LANGUAGE THAT IS  
16 BEING CHANGED IN ORDER TO MORE DIRECTLY ADDRESS THE  
17 QUESTION OF HOME STUDIES FOR SAME-SEX FOSTER COUPLES,  
18 CORRECT?

19 A. CAN YOU REPEAT THAT?

20 Q. SURE. I AM TRYING TO FIGURE OUT THE CONTRACT  
21 THAT YOU WERE SAYING BEFORE THAT DHS WOULD GIVE CATHOLIC  
22 IS THE SAME FULL CONTRACT THEY HAD BEFORE OR IS A  
23 CHANGED CONTRACT ON THE NONDISCRIMINATION ISSUE?

24 A. I DON'T HAVE THE CONTRACT IN FRONT OF ME, BUT  
25 JUST TO REPEAT WHAT WAS SHARED WITH CATHOLIC SOCIAL

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

1 REFERRALS, IS THAT CORRECT?

2 A. THAT'S CORRECT.

3 MR. RIENZI: MY LAST QUESTION AND I WANT  
4 TO MAKE ONE PROFFER, ONE LAST DOCUMENT, YOUR HONOR.  
5 BY MR. RIENZI:

6 Q. MY LAST QUESTION, THOUGH, IS, I BELIEVE WE  
7 TALKED BEFORE ABOUT WHETHER YOU SPOKE WITH THE MAYOR.  
8 AND I JUST WANT TO BE CLEAR. HAVE YOU HAD ANY  
9 CONVERSATIONS WITH ANYONE IN THE MAYOR'S OFFICE ABOUT  
10 WHETHER THIS CONFLICT WITH THE ARCHDIOCESE IS  
11 POLITICALLY USEFUL?

12 MR. FIELD: OBJECTION TO THE SCOPE OF THE  
13 QUESTION, YOUR HONOR.

14 THE COURT: YES, SUSTAINED.

15 MR. RIENZI: YOUR HONOR, MY ONE PROFFER.  
16 THERE IS ONE ADDITIONAL MAYOR KENNEY TWEET THAT I JUST  
17 WANT TO MAKE THE PROFFER ON. I UNDERSTAND THAT IT WILL  
18 ALMOST CERTAINLY BE COVERED BY YOUR PRIOR RULING. MAY I  
19 JUST MAKE THE OFFER OUT LOUD?

20 THE COURT: YES.

21 MR. RIENZI: IT'S A APRIL 9, 2015 TWEET  
22 BY MAYOR KENNEY AT JIM F. KENNEY. IT SAYS: LOVE THIS,  
23 HASHTAG PHILADELPHIA COUNCIL, INVITE ALL AFFECTED BY  
24 RFRA LAWS TO CITY OF BROTHERLY LOVE, RANKED THE NUMBER  
25 ONE HASHTAG LGBT FRIENDLY BY HRC.

1 AND MY ARGUMENT WOULD SIMPLY BE THIS, IS  
2 MS. FIGUEROA'S BOSS DEMONSTRATING THAT HE DOES NOT LIKE  
3 RELIGIOUS FREEDOM LAWS VERY MUCH.

4 THE COURT: OKAY, IF THAT'S YOUR  
5 ARGUMENT.

6 MR. RIENZI: I HAVE PUT IT IN THE RECORD,  
7 AND I AM DONE.

8 THANK YOU VERY MUCH, MS. FIGUEROA.

9 THE COURT: OKAY. ANY REDIRECT?

10 MR. FIELD: JUST A FEW QUESTIONS, YOUR  
11 HONOR.

12 REDIRECT EXAMINATION

13 BY MR. FIELD:

14 Q. COMMISSIONER FIGUEROA, I WILL TRY AND BE BRIEF.  
15 WHEN YOU STARTED YOUR TESTIMONY TWO DAYS AGO NOW, YOU  
16 TALKED ABOUT THE JESUIT -- YOU WORKED FOR THE JESUIT  
17 VOLUNTEER CORPS IN YOUR FAITH. JUST TO CLARIFY FOR THE  
18 RECORD, IF YOU ARE COMFORTABLE, WOULD YOU MIND  
19 SPECIFYING YOUR RELIGIOUS FAITH?

20 A. SURE. I AM CATHOLIC. I HAVE BEEN BORN AND  
21 RAISED CATHOLIC AND I PRACTICE AS A CATHOLIC AND JESUITS  
22 ARE AN ORDER, A DENOMINATION OF PRIESTHOOD.

23 Q. THANK YOU.

24 IF YOU COULD TURN FOR A MOMENT TO THE  
25 EXHIBIT THAT HAS BEEN ENTERED AS P 13. COUNSEL WAS JUST

1           SHOWING IT TO YOU.   THIS IS THE LETTER --

2           A.           THIS ONE, YES.   IT WAS NOT MARKED.   I'M SORRY,  
3           THIS ONE?

4           Q.           YES.

5                           MR. FIELD:   AND I BELIEVE, COUNSEL, THIS  
6           WAS ENTERED AS P 13 FROM YESTERDAY?

7                           MR. RIENZI:   I BELIEVE SO.

8                           MR. FIELD:   THANK YOU.

9           BY MR. FIELD:

10          Q.           I WILL REPRESENT IT IS EXHIBIT P 13.   IT'S A  
11          LETTER DATED MAY 7TH TO MARK RIENZI, COUNSEL HERE, FROM  
12          VALERIE ROBINSON, CHAIR OF CORPORATE AND TAX GROUP.   IS  
13          MS. ROBINSON ONE OF YOUR COUNSEL WITH THE CITY?

14          A.           YES.

15          Q.           AND WERE YOU CONSULTED IN AND INVOLVED IN THIS  
16          LETTER?

17          A.           YES.   THE LAW DEPARTMENT PREPARED THIS LETTER.

18          Q.           YES.   THANK YOU.   IF YOU CAN TURN BACK TO THE  
19          SECOND PAGE THAT MR. RIENZI HAD YOU READING FROM.

20          A.           THE SECOND OR THE THIRD?

21          Q.           THIRD PAGE, EXCUSE ME.

22          A.           JUST MAKING SURE.

23          Q.           THERE ARE NO NUMBERS ON THIS ONE.   AND THE  
24          PARAGRAPH THAT IS FROM THE -- THE FOURTH FROM THE BOTTOM  
25          THAT STARTS:   FAMILY EQUALITY IS BOTH A LEGAL

1 REQUIREMENT AND AN IMPORTANT CITY POLICY AND VALUE THAT  
2 MUST BE EMBODIED IN OUR CONTRACTUAL RELATIONSHIPS.

3 A. UM-HUM.

4 Q. CAN YOU READ ME WHAT IT SAYS, THE LAST PORTION  
5 OF THAT PARAGRAPH THAT STARTS "ON A RELATED NOTE."

6 A. ON A RELATED NOTE, CONTRARY TO THE DISCUSSION IN  
7 YOUR LETTER REGARDING DHS'S PRACTICES CONCERNING  
8 SIBLINGS, BECAUSE THE BEST INTERESTS OF THE CHILDREN IN  
9 OUR CARE ARE PARAMOUNT, WE DID RECENTLY GRANT AN  
10 EXCEPTION TO CESSATION OF CSS'S REFERRALS IN THAT  
11 INSTANCE TO ASSURE THAT SIBLINGS WERE PLACED TOGETHER,  
12 AND WE EXPECT THE BEST INTEREST OF CHILDREN WILL REMAIN  
13 PARAMOUNT THROUGHOUT ANY TRANSITION.

14 Q. AS DHS COMMISSIONER IN ALL OF THE COMMUNICATIONS  
15 YOU ARE INVOLVED IN AND RESPONSIBLE FOR, DO YOU HAVE ANY  
16 REASON TO THINK THERE HAS EVER BEEN ANY LACK OF CLARITY  
17 ABOUT YOUR DEPARTMENT'S GRANTING EXCEPTIONS IN THE CASES  
18 OF KINSHIP AND SIBLINGS?

19 A. NO. I THINK WE HAVE BEEN PRETTY CLEAR.

20 Q. THANK YOU.

21 JUST ONE LAST ISSUE. EARLIER IN YOUR  
22 CROSS-EXAM TESTIMONY YOU MENTIONED HEARING NEW TESTIMONY  
23 ON TUESDAY FOR THE -- ABOUT AN ISSUE FOR THE FIRST TIME  
24 THAT CAUSED YOU SOME CONCERN. WHAT WAS THAT TESTIMONY?

25 A. THE TESTIMONY WAS BY JAMES AMATO, WHO INDICATED

1 THAT THERE HAS TO BE A PASTORAL REFERENCE PROVIDED IN  
2 ORDER TO BECOME A FOSTER PARENT WITH CATHOLIC SOCIAL  
3 SERVICES .

4 Q. AND WHAT CONCERN DID THAT CAUSE YOU?

5 A. IT'S A VERY SPECIFIC CHURCH PRACTICE THAT HAS TO  
6 COME FROM A PASTOR OR A RELIGIOUS LEADER AND CLEARLY  
7 CREATES ANOTHER BARRIER THAT IS NOT A REQUIREMENT TO  
8 BECOME A FOSTER PARENT .

9 Q. AND DID YOU HEAR MR. AMATO TESTIFY THAT IT  
10 DIDN'T -- IT WAS NOT REQUIRED TO ONLY BE A CATHOLIC  
11 CHURCH, BUT COULD BE ANY OF A VARIETY OF FORMS OF  
12 RELIGIOUS LEADER?

13 A. I DID, BUT I ALSO HEARD THAT WHAT I INTERPRETED  
14 AS EASIEST WOULD PROBABLY HAVE A SIGNIFICANT CHALLENGE  
15 BEING ABLE TO BECOME A FOSTER PARENT THROUGH CSS, SINCE  
16 THERE WOULD BE NO OPPORTUNITY TO GAIN A PASTORAL  
17 REFERENCE .

18 Q. AND DID THAT CAUSE YOU CONCERN ABOUT THE CITY'S  
19 CONTRACTING WITH CATHOLIC SOCIAL SERVICES?

20 A. IT DOES .

21 MR. FIELD: THANK YOU. NO FURTHER  
22 QUESTIONS, YOUR HONOR .

23 THE COURT: OKAY. ANY OTHER QUESTIONS?

24 MR. RIENZI: VERY BRIEFLY .

25 RECROSS EXAMINATION

1 BY MR. RIENZI:

2 Q. MS. FIGUEROA, AS COMMISSIONER OF DHS YOU ARE NOT  
3 AWARE OF A SINGLE ACTUAL PERSON WHO HAS SAID THEY WERE  
4 UNABLE TO BE CERTIFIED BY CATHOLIC BECAUSE OF A PASTORAL  
5 LETTER REQUIREMENT, IS THAT CORRECT?

6 A. NO, I HAVE NOT. I DIDN'T KNOW UNTIL YESTERDAY.

7 Q. DID YOU DISCUSS THE MATTER WITH OTHERS? DID YOU  
8 DISCUSS THE MATTER WITH OTHERS AT DHS?

9 A. NO. I WAS NOT ALLOWED TO TALK TO THEM. I WAS  
10 UNDER OATH.

11 Q. YOU HAVE GOT GOOD LAWYERS.

12 A. I DO.

13 MR. RIENZI: NOTHING FURTHER, YOUR HONOR.

14 THE COURT: OKAY. ANY OTHER QUESTIONS?

15 MR. FIELD: NOT FOR THIS WITNESS, YOUR  
16 HONOR.

17 THE COURT: THANK YOU.

18 THE WITNESS: THANK YOU, JUDGE.

19 THE COURT: YOUR NEXT WITNESS.

20 MS. CORTES: YOUR HONOR, COULD WE ASK FOR  
21 LUNCH BRIEFLY.

22 THE COURT: YOU CAN'T EAT.

23 MS. CORTES: AT THIS TIME, YOUR HONOR.

24 ALSO TO BE PERFECTLY HONEST, YOUR HONOR, OUR NEXT

25 PROPOSED WITNESS IS NOT CURRENTLY RIGHT HERE. I THINK



1 WE ASSUMED THAT THERE WAS GOING TO BE A LUNCH BREAK AT  
2 THIS TIME. SO I WOULD JUST ASK. I DID ALERT MR. RIENZI  
3 OF OUR NEXT WITNESS. I UNDERSTAND THAT HE HAS AN  
4 OBJECTION. I DON'T KNOW IF YOUR HONOR WANTS TO ADDRESS  
5 THAT NOW OR AFTER LUNCH OR WHATEVER YOUR HONOR'S  
6 PREFERENCE IS.

7 MR. RIENZI: YOUR HONOR, CAN I JUST  
8 BRIEFLY STATE. I THINK THERE'S ACTUALLY A GOOD REASON  
9 TO HAVE A BRIEF DISCUSSION NOW, IF YOU ARE WILLING.

10 THE COURT: OKAY.

11 MR. RIENZI: MY UNDERSTANDING FROM  
12 COUNSEL IS THAT THE NEXT WITNESS WILL BE A MR. FRANK  
13 CERVONE, WHO IS NOT A WITNESS FOR WHOM THEY SUBMITTED A  
14 DECLARATION IN ANY OF THEIR MOVING PAPERS AND WHOM I AM  
15 TOLD IS SOMEBODY THAT WISHES TO QUALIFY AS AN EXPERT,  
16 SOMEBODY WHO IS NOT DISCLOSED TO US PREVIOUSLY, WHO IS  
17 SUPPOSED TO BE AN EXPERT WHO WE DON'T HAVE ANY OF THE  
18 EXPERT MATERIALS ON. I THINK IT'S FRANKLY IMPROPER TO  
19 GO FORWARD WITH THE WITNESS IN THAT CIRCUMSTANCE. AND  
20 SO I WOULD ASK YOUR HONOR IF YOU ARE WILLING TO RULE  
21 NOW, I JUST DON'T THINK THEY SHOULD BE INTRODUCING NEW  
22 WITNESSES WHO HAVE NOT BEEN PART OF THE PLEADINGS  
23 PREVIOUSLY.

24 MS. CORTES: YOUR HONOR, MR. CERVONE WAS  
25 TO BE AN AFFIANT IN THE PROPOSED -- IN THE INTERVENOR'S

1 PAPERS. HE IS BEING REPRESENTED BY MS. MARY CATHERINE  
2 ROPER FOR THE ACLU. SO HE DID HAVE NOTICE. HE IS PART  
3 OF THAT -- OF THOSE PAPERS, YOUR HONOR. I DID PROVIDE  
4 COUNSEL WITH MR. CERVONE'S RESUME. THERE IS NO  
5 REQUIREMENT UNDER THE FEDERAL RULES THAT REQUIRE US TO  
6 PROVIDE THEM WITH SUCH NOTICE. WE ALSO DID NOT HAVE A  
7 NOTICE OF ALL OF THEIR WITNESSES FOR TODAY, YOUR HONOR.  
8 IF COUNSEL WOULD LIKE TO INTERVIEW MR. CERVONE AHEAD OF  
9 TIME WITH MS. ROPER PRESENT THERE IS NO ISSUE FOR OUR  
10 SIDE OR FOR MS. ROPER.

11 HIS PROPOSED TESTIMONY WOULD BE VERY  
12 RELEVANT TO THESE PROCEEDINGS. HE HAS BEEN A CHILD  
13 ADVOCATE IN -- SPECIFICALLY FOR THE CITY AND COUNTY OF  
14 PHILADELPHIA FOR THE PAST 40 YEARS. WE HAVE HEARD A LOT  
15 OF TESTIMONY -- OR AT LEAST OPPOSING COUNSEL HAS TRIED  
16 TO ELICIT A LOT OF TESTIMONY THAT IT'S ONLY ONE SIDE  
17 THAT IS GOING TO BE HARMED BY YOUR HONOR NOT GRANTING  
18 THIS TRO. MR. CERVONE WOULD PROVIDE YOUR HONOR WITH THE  
19 TESTIMONY, THE VERY RELEVANT TESTIMONY FROM HIS  
20 EXPERIENCE AS A CHILD ADVOCATE, AS TO WHAT WOULD OCCUR  
21 IF YOUR HONOR DOES GRANT THE TRO AND TO THE DEVASTATING  
22 EFFECT ON THE CHILDREN AND SPECIFICALLY THE LGBTQ  
23 CHILDREN AND ALSO THE LGBTQ SAME-SEX COUPLES AND HIS  
24 EXPERIENCE WITHIN THE FOSTER SYSTEM AS A CHILD ADVOCATE.

25 AND EVEN IF YOUR HONOR DOES NOT QUALIFY

1 HIM AS AN EXPERT, I WOULD PROPOSE TO YOUR HONOR THAT HE  
2 WOULD STILL BE ALLOWED TO PROVIDE OPINION TESTIMONY ON  
3 THAT FRONT. AND AGAIN, WE WOULD ALLOW MR. RIENZI AND  
4 HIS ENTIRE TEAM TO QUESTION HIM AHEAD OF TIME AND EVEN  
5 TO CONTINUE THE VOIR DIRE IN OPEN COURT BEFORE YOUR  
6 HONOR UNTIL YOUR HONOR IS SATISFIED THAT HE IS AN ACTUAL  
7 EXPERT IN THIS FIELD.

8 MR. RIENZI: YOUR HONOR, I SIMPLY SAY  
9 THAT THE TIME FOR INTRODUCING MR. CERVONE'S TESTIMONY  
10 WOULD HAVE BEEN WHEN THEY PRESENTED THEIR ARGUMENTS,  
11 THEIR LEGAL ARGUMENTS IN THEIR BRIEFS. AND INTRODUCING  
12 THE IDEA OF AN EXPERT TESTIFYING IN THE MIDDLE OF THE  
13 DAY TODAY AND PROPOSING THAT I TAKE HIS DEPOSITION OVER  
14 LUNCH SEEMS LIKE AN UNFAIR PRACTICE AND EXCEEDINGLY  
15 DIFFICULT FOR ANYBODY TO DO. YOU WILL HAVE A CHANCE TO  
16 HEAR FROM MR. CERVONE ONCE YOU DECIDE WHETHER OR NOT HE  
17 SHOULD BE ABLE TO INTERVENE. HE IS ONE OF THE COUNCIL  
18 OF INTERVENORS, APPARENTLY.

19 SO THAT MOTION IS BEFORE YOUR HONOR. OUR  
20 OPPOSITION IS DUE NEXT WEEK. YOU HAVE ACCEPTED THEIR  
21 BRIEF -- HIS BRIEF AND HIS WRITINGS AS AN AMICUS  
22 ALREADY. I REALLY DO NOT THINK IT'S FAIR TO GO DOWN  
23 THIS PATH.

24 MS. CORTES: YOUR HONOR, MR. RIENZI CAN  
25 ADDRESS THAT PART AS TO -- IT'S MY UNDERSTANDING MR.

1 CERVONE CAN CLARIFY FOR YOUR HONOR THAT HE WILL ACTUALLY  
2 WITHDRAW AS COUNSEL, GIVEN THAT HE WOULD BE ALLOWED TO  
3 TESTIFY TODAY AS A WITNESS. SO HE WOULD WITHDRAW AS  
4 COUNSEL AND MS. ROPER WOULD CONTINUE ALONG WITH THE  
5 REPRESENTATION.

6 IS THAT CORRECT, MS. ROPER?

7 MS. ROPER: THAT IS CORRECT, YOUR HONOR.  
8 AND OBVIOUSLY AS WE HAVE BEEN PARTICIPATING AS  
9 INTERVENORS, WE MIGHT WELL HAVE CALLED HIM OR SOMEONE  
10 SIMILAR TO TESTIFY. BUT SINCE WE ARE NOT HERE TO DO  
11 THAT, I THINK THE CITY WANTED TO DO THAT. AGAIN, THIS  
12 IS NOT OUR FIGHT. I JUST AM HERE TO CLEAR UP ANY  
13 QUESTIONS ABOUT HIS RELATIONSHIP WITH RESPECT TO THE  
14 INTERVENORS.

15 MS. CORTES: AND YOUR HONOR, TO MR.  
16 RIENZI'S POINT AS NOT BEING ABLE TO DEPOSE HIM, WE ARE  
17 ON YOUR HONOR'S TRO SCHEDULE. THEY ARE THE ONES THAT  
18 HAVE FILED THE TRO/PRELIMINARY INJUNCTION. SO WE ARE  
19 ALL ON AN EXPEDITED SCHEDULE. WE WOULD HAVE ALL LOVED  
20 TO HAVE HAD THE TIME TO DEPOSE ALL OF THEIR WITNESSES,  
21 BUT WE ARE ALL UNDER THIS SCHEDULE. SO NONE OF US WERE  
22 ABLE TO DO THAT.

23 THE COURT: OKAY. I AM GOING TO PERMIT  
24 THE WITNESS TO TESTIFY. I AM GOING TO RECESS UNTIL  
25 1:30. AND IF YOU CALL HIM AND HAVE HIM REPORT BACK, SO

1 THAT HE COULD BE MADE AVAILABLE TO COUNSEL SO THAT WE  
2 CAN PROCEED AT 1:30.

3 MS. CORTES: YOUR HONOR, HE HAD A MEETING  
4 WITH HIS STAFF STARTING AT 12:30. HE BELIEVED IT WOULD  
5 LAST A HALF HOUR. I HAVE ASKED HIM TO RETURN TO COURT  
6 AS QUICKLY AS HE POSSIBLY CAN SO HE WILL BE AVAILABLE TO  
7 COUNSEL FOR THE PLAINTIFFS.

8 THE COURT: VERY WELL. OKAY. WE WILL  
9 RECESS UNTIL 1:30.

10 ALL COUNSEL: THANK YOU, YOUR HONOR.

11 (ALL RISE.)

12 (LUNCH BREAK TAKEN.)

13 THE COURT: GOOD AFTERNOON. YOU MAY BE  
14 SEATED. ARE WE READY TO PROCEED?

15 MS. CORTES: YES, YOUR HONOR.

16 MR. RIENZI: YES, YOUR HONOR.

17 THE COURT: CALL YOUR WITNESS.

18 MS. CORTES: DEFENDANTS CALL FRANK  
19 CERVONE TO THE STAND.

20 THE CLERK: PLEASE REMAIN STANDING AND  
21 RAISE YOUR RIGHT HAND.

22 (WITNESS SWORN.)

23 THE CLERK: CAN YOU STATE AND SPELL YOUR  
24 NAME FOR THE RECORD, PLEASE?

25 THE WITNESS: FRANK CERVONE, C-E-R-V AS

1 IN VICTOR, O-N-E.

2 THE COURT: GOOD AFTERNOON.

3 THE WITNESS: GOOD AFTERNOON.

4 MS. CORTES: MAY I PROCEED, YOUR HONOR?

5 THE COURT: YES.

6 DIRECT EXAMINATION - QUALIFICATIONS

7 BY MS. CORTES:

8 Q. GOOD AFTERNOON, MR. CERVONE. CAN YOU PLEASE

9 TELL HER HONOR WHERE YOU WENT TO SCHOOL?

10 A. COLLEGE?

11 Q. YOU CAN START WITH COLLEGE AND YOU CAN WORK YOUR

12 WAY UP.

13 A. UNIVERSITY OF PENNSYLVANIA FOR UNDERGRAD,

14 VILLANOVA LAW SCHOOL, AND LASALLE UNIVERSITY FOR A

15 MASTER'S DEGREE IN THEOLOGY.

16 Q. CAN YOU TELL HER HONOR WHAT IS IT THAT YOU DID

17 IMMEDIATELY AFTER LAW SCHOOL?

18 A. CAREER-WISE?

19 Q. YES.

20 A. SO I SERVED FOR A YEAR AS A STAFF ATTORNEY AT

21 DELAWARE COUNTY LEGAL ASSISTANCE ASSOCIATION, A LEGAL

22 AID PROGRAM, WORKING WITH LAW STUDENTS AS AN ADJUNCT

23 CLINICAL PROFESSOR FROM VILLANOVA. I THEN MOVED ON TO

24 SAINT GABRIEL'S SYSTEM, WHICH IS A RESIDENTIAL -- A

25 PROGRAM FOR RESIDENTIAL TREATMENT AND DAY TREATMENT

1 PROGRAMS FOR DELINQUENT BOYS RUN BY THE CATHOLIC SOCIAL  
2 SERVICES, THE ARCHDIOCESE OF PHILADELPHIA, WHERE I WAS A  
3 TEACHER AND A LAWYER AND A CHRISTIAN BROTHER, A MEMBER  
4 OF THE RELIGIOUS COMMUNITY.

5 Q. AND THEN JUST GOING BACK TO YOUR EXPERIENCE AS  
6 AN ADJUNCT PROFESSOR AT VILLANOVA, CAN YOU TELL HER  
7 HONOR EXACTLY WHAT IT IS YOU DID AS AN ADJUNCT PROFESSOR  
8 THERE?

9 A. SO WE RAN A -- THE DELAWARE COUNTY LEGAL  
10 ASSISTANCE ESSENTIALLY HAD A CONTRACT OF SOME SORT WITH  
11 VILLANOVA LAW SCHOOL. THESE ARE IN SOMEWHAT THE EARLY  
12 DAYS OF CLINICAL EDUCATION AND SO THE LAW SCHOOL  
13 OUTSOURCED THE ADMINISTRATION OF THEIR CLINICAL PROGRAM  
14 TO THIS LEGAL AID OFFICE. AND SO MY JOB WAS TO  
15 SUPERVISE LAW STUDENTS IN DOMESTIC VIOLENCE CASES AND  
16 CHILD SUPPORT CASES IN STATE COURT IN DELAWARE COUNTY IN  
17 MEDIA.

18 Q. AND THEN YOU MENTIONED WORKING AT SAINT  
19 GABRIEL'S?

20 A. CORRECT.

21 Q. WHAT IS IT THAT YOU DID AFTER YOUR TIME AT SAINT  
22 GABRIEL'S CAREER-WISE?

23 A. SO I DID -- IN 1989 I LEFT SAINT GABE'S AND WENT  
24 BACK TO DELAWARE COUNTY -- DELAWARE COUNTY LEGAL  
25 ASSISTANCE IN ESSENTIALLY THE SAME ROLE AS A CLINICAL

1 INSTRUCTOR FOR A YEAR. AND THEN WAS HIRED AS GENERAL  
2 COUNSEL OF THE SUPPORT CENTER FOR CHILD ADVOCATES IN  
3 APRIL OF 1990.

4 Q. AND ARE YOU STILL THERE TODAY?

5 A. I AM. IN NOVEMBER OF 1992 I WAS ELECTED -- I  
6 WAS ELECTED. I WAS SELECTED BY THE BOARD OF DIRECTORS  
7 TO BE THE EXECUTIVE DIRECTOR OF CHILD ADVOCATES. AND I  
8 HAVE CONTINUED IN THE ROLE OF EXECUTIVE DIRECTOR SINCE  
9 NOVEMBER OF '92.

10 Q. AND THIS MIGHT SEEM LIKE AN OBVIOUS QUESTION,  
11 BUT CAN YOU TELL HER HONOR WHAT IT IS -- WHAT DOES IT  
12 MEAN TO BE A CHILD ADVOCATE?

13 A. SO CHILD ADVOCATE IS A TERM OF ART USED ALMOST  
14 EXCLUSIVELY IN OUR WORK IN PHILADELPHIA COUNTY. MOST  
15 JURISDICTIONS USE THE PHRASE GUARDIAN AD LITEM, AND IT  
16 IS ESSENTIALLY TO SERVE AS A LAWYER FOR A CHILD,  
17 COURT-APPOINTED LAWYER FOR A CHILD IN A CHILD PROTECTION  
18 PROCEEDING, WHICH IN PENNSYLVANIA IS KNOWN AS A  
19 DEPENDENCY COURT CASE IN THE JUVENILE COURTS. OUR  
20 OFFICE REPRESENTS CHILDREN IN CHILD WELFARE PROCEEDINGS  
21 AND RELATED PROCEEDINGS IN PHILADELPHIA'S COURT OF  
22 COMMON PLEAS.

23 Q. AND BEFORE WE GO INTO THE SPECIFICS AS TO WHAT  
24 YOU WOULD DO AS A CHILD ADVOCATE, CAN YOU TELL HER HONOR  
25 SORT OF WHO ARE THE PLAYERS IN THE DEPENDENCY COURT



1 SYSTEM IN PHILADELPHIA?

2 A. A CLASSIC, WE THINK OF A TRIAD OF CHILD, PARENT  
3 AND STATE AS THE THREE PARTIES TO A PROCEEDING. AND SO  
4 THE CHILD OR SIBLING GROUP IS A PARTY OF INTEREST IN  
5 THAT PROCEEDING. THOSE PROCEEDINGS ARE TYPICALLY  
6 INITIATED BY A COUNTY CHILDREN AND YOUTH AGENCY. HERE  
7 IN PHILADELPHIA IT'S THE DEPARTMENT OF HUMAN SERVICES  
8 AND THE DEPARTMENT OF HUMAN SERVICES IS REPRESENTED BY  
9 LAWYERS FROM THE CITY LAW DEPARTMENT. AND THEN THERE  
10 ARE ONE OR TWO PARENTS IN THE PROCEEDING. THEY  
11 TYPICALLY HAVE SEPARATE COUNSEL, AND THUS WE HAVE CHILD,  
12 PARENT, STATE AS THE THREE KIND OF MAIN ACTORS OR  
13 PARTIES. THERE ARE A VARIETY OF PROVIDER AGENCIES WHO  
14 COME BEFORE THE COURT TYPICALLY NOT AS PARTY, BUT IN  
15 EITHER A WITNESS ROLE OR OTHERWISE COME TO THE ATTENTION  
16 OF THE COURT.

17 Q. AND WHEN YOU MENTIONED PARENTS, CAN YOU BREAK  
18 THAT DOWN, DO YOU MEAN BIOLOGICAL PARENTS, FOSTER  
19 PARENTS, CAN YOU JUST PLEASE CLARIFY FOR HER HONOR WHAT  
20 YOU MEANT BY PARENTS?

21 A. SO THE NATURE OF A DEPENDENCY PROCEEDING IS TO  
22 INTERVENE WITH REGARD TO THE PARENT/CHILD RELATIONSHIP,  
23 THE LEGAL RELATIONSHIP. SO MOSTLY WE ARE TALKING ABOUT  
24 BIRTH PARENTS, MOTHERS AND FATHERS. ON OCCASION THERE  
25 IS SOME OTHER ADULT CAREGIVER WHO HAS A LEGAL

1 RELATIONSHIP WITH THE CHILD AND THUS THEY GET STANDING  
2 IN THAT DEPENDENCY PROCEEDING, SO THAT COULD BE A  
3 GRANDPARENT, IT COULD BE A STRANGER WHO HAS BEEN  
4 PROVIDING CARE FOR THE CHILD OR MAYBE WHO HAS BEEN  
5 RECOGNIZED BY SOME OTHER COURT AS HAVING CUSTODY. THOSE  
6 ARE ALL THE FOLKS THAT HAVE A LEGAL RELATIONSHIP WITH  
7 THE CHILD. WELL, OF COURSE, WE ALSO INTERACT WITH  
8 CAREGIVERS WHO ARE INTERPOSED BY SOME PROVIDER AGENCY  
9 SUCH AS WE HAVE BEEN DISCUSSING HERE FROM A FOSTER CARE  
10 AGENCY OR THE LIKE. AND THOSE FOLKS MIGHT BE STRANGERS  
11 TO THE CHILD BEFORE THEY COME TO KNOW THE CHILD OR THEY  
12 MIGHT BE A RELATIVE OF THE CHILD, WHAT WE CALL KINSHIP  
13 RELATIONSHIP.

14 Q. AND JUST FOR CLARITY, HOW LONG HAVE YOU BEEN A  
15 CHILD ADVOCATE?

16 A. ONE MIGHT SAY SINCE I HAVE BEEN WORKING AT THE  
17 SUPPORT CENTER FOR CHILD ADVOCATES SINCE 1990, IN THIS  
18 FORMAL SENSE OF GUARDIAN AD LITEM IN COURT CASES. I  
19 FEEL LIKE MY OTHER ANSWER TO THAT QUESTION OFTEN IS MY  
20 WHOLE LIFE. THIS IS WHAT I FEEL LIKE I -- I AM ABOUT.  
21 IT IS BECOME MY PERSONAL MISSION, MY SENSE OF  
22 SELF-IDENTITY IS TO BE AN ADVOCATE FOR CHILDREN.

23 Q. AND IN YOUR PREPARING TO GO TO COURT AND IN YOUR  
24 ROLE AS A CHILD ADVOCATE, CAN YOU EXPLAIN TO HER HONOR  
25 WHAT IS IT THAT YOU HAVE TO DO TO PREPARE AND MAKE SURE

1 THAT YOU FULFILL THOSE DUTIES?

2 A. SO THE MODEL THAT I USE IN MY OWN CASES IS THE  
3 MODEL OF OUR OFFICE, WHAT WE THINK OF AS A SERVICE  
4 MODEL. AND WE THINK OF OUR TASK AS TO REPRESENT THE  
5 WHOLE CHILD. A CHILD IS REFERRED TO ME AND MY -- I  
6 DON'T HAVE AN INDIVIDUAL LAW PRACTICE OUTSIDE OF THE  
7 OFFICE. SO WHEN I USE "WE," I'M TALKING ABOUT BOTH MY  
8 OWN PRACTICE AND THAT OF MY COLLEAGUES WHO ARE IN OUR  
9 OFFICE. SO OUR PRACTICE INVOLVES RESPONDING TO THE  
10 PRESENTING PROBLEM THAT BROUGHT A CHILD TO THE ATTENTION  
11 OF OUR OFFICE AND TO THE ATTENTION OF THE COURTS. THAT  
12 PRESENTING PROBLEM MIGHT, FOR EXAMPLE, BE AN INCIDENT OF  
13 CHILD SEXUAL ABUSE OR PHYSICAL ABUSE OR SEVERE NEGLECT,  
14 WHICH INCIDENT WAS THEN BROUGHT TO THE COURT, FOR  
15 EXAMPLE, BY THE DEPARTMENT OF HUMAN SERVICES IN A  
16 PETITION. THAT CASE IS ESSENTIALLY PETITIONED TO COURT  
17 AND WE ARE APPOINTED BY THE COURT TO SERVE AS COUNSEL  
18 AND GUARDIAN AD LITEM FOR THE CHILD.

19 WE WORK HARD TO UNDERSTAND THE EVENTS,  
20 BACKGROUND RELATED TO THE PRESENTING PROBLEM. AND THEN  
21 AS WELL TO UNDERSTAND THE -- ALL OF THE COLLATERAL  
22 ISSUES THAT MIGHT BE INVOLVED IN A CHILD'S LIFE. ONE  
23 MIGHT THINK, FOR EXAMPLE, IN A CHILD SEX ABUSE CASE THAT  
24 THAT CHILD NEEDS THERAPY AND NEEDS ACCESS TO THERAPY,  
25 NEEDS TRANSPORTATION TO THE THERAPIST, NEEDS A REPORT

1 FROM THE THERAPIST. WE NEED TO KNOW WHETHER SHE IS  
2 MAKING PROGRESS. SHE NEEDS TO BE IN SCHOOL. SHE NEEDS  
3 TO BE IN THE RIGHT SCHOOL. AND SO WE ARE GOING TO  
4 ENGAGE HER SCHOOL COMMUNITY, COUNSELORS MOSTLY.

5 IN THE MAIN WE ARE GOING TO INTERACT WITH  
6 THE CASE MANAGERS ON THE CASE. HERE IN PHILADELPHIA  
7 THEY WORK FOR CUA'S, COMMUNITY UMBRELLA AGENCIES, WE  
8 INTERACT WITH THE CUA WORKER ON THE CASE. WE MIGHT WORK  
9 WITH SOME OF THE PARTS OF PHILADELPHIA DHS THAT WE HAVE  
10 HEARD ABOUT OVER THE PAST FEW DAYS, LIKE THE CENTRAL  
11 REFERRAL UNIT, CONTRACT ADMINISTRATION, THE  
12 COMMISSIONER'S OFFICE OR OTHERWISE TO DEAL WITH PROBLEMS  
13 THAT EMERGE WITH REGARD TO THAT CHILD.

14 Q. CAN YOU TELL HER HONOR HOW -- THIS MIGHT BE  
15 DIFFICULT, BUT CAN YOU ESTIMATE FOR HER HONOR ABOUT HOW  
16 MANY CHILDREN YOU HAVE SERVED AS A CHILD ADVOCATE FOR IN  
17 YOUR -- AS YOUR TIME -- DURING YOUR TENURE?

18 A. SO I DON'T HAVE AN INDIVIDUAL PRACTICE -- I'M  
19 SORRY, CASELOAD THESE DAYS. FOR MANY YEARS OF MY  
20 SERVICE AS DIRECTOR I ACTUALLY HAD A SUBSET OF KIDS WHO  
21 WERE ASSIGNED TO ME IN THE MAIN. NOW I SERVE AS ONE OF  
22 THE ROTATING STAFF ATTORNEYS THAT COVER CASES. ANY TIME  
23 YOU ARE IN COURT ON BEHALF OF A CHILD, YOU ARE  
24 REPRESENTING THAT CHILD. OUR OFFICE IS APPOINTED TO  
25 REPRESENT THE CHILD, NOT INDIVIDUAL ATTORNEYS. SO I AM

1 NOT PERSONALLY APPOINTED TO REPRESENT VERY MANY KIDS.

2 YOU KNOW, IT HAPPENS, IN DISCRETE MOMENTS.

3 THE AGENCY REPRESENTS THESE DAYS ABOUT  
4 1,100 KIDS A YEAR. SO IN ONE SENSE I FEEL RESPONSIBLE  
5 AND AS REPRESENTATIVE I REPRESENT ALL 1,100 OF THOSE  
6 KIDS. I CERTAINLY DON'T KNOW THEM ALL. I WAS IN COURT  
7 YESTERDAY AND HAD THREE KIDS WHO I REPRESENTED, TWO WHO  
8 WERE ADOPTED AND ONE WHO IS IN FOSTER CARE. ON FRIDAY I  
9 HAD SEVEN KIDS WHO I REPRESENTED IN FOUR PROCEEDINGS.  
10 SO I WOULD SAY THAT I HAVE PERSONALLY ENGAGED PROBABLY  
11 SEVERAL THOUSAND CHILDREN, EITHER INDIVIDUAL  
12 REPRESENTATION OVER MY CAREER, AND CERTAINLY HALF OF THE  
13 AGENCY I BELIEVE OUR NUMBER IS SOMEWHERE IN THE ORDER OF  
14 8,000 KIDS DURING MY TIME. VERY ROUGH ESTIMATE.

15 Q. AND I GUESS IN BOTH YOUR PERSONAL AND AS  
16 REPRESENTATIVE OF YOUR -- OF THIS SUPPORT CENTER FOR  
17 CHILD ADVOCATES, CAN YOU TELL HER HONOR ABOUT HOW MANY  
18 OF THESE CHILDREN HAVE SELF-IDENTIFIED AS LGBTQ YOUTH?

19 A. FOR THE LAST ABOUT TEN YEARS WE HAVE MAINTAINED  
20 A SPECIALTY PRACTICE IN WHICH WE ASSIGN DESIGNATED STAFF  
21 TO WORK WITH YOUTH WHO HAVE SELF-IDENTIFIED. AND SO  
22 ALONG THE WAY WE HAVE HAD OCCASION TO KEEP COUNT AT  
23 LEAST OF THOSE WHO HAVE IDENTIFIED -- SELF-IDENTIFIED.  
24 AND THAT NUMBER WE THINK IS SOMEWHERE BETWEEN 25 AND 50  
25 CHILDREN A YEAR WHO HAVE EXPLICITLY SELF-IDENTIFIED.

1 CERTAINLY THERE ARE SOME NUMBER OF ADDITIONAL YOUTH --  
2 PARDON ME -- WHO HAVE NOT YET COME OUT TO THEMSELVES OR  
3 TO US OR TO OTHERS. AND, YOU KNOW, ONE MIGHT IMAGINE  
4 THERE MAY BE ANOTHER SEVERAL DOZEN CHILDREN ON OUR  
5 CASELOAD AT ANY ONE MOMENT WHO ARE QUESTIONING THEIR  
6 IDENTITY.

7 MR. RIENZI: OBJECTION, MOVE TO STRIKE AS  
8 SPECULATION.

9 THE COURT: OVERRULED.

10 BY MS. CORTES:

11 Q. AND MR. CERVONE, YOU SAID YOU DESIGNATE STAFF  
12 SPECIFICALLY FOR THESE YOUTHS. WHY IS THAT?

13 A. OUR SERVICE MODEL INCLUDES ASSIGNMENT OF EACH  
14 CHILD TO A STAFF MEMBER AS RESPONSIBLE FOR THAT CASE.  
15 AND OUR SERVICE MODEL WE HAVE NOT MENTIONED INCLUDES  
16 WORKING WITH VOLUNTEER LAWYERS FROM THE LEGAL COMMUNITY.  
17 WE THINK OF OURSELVES AS THE VOLUNTEER LEGAL SERVICE FOR  
18 ABUSED AND NEGLECTED CHILDREN. SO THAT WHEN A LAWYER  
19 FROM THE COMMUNITY WANTS TO DO THEIR PRO BONO WORK FOR  
20 ABUSED KIDS, THEY COME TO US. SO IN PART IN ORDER TO  
21 FACILITATE THAT VOLUNTEER MODEL, EACH CHILD IS ASSIGNED  
22 TO A CHILD ADVOCATE SOCIAL WORKER, PROBABLY 90 PERCENT  
23 OR MORE OF OUR KIDS ARE ASSIGNED TO A CHILD ADVOCATE  
24 SOCIAL WORKER. EIGHT TO TEN PERCENT ARE ASSIGNED TO A  
25 STAFF ATTORNEY FOR PRIMARY RESPONSIBILITY. AND, YOU

1 KNOW, THE PURPOSE OF THOSE SEVERAL ASSIGNMENTS IS SO  
2 THAT THERE IS A DISCRETE CASE MANAGER WHO KNOWS ABOUT  
3 THE CASE AND WHO HAS -- IS ESSENTIALLY THE COLLECTOR OF  
4 KNOWLEDGE AND DOCUMENTS AND THE PROTAGONIST FOR PURPOSES  
5 OF ADVOCACY.

6 Q. NOW, I JUST WANT TO GO BACK TO YOUR GENERAL  
7 EXPERIENCE IN CHILD ADVOCACY. HAVE YOU WRITTEN OR  
8 PUBLISHED ANY ARTICLES REGARDING CHILD ADVOCACY?

9 A. I'VE PUBLISHED PROBABLY DOZEN OF PIECES, LAW  
10 REVIEW ARTICLES, OP-EDS, NEWSLETTER PIECES, ARTICLES IN  
11 PROFESSIONAL PUBLICATIONS, THE ABA LITIGATION MAGAZINE  
12 -- I'M SORRY, WHATEVER THEIR PROFESSIONAL JOURNAL IS,  
13 THE SECTION ON LITIGATION OF THE ABA. SO I DO A LOT OF  
14 WRITING, PROBABLY PUBLISH THREE OR FOUR OR FIVE PIECES A  
15 YEAR FOR, IN A SENSE, GENERAL CIRCULATION.

16 Q. AND BESIDES YOUR REGULAR SUPPORT TESTIMONY, HAVE  
17 YOU BEEN ASKED TO TESTIFY REGARDING MATTERS OF CHILD  
18 ADVOCACY?

19 MR. RIENZI: OBJECTION, JUST GET CLARITY  
20 IF YOU ARE TALKING ABOUT THIS CASE OR --

21 MS. CORTES: I WILL REPHRASE, YOUR HONOR.

22 THE COURT: YES.

23 BY MS. CORTES:

24 Q. MR. CERVONE, HAVE YOU BEEN ASKED TO TESTIFY  
25 REGARDING CHILD ADVOCACY BESIDES IN THIS PARTICULAR

1 CASE?

2 A. YES. SO TUESDAY MORNING I TESTIFIED BEFORE THE  
3 GENERAL ASSEMBLY -- PENNSYLVANIA GENERAL ASSEMBLY HOUSE,  
4 CHILD AND YOUTH COMMITTEE IN SUPPORT OF THE CREATION OF  
5 THE OFFICE OF THE CHILDREN'S ADVOCATE, ESSENTIALLY AN  
6 OMBUDSMAN FUNCTION. THAT'S THE THIRD TIME I HAVE  
7 TESTIFIED ON THAT SUBJECT IN THE LAST 15 YEARS. IN JULY  
8 OF LAST YEAR, JULY OF '17, I TESTIFIED BEFORE THE  
9 INTERBRANCH COMMISSION. I PREVIOUSLY THOUGHT IT WAS THE  
10 INTERRELATIONS COMMISSION BUT IT WAS THE PENNSYLVANIA  
11 INTERBRANCH COMMISSION ON GENDER AND RACIAL BIAS ON THE  
12 SUBJECT OF THE EXPERIENCE OF LGBT YOUTH IN THE CHILD  
13 WELFARE SYSTEM.

14 Q. AND LET ME JUST STOP YOU RIGHT THERE. CAN YOU  
15 TELL HER HONOR WHAT YOU TESTIFIED TO? CAN YOU TELL US  
16 MORE ABOUT THE SUBJECT OF THAT TESTIMONY?

17 A. THE SUBJECT OF THAT TESTIMONY?

18 Q. YES.

19 A. OF THAT EVENT?

20 Q. YES.

21 A. YEAH. SO OUR OFFICE WAS INVITED TO SPEAK TO THE  
22 INTERBRANCH COMMISSION ON THIS QUESTION OF THE  
23 EXPERIENCE OF GAY AND LESBIAN YOUTH IN THE CHILD WELFARE  
24 SYSTEM AND HOW THE SYSTEMS MIGHT SERVE THOSE CHILDREN  
25 BETTER, AND SO --



1 Q. I'M SORRY TO INTERRUPT. WHEN YOU SAY THE  
2 SYSTEMS, CAN YOU PLEASE EXPLAIN TO HER HONOR WHAT  
3 EXACTLY IS MEANT BY THAT?

4 A. YES. SO THE INTERBRANCH COMMISSION, AS I  
5 UNDERSTAND IT, IS A KIND OF JOINTLY-CREATED, ESSENTIALLY  
6 RESEARCH ARM TO MAKE RECOMMENDATIONS TO THE SEVERAL  
7 BRANCHES OF STATE GOVERNMENT. AND SO IT IS SOMEHOW  
8 COMMISSIONED BY BOTH RESOLUTION OF THE GENERAL ASSEMBLY,  
9 THE LEGISLATURE, AND APPOINTMENT FROM THE PENNSYLVANIA  
10 SUPREME COURT. TO BE HONEST, I DON'T KNOW IF THE  
11 EXECUTIVE BRANCH HAS ANY APPOINTMENTS IN THE  
12 INTERBRANCH, YOU KNOW, STRUCTURE.

13 Q. AND CAN YOU TELL BEFORE -- I'M SORRY, BEFORE I  
14 INTERRUPTED YOU TO EXPLAIN WHAT THE SYSTEMS WERE, COULD  
15 YOU TELL HER HONOR WHAT IS IT -- MORE SPECIFICALLY WHAT  
16 IT IS YOU TESTIFIED REGARDING THAT --

17 MR. RIENZI: OBJECTION, HEARSAY.

18 THE COURT: OVERRULED.

19 THE WITNESS: THE MEMBERS INVITED US TO  
20 SPEAK ABOUT IT AND WHAT WE SPOKE ABOUT. I WENT WITH A  
21 COLLEAGUE, A SPECIALIST, A WOMAN WHO -- A MASTER SOCIAL  
22 WORKER WHO HAD RESPONSIBILITY FOR THIS PARTICULAR  
23 CASELOAD FOR THE LAST FIVE YEARS. AND WE SHARED -- IN  
24 PART WE SHARED THE STORIES AND EXPERIENCE OF ESSENTIALLY  
25 DISCRIMINATION, ABUSE, OPPRESSION AND BULLYING THAT MANY

1 OF OUR CLIENTS HAVE EXPERIENCED DURING THEIR TIME EITHER  
2 IN FOSTER CARE OR IN RESIDENTIAL PROGRAMS OR WITH THEIR  
3 BIRTH FAMILIES. SO WE TALK ABOUT, IN A SENSE, THE  
4 EXPERIENCE OF THEIR PROBLEMS. AS WELL WE TALK ABOUT IN  
5 A SENSE, SOLUTIONS.

6 SO WE SPEND SOME TIME ACTUALLY TEACHING  
7 ABOUT, IN A SENSE, LANGUAGE THAT MIGHT BE MORE  
8 APPROPRIATELY USED TO ADDRESS ISSUES OF TRANSGENDER  
9 IDENTITY. YOU KNOW, THE KIND OF RESPECT THAT HAS COME  
10 TO EMERGE IN THE PUBLIC ARENA THESE DAYS AROUND SELECTED  
11 OR PREFERRED PRONOUNS, PERSONS OF TRANSGENDER OR  
12 BI-RACIAL IDENTITY -- I'M SORRY, BI-SEXUAL IDENTITY,  
13 OCCASIONALLY HAVE A DESIRE TO NOT BE KNOWN IN THOSE  
14 BINARY "HE" "SHE" TERMS. SO WE EXPLORED SOME OF THAT.  
15 THIS IS A NEW AREA FOR MOST PEOPLE AND IT WAS A NEW TURF  
16 FOR THIS BODY AND THEY INVITED US TO SHARE WHAT WE KNOW  
17 FROM THE EXPERIENCE OF KIDS AND WHAT WE HAVE SEEN THERE.

18 Q. AND WHAT WERE SOME OF THE EXAMPLES OF THE  
19 DISCRIMINATION THAT YOU TESTIFIED TO REGARDING THE  
20 CHILDREN?

21 MR. RIENZI: OBJECTION, HEARSAY.

22 THE COURT: OVERRULED.

23 THE WITNESS: SO ONE SCENARIO THAT I  
24 RECALL IN A WAY IS TYPICAL OF THE EXPERIENCE OF KIDS IS  
25 A YOUNG MAN, AND I THINK HE IDENTIFIES HIMSELF AS MALE,

1 WHO WAS IN CARE BECAUSE HE HAD BEEN HARASSED BY HIS OWN  
2 BIRTH FAMILY ABOUT HIS EMERGING SEXUAL IDENTITY. I  
3 DON'T RECALL IF THERE WAS PHYSICAL ABUSE IN THAT CASE.  
4 BUT IT WOULD NOT BE UNCOMMON FOR GAY KIDS TO BE BOTH  
5 PHYSICALLY AND EMOTIONALLY ABUSED IN THEIR FAMILY OF  
6 ORIGIN. IT'S ONE OF THE REASONS IN GENERAL THAT GAY  
7 KIDS COME INTO CHILD WELFARE FOR PROTECTION, BECAUSE  
8 THEY ARE NOT WELCOME AT HOME.

9 MR. RIENZI: OBJECTION, YOUR HONOR.  
10 COUNSEL HAS YET PROFFERED THE WITNESS AS AN EXPERT. I  
11 DON'T KNOW IF WE ARE THERE YET, BUT IT SURE SEEMS LIKE  
12 THE WITNESS IS VENTURING INTO GENERALITIES AS OPPOSED TO  
13 ANY FACT TESTIMONY.

14 THE COURT: DO YOU HAVE QUESTIONS IN  
15 REGARD TO HIS QUALIFICATIONS?

16 MR. RIENZI: ABSOLUTELY, YOUR HONOR.

17 THE COURT: DO YOU HAVE ANY OTHER  
18 QUESTIONS IN REGARD TO HIS QUALIFICATIONS?

19 MS. CORTES: IN REGARDS TO HIS  
20 QUALIFICATIONS, NO, YOUR HONOR.

21 MR. RIENZI: MAY I ASK, YOUR HONOR, WHAT  
22 THE TOPIC IS HE IS BEING PROFFERED AS AN EXPERT ON?

23 MS. CORTES: YOUR HONOR, I THINK AS MR.  
24 CERVONE HAS TESTIFIED THUS FAR, HE IS BEING PROFFERED AS  
25 AN EXPERT REGARDING CHILD ADVOCACY -- WELL, MORE

1 SPECIFICALLY THE PROBLEMS FACED BY CHILDREN WITHIN THE  
2 FOSTER CARE SYSTEM, AND IN PARTICULAR THE LGBTQ YOUTH,  
3 AND ALSO AS TO HIS CONCLUSIONS AND OBSERVATIONS AS TO  
4 THE IMPORTANCE OF A SAFE FOSTER CARE SYSTEM FOR THAT  
5 LGBTQ YOUTH.

6 THE COURT: OKAY. YOU CAN ASK QUESTIONS,  
7 COUNSEL.

8 MR. RIENZI: THANK YOU, YOUR HONOR.

9 CROSS-EXAMINATION - QUALIFICATIONS  
10 BY MR. RIENZI:

11 Q. MR. CERVONE, YOU'RE AN ATTORNEY?

12 A. YES.

13 Q. YOU'RE AN ATTORNEY IN THIS CASE?

14 A. NOT ANY LONGER.

15 Q. THAT'S NOT TRUE, IS IT? YOU HAVE NOT WITHDRAWN  
16 FROM THE CASE, HAVE YOU?

17 A. WELL, IN POINT OF FACT I HAVE NOT ENTERED MY  
18 APPEARANCE IN THE CASE IN LARGE PART BECAUSE I HAVE NOT  
19 FIGURED OUT HOW TO DO SO IN THE FEDERAL FILING SYSTEM.  
20 I AM ON THE PAPERS AND WE ANTICIPATE MY COUNSEL  
21 WITHDRAWING ME FROM THOSE PAPERS.

22 Q. BUT YOU HAVE NOT WITHDRAWN YET, CORRECT?

23 A. LIKE I SAID, I HAVE NOT ENTERED MYSELF, BUT WE  
24 HAVE NOT EFFECTIVELY WITHDRAWN.

25 Q. YOU HAVE PARTICIPATED AS AN ADVOCATE IN THESE

1 PROCEEDINGS, HAVE YOU NOT?

2 MS. CORTES: OBJECTION.

3 THE COURT: OVERRULED.

4 BY MR. RIENZI:

5 Q. YOU HAVE PARTICIPATED AS AN ADVOCATE IN THESE  
6 PROCEEDINGS, HAVE YOU NOT?

7 A. I AM NOT SURE I HAVE.

8 Q. YOUR NAME IS ON A BRIEF, SIR, IS IT NOT?

9 A. YES.

10 Q. THAT'S -- YOU ARE A LAWYER, YOU UNDERSTAND THAT  
11 TO BE PARTICIPATING AS AN ADVOCATE, CORRECT?

12 A. IN THAT SENSE, SURE.

13 Q. AND THAT BRIEF HAS BEEN ACCEPTED BY THE COURT AS  
14 AN AMICUS BRIEF, CORRECT?

15 A. YES.

16 Q. AND THERE'S A PENDING MOTION WITH YOUR NAME ON  
17 IT FOR PARTICIPATION VIA INTERVENTION, IS THAT CORRECT?

18 A. YES.

19 Q. AND THE MOTION IS ON BEHALF OF CHILD ADVOCATES,  
20 WHICH IS THE ORGANIZATION YOU ARE THE EXECUTIVE DIRECTOR  
21 OF, CORRECT?

22 A. CORRECT.

23 Q. HAVE YOU EVER PARTICIPATED AS A TESTIFYING  
24 WITNESS IN ANOTHER CASE IN WHICH YOU HAVE BEEN AN  
25 ADVOCATE?

1 A. YES, ACTUALLY LAST MONTH.

2 Q. WHERE WAS THAT?

3 A. THAT WAS IN THE COURT OF COMMON PLEAS IN  
4 PHILADELPHIA COUNTY.

5 Q. DID YOU PARTICIPATE AS AN EXPERT WITNESS?

6 A. NO.

7 Q. I HEARD THE DESCRIPTION FROM -- COUNSEL FOR THE  
8 CITY IS NOT YOUR LAWYER, CORRECT?

9 A. CORRECT.

10 Q. I HEARD THE DESCRIPTION FROM COUNSEL FOR THE  
11 CITY ABOUT THE TOPIC ON WHICH YOU ARE AN EXPERT AND I  
12 WANT TO MAKE SURE I UNDERSTAND IT. SO YOU ARE BEING  
13 PROFFERED AS AN EXPERT ON CHILDREN AND THE IMPACT ON  
14 LGBTQ YOUTH IN THE FOSTER CARE SYSTEM, IS THAT CORRECT?

15 A. WELL, IT'S THEIR PROFFER. YOU KNOW, I KNOW WHAT  
16 I KNOW. I AM NOT SURE. TO BE HONEST, I DON'T THINK I  
17 CAN COMMENT ON HOW THEY ARE PROFFERING ME.

18 Q. YOUR EXPERTISE IS WORKING WITH CHILDREN,  
19 CORRECT?

20 A. REPRESENTING CHILDREN, WORKING WITH CHILDREN,  
21 YES.

22 Q. YOUR EXPERTISE IS NOT REPRESENTING AND WORKING  
23 WITH PARENTS, CORRECT?

24 A. I CERTAINLY HAVE A LOT OF EXPERIENCE IN  
25 REPRESENTING PARENTS. I HAVE REPRESENTED PARENTS. LIKE

1 I SAID, I TAUGHT SOME PEOPLE HOW TO REPRESENT ADULTS. I  
2 HAVE ON MORE THAN A FEW OCCASIONS REPRESENTED BOTH  
3 PARENTS AND ADULTS IN A VARIETY OF COURT PROCEEDINGS IN  
4 MY CAREER, YOU KNOW, MOSTLY AS COMES ABOUT AS -- ON  
5 BEHALF OF FORMER CLIENTS, FORMER CLIENT CHILDREN OF OURS  
6 WHO HAVE GROWN UP AND THEY HAVE SOMETHING ELSE IN THEIR  
7 LIFE.

8 Q. SURE. WE HAD A MEETING IN A ROOM RIGHT OUTSIDE  
9 BEFORE THIS, SIR?

10 A. YES.

11 Q. AND YOU RECALL IN THAT MEETING YOU TOLD ME THAT  
12 YOUR EXPERTISE IS IN DEALING WITH THE CHILDREN'S SIDE OF  
13 IT, NOT THE PARENT SIDE OF IT. DO YOU RECALL TELLING ME  
14 THAT?

15 A. SO I DON'T THINK I WOULD HAVE PUT IT THAT WAY.  
16 FORGIVE ME, I DON'T AGAIN MEAN TO AVOID YOU. WE ARE  
17 CHILDREN'S LAWYERS, I AM A CHILDREN'S LAWYER. AS AN  
18 OFFICE, WE ONLY REPRESENT KIDS. BECAUSE I HAVE A LAW  
19 LICENSE AND BECAUSE I AM THE BOSS, I GET TO REPRESENT  
20 WHO I WANT. AND SO I TRY TO RESPECT THE BOUNDARIES THAT  
21 WE HAVE ALL AGREED TO AS AN OFFICE, BUT ON OCCASION I  
22 ENTER MY APPEARANCE IN SOME WAY OR OTHER ON BEHALF OF  
23 ADULTS.

24 Q. YOU DON'T CONSIDER YOURSELF AN EXPERT IN THE  
25 INTEREST OF ADULTS, DO YOU?

1 MS. CORTES: OBJECTION TO THE RELEVANCE.

2 THE COURT: OVERRULED.

3 THE WITNESS: I DO THINK -- I THINK I  
4 HAVE SOME EXPERTISE. I TEACH PEOPLE HOW TO REPRESENT  
5 ADULTS, SURE.

6 BY MR. RIENZI:

7 Q. MORE THAN ANY OTHER LAWYER WHO REPRESENTS  
8 ADULTS?

9 MS. CORTES: OBJECTION.

10 THE COURT: YES, SUSTAINED.

11 BY MR. RIENZI:

12 Q. OTHER THAN SOMETIMES REPRESENTING ADULTS, DO YOU  
13 HAVE ANY OTHER CLAIM TO EXPERTISE IN THE INTEREST OF  
14 ADULTS?

15 A. WELL, SO -- YES.

16 Q. AND WHAT IS THAT?

17 A. SO THE ADMINISTRATIVE OFFICE OF PENNSYLVANIA  
18 COURTS INVITED ME TO CO-LEAD A TRAINING SERIES FOR  
19 PARENT AND CHILDREN LAWYERS IN PENNSYLVANIA ACROSS THE  
20 STATE, ALONG WITH A COLLEAGUE FROM COMMUNITY LEGAL  
21 SERVICES IN PHILADELPHIA. WE ASSEMBLED A FACULTY OF  
22 LAWYERS AND JUDGES AND I BELIEVE A SOCIAL WORKER. AND  
23 WE CONDUCTED ESSENTIALLY A ROAD SHOW OF TWO FULL DAYS OF  
24 CLE TRAINING IN SIX CITIES OVER, YOU KNOW, A SUMMERTIME  
25 THREE SUMMERS AGO, I THINK, IN WHICH WE TRAINED PROBABLY



1 80 PERCENT OF THE LAWYERS WHO SERVE PARENTS AND CHILDREN  
2 IN DEPENDENCY PROCEEDINGS.

3 WE REGULARLY TRAIN -- I AND MY COLLEAGUES  
4 REGULARLY TRAIN THE COURT-APPOINTED BAR IN PHILADELPHIA  
5 COUNTY WHO REPRESENT PARENTS AND CHILDREN. WE ARE THE  
6 DESIGNATED CLE PROVIDER FOR THE FIRST JUDICIAL DISTRICT  
7 IN ORDER TO QUALIFY THOSE LAWYERS TO REPRESENT PARENTS  
8 IN DEPENDENCY PROCEEDINGS. I HAVE PUBLISHED EXTENSIVELY  
9 ON THE -- REALLY THE NATURE AND SCOPE AND DEMANDS OF  
10 REPRESENTATION FOR CHILDREN. AND LASTLY, I AM A  
11 SCRIVENER OF THE STANDARDS OF PRACTICE FOR LAWYERS WHO  
12 REPRESENT CHILDREN AND PARENTS IN DEPENDENCY PROCEEDINGS  
13 WHICH STANDARDS HAVE BEEN APPROVED BY THE PENNSYLVANIA  
14 STATE CHILDREN CHILD STUDY TEAM.

15 Q. YOU HAVE A LOT OF EXPERIENCE TRAINING LAWYERS TO  
16 REPRESENT BOTH ADULTS AND CHILDREN, IS THAT FAIR?

17 A. YEAH. WE REALLY FEEL LIKE IT'S ALL OF A PIECE.

18 Q. DO YOU HAVE ANY EXPERIENCE IN CHILD PSYCHOLOGY?

19 MS. CORTES: OBJECTION, VAGUE.

20 BY MR. RIENZI:

21 Q. DO YOU HAVE ANY TRAINING IN CHILD PSYCHOLOGY?

22 THE COURT: OVERRULED.

23 THE WITNESS: SO DURING MY MASTER'S  
24 TRAINING, I HAD SEVERAL COURSES RELATED TO FAMILY  
25 DYNAMICS. WHILE THEY WERE NOT IN THE PSYCHOLOGY PROGRAM

1 AT LASALLE UNIVERSITY, THERE WERE, I BELIEVE, ALL OF  
2 THOSE COURSES WERE OFFERED IN THE THEOLOGY PROGRAM, BUT  
3 THERE WAS A COURSE IN FAMILY DYNAMICS, THERE WAS STUDY  
4 OF GENEALOGY AND -- THEY CALL THAT TRANSGENERATIONAL  
5 INFLUENCES. I WOULD NOT IN ANY WAY HOLD MYSELF OUT TO  
6 BE A PSYCHOLOGIST, AND MY WIFE URGES ME NOT TO TRY TO  
7 PRACTICE THERAPY.

8 Q. WHAT PRINCIPLES AND METHODS DO YOU EXPECT TO BE  
9 APPLYING IN YOUR TESTIMONY TODAY?

10 MS. CORTES: OBJECTION, CALLS FOR A LEGAL  
11 CONCLUSION, YOUR HONOR.

12 MR. RIENZI: THE DAUBERT STANDARD UNDER  
13 RULE 702 REQUIRES THAT HE BE APPLYING RELIABLE  
14 PRINCIPLES AND METHODS. I AM SIMPLY ASKING WHAT THEY  
15 ARE.

16 THE COURT: OVERRULED.

17 THE WITNESS: SO AS I SAID, I HELP WRITE  
18 THE STANDARDS AND PRACTICE FOR THE REPRESENTATION OF  
19 CHILDREN. AND I IMAGINE I WOULD REFERENCE WHAT MANY OF  
20 US CONSIDER TO BE BEST PRACTICE STANDARDS FOR THE CARE  
21 OF CHILDREN, THE REPRESENTATION OF CHILDREN AND SERVICE  
22 TO CHILDREN. CERTAINLY AS WELL, MY GENERAL KNOWLEDGE  
23 AND TRAINING AS A LAWYER IN THIS FIELD FOR 30 YEARS.  
24 YEAH.

25 Q. ANYTHING ELSE? ANY OTHER PRINCIPLES AND METHODS

1 YOU EXPECT TO BE APPLYING TODAY?

2 A. WELL, I AM FAIRLY KNOWLEDGEABLE ABOUT THE CANONS  
3 OF ETHICS, THE RULES OF JUVENILE COURT PROCEDURE, THE  
4 JUVENILE ACT AND RELATED BODIES OF LAW THAT PERTAIN TO  
5 THIS AREA OF PRACTICE. CERTAIN BODIES OF LAW THAT  
6 ADDRESS RESPONSIBILITIES RELATED TO DISCRIMINATION OR  
7 NONDISCRIMINATION IN PRACTICE. AS WELL, I HAVE BEEN THE  
8 ADMINISTRATOR OF A PROGRAM OF REPRESENTATION OF, YOU  
9 KNOW, A NONPROFIT AGENCY. AND SO I HAVE SOME BACKGROUND  
10 AND EXPERTISE IN NONPROFIT MANAGEMENT. IN, YOU KNOW --  
11 YEAH.

12 Q. YOU SAID YOU WORKED AS AN ATTORNEY FOR SAINT  
13 GABRIEL'S SYSTEM FOR FIVE YEARS, IS THAT CORRECT?

14 A. CORRECT.

15 Q. SAINT GABRIEL'S SYSTEM IS PART OF CATHOLIC  
16 SOCIAL SERVICES, A PARTY TO THIS CASE, CORRECT?

17 A. CORRECT.

18 Q. AND IN FACT, SAINT GABRIEL'S SYSTEM IS ON THE  
19 SAME CONTRACT THAT'S AT ISSUE ABOUT FOSTER CARE,  
20 CORRECT?

21 MS. CORTES: YOUR HONOR, I DON'T SEE HOW  
22 THIS IS RELEVANT TO THIS VOIR DIRE REGARDING MR.  
23 CERVONE.

24 THE COURT: OVERRULED.

25 THE WITNESS: I AM NOT AWARE OF THE

1 CURRENT STATE OF THE CONTRACT.

2 BY MR. RIENZI:

3 Q. WHEN YOU WERE AT SAINT GABRIEL'S, DID YOU  
4 UNDERSTAND THAT THERE WAS A CONTRACT WITH THE CITY THAT  
5 COVERED BOTH SAINT GABRIEL'S AND FOSTER CARE?

6 A. WELL, MY RECOLLECTION WOULD HAVE BEEN THAT THEY  
7 WERE SEPARATE CONTRACTS, BUT IT'S BEEN A LONG TIME.

8 Q. OKAY.

9 MR. RIENZI: YOUR HONOR, WE OBJECT TO THE  
10 INTRODUCTION OF MR. CERVONE AS AN EXPERT. HIS  
11 PARTICIPATION VIOLATES THE WITNESS ADVOCATE RULE.  
12 WHETHER HE'D LIKE TO OR NOT, HE IS AN ADVOCATE IN THIS  
13 CASE. HE HAS SIGNED PLEADINGS IN THIS CASE, HIS NAME  
14 APPEARS ON BRIEFS IN THIS CASE. HE SUBMITTED A  
15 DECLARATION THAT SAYS THAT THE ORGANIZATION HE LEADS,  
16 CHILD ADVOCATES, HAS AN INTEREST IN THIS CASE. HE IS  
17 ALSO A FORMER LAWYER FOR ONE OF THE ORGANIZATIONS THAT  
18 IS ON THE CONTRACT. AND ON TOP OF THAT, I DID NOT HEAR  
19 ANY DESCRIPTION OF RELIABLE PRINCIPLES AND METHODS. I  
20 HEARD A DISCUSSION OF EXPERIENCE THAT HE HAS, BUT DID  
21 NOT HEAR RELIABLE PRINCIPLES AND METHODS THAT UNDER RULE  
22 702 AND DAUBERT ARE GOING TO BE APPLIED, SO WE WOULD  
23 OBJECT, YOUR HONOR.

24 THE COURT: YOUR OBJECTION IS OVERRULED.

25 MR. RIENZI: I ASSUME, YOUR HONOR, I WILL

1 GET ANOTHER CHANCE TO COME UP AND CROSS-EXAMINE AFTER  
2 THE DIRECT EXAMINATION IS COMPLETED.

3 THE COURT: CROSS-EXAMINE AS TO THE  
4 SUBSTANCE OF HIS TESTIMONY.

5 MR. RIENZI: YES, THANK YOU.

6 DIRECT EXAMINATION

7 BY MS. CORTES:

8 Q. I THINK WHEN WE LAST SPOKE, MR. CERVONE, THAT  
9 YOU WERE LETTING HER HONOR KNOW THE BASIS OF YOUR  
10 TESTIMONY REGARDING DISCRIMINATION ON THE LGBTQ YOUTH.

11 A. YES.

12 Q. I WAS NOT SURE IF YOU HAD CONCLUDED YOUR  
13 TESTIMONY ON THAT OR --

14 A. YOU MEAN PARTICULARLY REGARDING THE PRIOR  
15 TESTIMONY?

16 Q. CORRECT.

17 A. WELL, IN POINT OF FACT, ONE OF THE REASONS --  
18 YEAH, SO I BELIEVE, AND IT HAS BEEN MY EXPERIENCE, THAT  
19 CHILDREN -- LGBT YOUTH COME INTO OUR CHILD WELFARE  
20 SYSTEM IN PART BECAUSE HOW THEY ARE TREATED IN THEIR OWN  
21 FAMILIES. AND SOMETIMES THEY CONTINUE TO HAVE THOSE BAD  
22 EXPERIENCES WHEN THEY ARE IN THE CARE OF FAMILIES WHO  
23 THE SYSTEM ENGAGES, RESOURCE PARENTS, CHILD CARE  
24 WORKERS, AND OTHERS.

25 Q. SO BASED ON THAT -- BASED ON THAT OBSERVATION,

1 HOW IMPORTANT THEN IS IT TO HAVE A FOSTER CARE SYSTEM  
2 THAT HAS AFFIRMING VALUES FOR LGBT YOUTH?

3 A. WELL, I THINK IT'S ABSOLUTELY ESSENTIAL THAT OUR  
4 CLIENT CHILDREN FEEL WELCOME AND SUPPORTED IN THEIR  
5 PERSON AND IN THEIR IDENTITY, THAT THEY COME TO A SYSTEM  
6 FOR REFUGE FROM WHAT IS ESSENTIALLY OPPRESSION, FROM  
7 ABUSE AND NEGLECT, OFTEN, AS I SAID, TYPICALLY TARGETED  
8 ON THEIR IDENTITY AND IT IS ABSOLUTELY ESSENTIAL THAT  
9 THEY FIND IN ALL OF US, IN THE CHILD WELFARE SYSTEM AND  
10 ALL OF ITS PRACTITIONERS A PLACE OF JUSTICE, A PLACE OF  
11 HEALING AND A PLACE OF SAFETY. AND IN NO UNCERTAIN  
12 TERMS THAT MEANS THAT HOMES MUST BE WELCOMING TO THEM.  
13 THEY MUST BE AFFIRMING TO THEM, THEY MUST BE PLACES AND  
14 PEOPLE AND ORGANIZATIONS THAT SAY YES TO THEIR  
15 EXPLORATION OF THEIR OWN IDENTITY. IN A SENSE, IT GOES  
16 WITHOUT SAYING THAT THE YOUNG PERSON IS STILL EXPLORING  
17 HIMSELF OR HERSELF IN THEIR IDENTITY. THAT'S WHAT WE  
18 ARE ALL DOING AS YOUNG PEOPLE, AND IT'S ESSENTIAL THAT  
19 THAT YOUNG PERSON HAVE A SAFE PLACE IN WHICH TO DO THAT.

20 Q. NOW, WERE YOU HERE YESTERDAY -- WELL, IT'S BEEN  
21 MULTIPLE DAYS. I MEAN NOBODY WAS HERE YESTERDAY. BUT  
22 WERE YOU HERE --

23 THE COURT: I WAS HERE.

24 BY MS. CORTES:

25 Q. WERE YOU HERE, MR. CERVONE, IN COURTROOM 16B A

1 FEW DAYS AGO WHEN MR. AMATO TESTIFIED?

2 A. YES.

3 Q. DID YOU HEAR HIS TESTIMONY REGARDING CSS'S  
4 PRACTICES ON SAME-SEX COUPLES?

5 A. YES.

6 Q. DID YOU HAVE ANY REACTION TO THAT TESTIMONY?

7 MR. RIENZI: OBJECTION, VAGUE.

8 THE COURT: OVERRULED.

9 THE WITNESS: YEAH, I WAS PRETTY UPSET BY  
10 IT.

11 BY MS. CORTES:

12 Q. WHY WERE YOU UPSET BY THAT?

13 A. WELL, YOU KNOW, I HEARD -- I BELIEVE IT WAS HIS  
14 REFERENCE TO THEIR MISSION AS WELCOMING ALL AND VALUING  
15 ALL. AND THEN HE PROCEEDED TO EXPLAIN HOW SOME PEOPLE  
16 ARE NOT WELCOME AND SUPPORTED. IT WAS NEWS TO ME THAT  
17 THERE IS A BIT OF A LITMUS TEST FOR QUALIFICATION AS A  
18 FOSTER PARENT AND RESOURCE PARENT IN THE CSS SYSTEM.  
19 AND THAT FELT TO ME ITSELF CONTRARY TO THE SPIRIT OF THE  
20 CHILD WELFARE SYSTEM AS A WHOLE. IT WAS -- I REALLY  
21 CRYSTALIZED IN SITTING IN THIS ROOM DURING THAT  
22 TESTIMONY THIS NOTION THAT I REFERENCED EARLIER THAT  
23 FROM THE PERSPECTIVE OF THE CHILD, THE SYSTEM NEEDS TO  
24 BE A WELCOMING SYSTEM. AND I THOUGHT JIM -- I WILL CALL  
25 HIM JIM, I HAVE KNOWN HIM FOR A REALLY LONG TIME AND I

1 LIKE HIM A LOT AS A PERSON. I WAS SURPRISED THAT THE  
2 SYSTEM -- THAT THEIR SYSTEM IS SO EXPLICITLY UNWELCOMING  
3 OF CERTAIN TYPES OF PEOPLE.

4 Q. DID YOU HAVE ANY REACTION OR DID YOU HAVE ANY  
5 CONCERNS REGARDING WHAT MR. AMATO SAID AS TO ITS EFFECT  
6 ON PROSPECTIVE FOSTER PARENTS THAT ARE LGBTQ OR IN A  
7 SAME-SEX UNION?

8 A. YES, I THINK HE IS WRONG. I THINK HE, IF I AM  
9 TO CHARACTERIZE IT, I THOUGHT HE STATED, AT LEAST  
10 IMPLIED, THAT THEIR PRACTICE WOULD NOT WORK TO DISSUADE  
11 PROSPECTIVE RESOURCE PARENTS FROM COMING FORWARD TO  
12 SERVE, THAT THEY CLEARLY -- THEY ARE FAIRLY EXPLICIT  
13 THAT THEY WOULD DISSUADE THEM FROM COMING TO THEIR  
14 AGENCY. HE ALSO OBVIOUSLY WAS RATHER EXPLICIT THAT IF  
15 ONE CAME FORWARD, THEY WOULD SEND THAT PERSON OR COUPLE  
16 TO SOME OTHER AGENCY, NOT TRY TO TALK THEM OUT OF DOING  
17 BUSINESS, TO BE -- FAIR ENOUGH. BUT IN POINT OF FACT, I  
18 BELIEVE THAT THIS PRACTICE MAY HAVE THE EFFECT OF  
19 DISSUADING PROSPECTIVE RESOURCE FAMILIES FROM SERVING  
20 CHILDREN AT ALL. THAT IF PEOPLE BELIEVE THAT THIS IS A  
21 SYSTEM THAT IS ALLOWED TO DISCRIMINATE, THEY WILL HAVE A  
22 CRISES IN CONFIDENCE ABOUT WORKING IN THE SYSTEM.

23 I FEEL LIKE IT'S A LOT LIKE WHEN IT IS  
24 REVEALED THAT THE SYSTEM IS NOT PERFORMING WELL. AND I  
25 AM SOMEBODY WHO SOMETIMES HELPS TO MAKE THOSE HEADLINES



1 BY REVEALING OR HELPING TO REVEAL WHEN THE SYSTEM IS NOT  
2 PERFORMING WELL. AND CERTAINLY I HAVE HEARD THAT FOLKS  
3 HAVE HAD A CRISIS OF CONFIDENCE, SHOULD I COME TO WORK  
4 HERE, SHOULD I COME TO BE INVOLVED WITH THIS SYSTEM THAT  
5 SEEMS SO CHAOTIC. I FEEL LIKE WE HAVE GOTTEN BEYOND  
6 THAT IN THE PRESENT ADMINISTRATION OF THE SYSTEM FOR THE  
7 LAST BUNCH OF YEARS. BUT I THINK THAT'S THE TYPE OF  
8 EFFECT AND MESSAGE THAT IT WILL HAVE TO PROSPECTIVE  
9 FOSTER FAMILIES, SAME-SEX FAMILIES, WHO WILL SAY WHY  
10 SHOULD I COME TO A SYSTEM THAT TOLERATES THAT FORM OF  
11 DISCRIMINATION?

12 MS. CORTES: YOUR HONOR, I'M JUST GOING  
13 TO HAVE A MOMENT. MAY I HAVE A MOMENT TO CONFER WITH  
14 COUNSEL?

15 THE COURT: YES.

16 (BRIEF PAUSE IN THE PROCEEDING.)

17 BY MS. CORTES:

18 Q. MR. CERVONE, YOU TALKED ABOUT THE POTENTIAL  
19 IMPACT ON THE LGBTQ YOUTH THAT ARE CURRENTLY IN THE  
20 FOSTER SYSTEM. DO YOU HAVE AN OPINION OR DO YOU THINK  
21 THIS WILL AFFECT ALL OF THE CHILDREN IN THE FOSTER CARE  
22 SYSTEM? "THIS" MEANING CSS'S PRACTICE THAT WE HEARD  
23 ABOUT TODAY -- OR NOT TODAY, THROUGHOUT THIS HEARING?

24 MR. RIENZI: OBJECTION.

25 THE COURT: DO YOU UNDERSTAND THE

1 QUESTION?

2 THE WITNESS: WELL, I THINK THERE ARE  
3 LOTS OF POSSIBLE EFFECTS. I'M NOT SURE WHERE YOU WOULD  
4 GO WITH IT BUT I THINK THERE ARE EFFECTS ACROSS THE  
5 SPECTRUM, FROM MY PERSPECTIVE. SO I THINK I UNDERSTAND  
6 THE QUESTION.

7 THE COURT: OKAY.

8 MR. RIENZI: OBJECTION.

9 THE COURT: OVERRULED.

10 THE WITNESS: SO I THINK THAT THE --  
11 LET'S JUST START WITH THE LOSS OF HOMES THAT JIM AMATO  
12 REFERENCED, AND I THINK IT WOULD BE SAD TO LOSE THOSE  
13 HOMES, BUT THAT THE SYSTEM WILL SURVIVE, THAT THE NUMBER  
14 OF HOMES THAT ARE AT ISSUE LONG-TERM IS -- YOU KNOW,  
15 THANKFULLY IT'S NOT 1,000 HOMES AND IT'S BETTER THAN --  
16 OR TEN HOMES THAT MIGHT BE LOST WERE CSS ELECTED TO GET  
17 OUT OF THE BUSINESS, AS JIM SUGGESTED. I THINK THE  
18 SYSTEM MIGHT GET MANY OF THOSE RESOURCE FAMILIES WILL  
19 MIGRATE OVER TO OTHER AGENCIES, SOME WILL NOT. THAT IS  
20 WHAT HAS HAPPENED IN EVERY OTHER, IN A SENSE, CLOSURE OF  
21 AN AGENCY.

22 AGENCIES CLOSE FOR A VARIETY OF REASONS.  
23 THEY GO OUT OF BUSINESS, THEY MOVE ON AND THE FOSTER  
24 PARENTS ARE LEFT TO DECIDE DO THEY STILL WANT TO FOSTER.  
25 AND WE HAVE SEEN FOSTER PARENTS WHO ARE WITH AGENCY A

1       MIGRATE OVER TO AGENCY B. SO I EXPECT THAT THE SYSTEM  
2       WILL HANDLE THAT EFFECT. I THINK THE EFFECT ON CHILDREN  
3       PRESENTLY IN CARE IS ONE THAT I AM AND OUR OFFICE IS  
4       VERY CONCERNED ABOUT. WE HOPE THAT THESE AGENCIES AND  
5       THIS COURT DO NOT CAUSE THOSE KIDS TO BE TURNED OUT ON  
6       THE STREET ON JUNE 30 WHEN THE CURRENT CONTRACT EXPIRES.  
7       THAT WOULD BE VERY UPSETTING.

8                   I THOUGHT JIM WAS PRETTY CLEAR AND NOBLE  
9       IN SAYING THAT THEY DON'T INTEND TO TURN ANY OF THOSE  
10      KIDS OUT. AT SOME POINT THEY MAY FEEL THAT -- THEY MAY  
11      FEEL DIFFERENTLY FROM A BUSINESS PERSPECTIVE, THAT THEY  
12      CAN NO LONGER RUN THOSE HOMES OR THEIR AGENCY. SO WE  
13      ALL WILL HAVE TO WORK HARD TO MITIGATE THOSE EFFECTS.  
14      YOU KNOW, THE EFFECT OF THE CONTINUED PLACEMENT OF KIDS  
15      IN HOMES IN AN AGENCY THAT IS ALLOWED TO, IN A SENSE,  
16      PUT OUT THIS MESSAGE THAT SAME-SEX COUPLES ARE SOMEHOW  
17      NOT TO BE VALUED OR INAPPROPRIATE, WHATEVER WORD YOU  
18      WANT TO PUT AS TO THE, IN ESSENCE, THE VALUATION OF  
19      THEM.

20                   AS I REFERENCED EARLIER IN THE  
21      QUALIFICATIONS SECTION, I THINK WILL GIVE KIDS PRECISELY  
22      THE WRONG MESSAGE AND IT WOULD BE AN UPSETTING ONE. THE  
23      KIDS WHO COME TO A SYSTEM FOR JUSTICE NOW NEED A SYSTEM  
24      THAT FEELS UNJUST. IT FEELS DISCRIMINATORY AND THAT  
25      WILL HAVE A BAD -- THAT WILL HAVE A TERRIBLE EFFECT ON

1 ALL THE KIDS IN THE SYSTEM WHO COME TO UNDERSTAND IT.  
2 WE FIND KIDS ARE PRETTY SMART AND THOUGHTFUL AND THEY  
3 ASK QUESTIONS LIKE THAT AND I EXPECT THAT THEY WILL HAVE  
4 THEIR OWN CRISIS IN CONFIDENCE ABOUT THIS SYSTEM IN  
5 CARE.

6 MS. CORTES: THANK YOU.

7 CROSS-EXAMINATION

8 BY MR. RIENZI:

9 Q. MR. CERVONE, YOU SAID THAT CATHOLIC HAVING TO  
10 STOP FOSTER CARE ON JUNE 30TH WOULD BE A BAD THING, IS  
11 THAT CORRECT?

12 A. IT WOULD.

13 Q. AND YOU SAID THE NUMBER, IT'S GOOD THAT IT'S NOT  
14 1,000, BUT IT'S NOT ZERO EITHER, IS IT?

15 A. THAT'S CORRECT.

16 Q. AND YOU SAID SOME WILL TRANSFER BUT YOU KNOW  
17 THAT SOME WON'T END UP TRANSFERRING, CORRECT?

18 A. I IMAGINE SO.

19 Q. AND FOR SOME NUMBER OF KIDS THEY WILL END UP  
20 HAVING TO SWITCH HOMES, POSSIBLY FOSTER PARENTS THEY ARE  
21 WITH, CORRECT?

22 A. WELL, YEAH, I THINK AS YOU HEARD THIS MORNING  
23 FROM MS. FIGUEROA, IT'S A DYNAMIC BUSINESS, SO KIDS ARE  
24 KIND OF COMING AND GOING FROM THESE HOMES ALL THE TIME.  
25 SO, YOU KNOW, IF THEY HAVE 130 -- IF THEY HAVE 120 KIDS

1 TODAY, A YEAR FROM NOW JUST IN THE ORDINARY COURSE OF  
2 THINGS, EASILY HALF OF THOSE KIDS WON'T EVEN BE IN CARE,  
3 RIGHT? SO SOME OF THIS -- IT'S JUST THE NATURAL  
4 ATTRITION OF KIDS GOING HOME. THE GENERAL PREFERENCE OF  
5 THE SYSTEM IS FOR KIDS TO GO HOME. THERE'S A CONSTANT  
6 PRESSURE. IT'S IN FEDERAL LAW, IT'S IN STATE LAW, IT'S  
7 IN EVERYBODY'S KIND OF AWARENESS OF IT, WE ARE TRYING TO  
8 GET THEM AT HOME.

9 SO YOU SAID WILL SOME BE TURNED ONTO THE  
10 STREET OR WILL SOME BE PERHAPS -- LISTEN HERE, WILL SOME  
11 HAVE TO GO SOMEWHERE ELSE? I SUPPOSE SO. WHAT THAT  
12 NUMBER WILL BE, WE CAN'T KNOW.

13 Q. BUT TO YOUR MIND, ARE YOU SAYING THAT'S NOT THAT  
14 BIG A DEAL?

15 A. BIG A DEAL FOR EVERY KID EVERY TIME THEY ARE  
16 CHANGED, EXCEPT WHEN THE CHANGE IS FOR A GOOD REASON.  
17 YOU KNOW, IT'S REFERENCED ALL THE TIME IN THE COURSE OF  
18 THE LAST THREE DAYS, IS IT BAD FOR KIDS TO MOVE. WELL,  
19 NOT IF THEY ARE IN A BAD HOME, RIGHT? WE START WITH THE  
20 PREMISE THAT KIDS ARE REMOVED FROM BAD HOMES. WAS THE  
21 MOVE FROM THEIR PARENT, WHO IS ABUSIVE, BAD? WELL, TO  
22 THE KID IT MIGHT BE, RIGHT, BECAUSE KIDS, THEY LOVE EVEN  
23 THEIR ABUSERS, RIGHT, FOR ALL THOSE REASONS THAT WE  
24 KNOW.

25 Q. YOU HAVE NO REASON TO THINK THAT THE HOMES THEY

1 WOULD BE MOVED AWAY FROM WHILE THEY ARE CURRENTLY AT  
2 CATHOLIC, THAT THOSE ARE BAD HOMES, DO YOU?

3 A. NO. AS I SAID BEFORE, THE THREE PEOPLE THAT YOU  
4 HAD UP HERE ALL SEEM ENTIRELY NOBLE. I CAN'T -- I DON'T  
5 THINK ANY OF US COULD ABSTRACTLY OR REMOTELY EVALUATE OR  
6 VALUE THE -- IN A SENSE, THE BOND, THE WELL-BEING, HOW  
7 THOSE KIDS ARE DOING IN THESE SEVERAL 120 HOMES. WE  
8 HAVE TO IMAGINE THAT BECAUSE THEY ARE REGULARLY REVIEWED  
9 AND BECAUSE THE COURTS HAVE APPROVED THEM THEY ARE AT  
10 LEAST DECENT. BUT I CAN'T TELL IF IT WOULD BE A MAJOR  
11 LOSS OR A MINOR ONE FOR THIS OR THAT KID TO LOSE THIS OR  
12 THAT FOSTER HOME.

13 Q. SO THEN DO YOU ALSO THINK COMMISSIONER FIGUEROA  
14 WAS WRONG WHEN SHE CLOSED INTAKE OVER CONCERNS ABOUT  
15 CHILDREN HAVING TO EVENTUALLY TRANSFER AWAY FROM  
16 CATHOLIC?

17 A. NO.

18 Q. HER REASON WAS THAT TRANSFERRING WOULD BE BAD.  
19 DO YOU RECALL THAT?

20 MS. CORTES: OBJECTION.

21 THE COURT: OVERRULED.

22 THE WITNESS: YOU ASKED ABOUT CLOSING  
23 INTAKE, NOT TRANSFER? IT'S NEW KIDS VERSUS CURRENT  
24 KIDS?

25 BY MR. RIENZI:

1 Q. COMMISSIONER FIGUEROA'S TESTIMONY THIS MORNING,  
2 AND I BELIEVE ON TUESDAY, WAS THAT SHE CLOSED INTAKE  
3 BECAUSE IT WOULD NOT BE IN THE BEST INTEREST OF THE  
4 CHILDREN TO BE PLACED IN HOMES WITH CATHOLIC WHEN THEY  
5 MAY EVENTUALLY NEED TO BE TRANSFERRED OUT OF HOMES.

6 A. OH, YEAH, YEAH. THAT'S RIGHT, I REMEMBER THAT  
7 POINT. I THOUGHT IT WAS LAST NIGHT THAT SHE MADE THAT  
8 POINT, BUT WHENEVER SHE MADE IT. SO WHAT SHE SAID --  
9 WHAT I CAME AWAY UNDERSTANDING OF THAT POINT, IF I GET  
10 THIS RIGHT, IS UNTIL WE SORT OUT THIS PROBLEM, WE OUGHT  
11 NOT TO PUT, IN A SENSE -- WE SHOULD NOT HAVE TO PUT MORE  
12 CHILDREN INTO THE PROBLEM.

13 Q. BECAUSE IT IS A PROBLEM IF THEY HAVE TO TRANSFER  
14 AWAY WHEN CATHOLIC CLOSES, CORRECT?

15 A. IT CERTAINLY MIGHT BE A PROBLEM. AS I SAID,  
16 EVERY TRANSFER -- YOU KNOW, WE START FROM THE PREMISE IN  
17 CHILD WELFARE THAT PERMANENCY AND STABILITY ARE BASELINE  
18 PREMISES, SO WE WANT A KID TO REMAIN IN A GOOD PLACE.  
19 YOU ARE BUILDING RELATIONSHIPS. YOU WANT THE KID TO  
20 HAVE A SENSE THAT WHEN HE LEAVES IN THE MORNING TO GO TO  
21 SCHOOL, HE DOES NOT TO HAVE THINK ABOUT THAT HE IS  
22 COMING BACK HERE TONIGHT. THAT'S WHAT WE MEAN BY  
23 PERMANENCY IN THE SHORT ORDER. SO YEAH, IT'S BAD. WE  
24 TRY TO AVOID TRANSFERS.

25 Q. TERRIFIC, THANK YOU.

1                   YOU SAID BEFORE THAT YOU THOUGHT  
2           CATHOLIC'S POLICY MAY HAVE AN EFFECT OF DISSUADING SOME  
3           LGBTQ PARENTS FROM ENTERING THE SYSTEM AT ALL.    IN OTHER  
4           WORDS, NOT JUST WITH CATHOLIC, BUT ELSEWHERE?

5           A.           YES.

6           Q.           IS THAT CORRECT, IS THAT WHAT YOU SAID?

7           A.           YES.

8           Q.           YOU SAID "MAY" BECAUSE YOU DON'T ACTUALLY REALLY  
9           KNOW, CORRECT?

10          A.           THAT'S CORRECT.

11          Q.           AND YOU ALSO SAID YOU THINK IT WILL HAVE A  
12          TERRIBLE EFFECT ON KIDS IN THE SYSTEM.    AND YOU DON'T  
13          ACTUALLY KNOW THAT EITHER, DO YOU?

14          A.           WELL, SO I HAVE HAD A BUNCH OF CONVERSATIONS  
15          WITH KIDS OVER THE YEARS, YOU KNOW, 15, 20, MAYBE 30, IN  
16          WHICH KIDS HAVE TALKED ABOUT -- I HAVE CERTAINLY  
17          OBSERVED THEM AS WELL, IN A SENSE, SPEAKING TO LARGE  
18          GROUPS IN KIND OF A LECTURE FORMAT.    WE SOMETIMES HAVE  
19          KIDS TRAIN LAWYERS.    WE THINK IT'S -- AND IT WORKS, IT'S  
20          JUST A REALLY NEAT DYNAMIC.    AND THEY TALK ABOUT THE  
21          EXPERIENCE OF BEING DISCRIMINATED AGAINST IN THE CHILD  
22          WELFARE SYSTEM.    AND WE ASK THEM, WELL, WHAT WAS YOUR  
23          EXPERIENCE IN THE CHILD WELFARE SYSTEM?    THEY SAY, IT  
24          WAS BAD.    I WAS DISCRIMINATED AGAINST.    SO THEY DON'T  
25          THINK ABOUT IT JUST IN TERMS OF THE BAD ACTOR WHO



1 DISCRIMINATED AGAINST THEM, THEY THINK ABOUT THEIR TIME  
2 IN CARE AND THEY THINK ABOUT THE WHOLE SYSTEM. THEY  
3 THINK OF IT, IN A SENSE, ALL OF A PIECE. SO THAT'S  
4 REALLY WHAT I WAS REFERENCING AND I THINK THEY WILL SEE  
5 IT AS BAD.

6 Q. AND IN THOSE CONVERSATIONS, NONE OF THEM  
7 MENTIONED CATHOLIC'S VIEW THAT IT WOULD NOT DO HOME  
8 STUDIES FOR LGBTQ COUPLES, CORRECT?

9 A. THAT'S CORRECT.

10 Q. I HEARD YOU TO BE SAYING THAT YOUR CONCERN ABOUT  
11 THE EFFECT ON KIDS IS THAT THEY WILL KNOW THAT IN THE  
12 SYSTEM THERE'S AN ENTITY OR AN ACTOR WHO IS NOT  
13 AFFIRMING OF THEIR SEXUAL ORIENTATION, IS THAT ACCURATE?  
14 I DON'T WANT TO PUT WORDS IN YOUR MOUTH. I AM JUST  
15 TRYING -- THAT'S CORRECT?

16 A. UM-HUM.

17 Q. AS LONG AS THE CATHOLIC CHURCH MAINTAINS ITS  
18 CURRENT TEACHINGS ON SEXUALITY, WON'T KIDS KNOW THAT  
19 JUST BY SEEING THE NAME CATHOLIC?

20 A. THEY MIGHT.

21 Q. SO DO YOU THINK CATHOLIC ITSELF NEEDS TO BE OUT  
22 OF THE FOSTER CARE BUSINESS ENTIRELY, BASED ON YOUR  
23 ARGUMENT?

24 A. I REALLY HAVE NO OPINION ON THAT. I WOULD LOVE  
25 FOR THEM TO STAY IN THE BUSINESS. I WOULD LOVE FOR THEM

1 TO APPROACH SAME-SEX MARRIAGES DIFFERENTLY.

2 Q. YOU DISAGREE WITH THE CATHOLIC CHURCH'S  
3 RELIGIOUS TEACHINGS ON THAT?

4 MS. CORTES: OBJECTION TO THE RELEVANCE.

5 THE COURT: SUSTAINED.

6 MR. RIENZI: YOUR HONOR, HIS VIEWS ON THE  
7 CATHOLIC CHURCH'S TEACHINGS ABOUT SAME-SEX MARRIAGE,  
8 WHEN HE IS SAYING HE THINKS CATHOLIC HAS THE WRONG VIEW  
9 TO REMAIN IN THE FOSTER SYSTEM.

10 THE COURT: HE DIDN'T SAY THAT. WHAT HE  
11 SAID WAS HE WOULD HOPE THAT THEY WOULD CHANGE THEIR VIEW  
12 AND THEY WOULD WELCOME SAME-SEX PARENTS.

13 BY MR. RIENZI:

14 Q. IF I CAN JUST PIN THAT DOWN. SO YOU WOULD HOPE  
15 THAT THE CATHOLICS CHURCH WOULD CHANGE ITS VIEWS ON  
16 SAME-SEX MARRIAGE, CORRECT?

17 A. I AM NOT ONE TO BELIEVE THAT THE CATHOLIC CHURCH  
18 IS A MONOLITH, SO I AM RELUCTANT TO TALK ABOUT THE  
19 CATHOLIC CHURCH AND ITS TEACHINGS.

20 Q. HOW ABOUT THE CATECHISM?

21 MS. CORTES: OBJECTION.

22 THE COURT: WELL, NOW WE ARE REALLY GOING  
23 FAR AFIELD.

24 MR. RIENZI: YOUR HONOR, WITH ALL DUE  
25 RESPECT --

1 THE COURT: LET'S JUST GO TO CATHOLIC  
2 SOCIAL SERVICES.

3 BY MR. RIENZI:

4 Q. DO YOU THINK CATHOLIC SOCIAL SERVICES NEEDS TO  
5 CHANGE ITS BELIEFS ON SEXUALITY AND MARRIAGE?

6 A. I WOULD LOVE FOR THEM TO.

7 Q. AND YOU TALKED ABOUT KIDS' EXPERIENCE IN HOMES  
8 THAT YOU SAID WERE NOT LGBT AFFIRMING, IS THAT FAIR?

9 A. SAY THAT AGAIN.

10 Q. IS THAT PART OF YOUR EXPERIENCE THAT YOU WERE  
11 TELLING US ABOUT?

12 A. SAY THAT AGAIN.

13 Q. EARLIER YOU TESTIFIED ABOUT THE EXPERIENCE OF  
14 LGBT KIDS IN HOMES THAT WERE NOT AFFIRMING, CORRECT?

15 A. YES.

16 Q. IS IT YOUR VIEW THAT FOSTER PARENTS WHO  
17 SUBSCRIBE TO THE TEACHINGS OF THE CATHOLIC CHURCH AND  
18 THE CATECHISM ARE UNFIT TO BE FOSTER PARENTS BECAUSE  
19 THEY WOULD NOT BE LGBT AFFIRMING?

20 MS. CORTES: OBJECTION.

21 THE COURT: SUSTAINED.

22 BY MR. RIENZI:

23 Q. DO YOU THINK THERE ARE RELIGIOUS VIEWS THAT IN  
24 YOUR MIND SHOULD DISQUALIFY PEOPLE FROM BEING FOSTER  
25 PARENTS?

1 MS. CORTES: OBJECTION.

2 THE COURT: SUSTAINED.

3 BY MR. RIENZI:

4 Q. YOU SAID YOU WORRIED ABOUT THE MESSAGE IT WOULD  
5 SEND TO LGBT KIDS IF CATHOLIC SOCIAL SERVICES WERE  
6 PERMITTED TO CONTINUE ACTING ACCORDING TO ITS FAITH.  
7 HAVE YOU THOUGHT ABOUT THE IMPACT ON CATHOLIC FOSTER  
8 PARENTS AND CATHOLIC KIDS OF THE CITY EXCLUDING CATHOLIC  
9 SOCIAL SERVICES FROM FOSTER CARE?

10 MS. CORTES: OBJECTION, MISCHARACTERIZES  
11 HIS TESTIMONY AND IT'S A COMPOUND QUESTION.

12 THE COURT: YES, BREAK IT DOWN, PLEASE.

13 BY MR. RIENZI:

14 Q. YOU TESTIFIED EARLIER ABOUT THE IMPACT THAT  
15 ALLOWING CATHOLIC TO CONTINUE WOULD HAVE ON LGBT KIDS,  
16 CORRECT?

17 A. YES.

18 Q. AND YOUR VIEW IS THAT IF THE CITY ALLOWS  
19 CATHOLIC TO CONTINUE OPERATING ACCORDING ITS RELIGIOUS  
20 BELIEFS, THAT WOULD BE HARMFUL FOR KIDS, CORRECT?

21 MS. CORTES: OBJECTION, THAT  
22 MISCHARACTERIZES HIS TESTIMONY.

23 THE COURT: OVERRULED. HE CAN EXPLAIN  
24 THAT ANSWER.

25 THE WITNESS: YES.

1 BY MR. RIENZI:

2 Q. AND YOU SAID IT MAY -- TO BE FAIR, I DON'T WANT  
3 TO PUT WORDS IN YOUR MOUTH. YOU SAID IT MAY, BUT YOU  
4 DIDN'T ACTUALLY KNOW, CORRECT?

5 A. RIGHT.

6 Q. HAVE YOU THOUGHT ABOUT THE IMPACT THAT IT WOULD  
7 HAVE ON CATHOLIC KIDS FOR THE CITY TO EXCLUDE CATHOLIC  
8 SOCIAL SERVICES FROM FOSTER CARE?

9 THE COURT: ASSUMING THAT THEY ARE NOT  
10 LGBTQ?

11 MR. RIENZI: EITHER WAY, ACTUALLY. I  
12 DON'T MEAN TO SPECIFY. I JUST MEAN CATHOLIC, I DON'T  
13 MEAN TO SPECIFY.

14 THE WITNESS: WELL, IF WE ARE TALKING  
15 ABOUT CATHOLIC KIDS -- I HAVE MET A LOT OF CATHOLIC KIDS  
16 IN MY LIFE, I CAN'T RECALL ONE THAT HAS THE PROBLEM WITH  
17 SAME-SEX MARRIAGE THAT THE CHURCH DOES, SO I DON'T THINK  
18 THE EFFECT WOULD BE NEGATIVE ON CATHOLIC KIDS IF CSS  
19 CHANGED ITS PRACTICE.

20 BY MR. RIENZI:

21 Q. HOW ABOUT CATHOLIC FOSTER PARENTS?

22 A. YOU KNOW, I DID NOT HEAR IN YOUR WITNESSES AND I  
23 DON'T KNOW HOW OTHER CATHOLIC FOSTER PARENTS COME DOWN  
24 ON THE QUESTION OF SAME-SEX MARRIAGE. THEY -- I WAS  
25 ACTUALLY INTERESTED IN WHETHER YOUR WITNESSES WERE GOING

1 TO GO THERE, AND I THINK I HEARD THEM SAY THAT THEY  
2 BELIEVE IN THE TEACHINGS OF THE CATHOLIC CHURCH. AND I  
3 CAME AWAY THINKING THAT WAS A FAIRLY GENERIC STATEMENT.  
4 AND AS A CATHOLIC MYSELF, I BELIEVE IN THE TEACHINGS OF  
5 THE CATHOLIC CHURCH, TOO, JUST NOT ALL OF THEM, SO --  
6 AND THAT'S MY EXPERIENCE WITH CATHOLICS IN GENERAL, THAT  
7 WE ARE A BIT SELECTIVE IN OUR FOLLOWINGS OF THE  
8 TEACHINGS OF THE CHURCH. SO I WOULD EXPECT THAT FOSTER  
9 PARENTS WOULD BE SIMILAR.

10 Q. BUT SOME MAY NOT BE, CORRECT?

11 A. I WOULD HAVE TO IMAGINE, SURE.

12 MR. RIENZI: YOUR HONOR, IF I CAN JUST  
13 HAVE ONE QUICK MINUTE, PLEASE?

14 THE COURT: YES.

15 (BRIEF PAUSE IN THE PROCEEDING.)

16 BY MR. RIENZI:

17 Q. MR. CERVONE, YOU SAID YOU HAVE KNOWN CATHOLIC  
18 SOCIAL SERVICES FOR A LONG TIME?

19 A. YES.

20 Q. WHAT IS YOUR OVERALL OPINION OF CATHOLIC SOCIAL  
21 SERVICES?

22 A. VERY POSITIVE.

23 MS. CORTES: OBJECTION AS TO RELEVANCE.

24 THE COURT: OVERRULED.

25 BY MR. RIENZI:

1 Q. AND YOU SAID YOU HAVE KNOWN MR. AMATO FOR A LONG  
2 TIME?

3 A. YES.

4 Q. AND I UNDERSTAND YOU DISAGREE WITH SOME OF THE  
5 -- YOU DIDN'T LIKE SOME OF THE THINGS HE SAID YESTERDAY,  
6 CORRECT?

7 A. YES.

8 Q. DO YOU THINK HE IS AN HONEST GUY?

9 A. YES.

10 Q. AND SO YOU DON'T THINK HE IS LYING WHEN HE  
11 TESTIFIES, CORRECT?

12 A. I WOULD NEVER CALL JIM AMATO A LIAR. I HAVE NO  
13 IDEA HOW HE FEELS ABOUT THE ISSUES HE TESTIFIED TO.

14 MR. RIENZI: NOTHING FURTHER, YOUR HONOR.

15 THE COURT: OKAY. ANY OTHER QUESTIONS?

16 MS. CORTES: NO, YOUR HONOR.

17 THE COURT: THANK YOU.

18 THE WITNESS: THANK YOU, JUDGE.

19 MS. CORTES: AND, YOUR HONOR, WITH MR.  
20 CERVONE'S TESTIMONY, THE DEFENDANTS WOULD LIKE TO MARK  
21 EXHIBITS, ALL THE EXHIBITS THAT THE DEFENDANTS HAVE  
22 MARKED. I BELIEVE IT'S 1 THROUGH 6, BUT I WILL DEFER TO  
23 THE COURT RECORD ON THAT, AND WE WOULD ALSO WANT TO MAKE  
24 SURE THAT PLAINTIFFS' EXHIBITS 13 AND 15 ARE MARKED AND  
25 MOVED INTO THE RECORD ALONG WITH THE AFFIDAVITS OF MS.

1 KIMBERLY ALI AND COMMISSIONER CYNTHIA FIGUEROA.

2 MR. RIENZI: YOUR HONOR, WE WOULD OBJECT  
3 ON THE DECLARATIONS OF THEIR WITNESSES AND WE WOULD  
4 SIMPLY SAY -- WE ARE FINE IF WE WANT TO HAVE A RULE THAT  
5 SAYS BOTH SIDES' DECLARATIONS OF THEIR WITNESSES COME  
6 IN. THAT WAS WHAT WE WERE PROPOSING YESTERDAY, ON  
7 TUESDAY, TO GET THE DECLARATIONS OF ALL WITNESSES IN,  
8 BUT I DON'T SEE HOW WE COULD POSSIBLY HAVE RULE THAT  
9 SAYS THE PLAINTIFFS' DECLARATIONS GET KEPT OUT, BUT THE  
10 DEFENSE DECLARATIONS --

11 THE COURT: WELL, I BELIEVE THAT THE  
12 COURT RULED THAT THE WITNESS WHO WAS NOT HERE TO  
13 TESTIFY, HER AFFIDAVIT COULD BE ADMITTED. NOW, IF YOU  
14 WISH TO HAVE -- I DON'T BELIEVE THAT THERE WAS A REQUEST  
15 FOR THE OTHER AFFIDAVITS TO BE ADMITTED OF THE OTHER  
16 WITNESSES WHO TESTIFIED.

17 MR. RIENZI: I APOLOGIZE, I MAY HAVE BEEN  
18 UNCLEAR AT SOME POINT ABOUT THAT, BUT TO THE EXTENT WE  
19 ARE DOING THIS NOW, I WOULD CERTAINLY MOVE THAT THE  
20 DECLARATIONS OF OUR OTHER WITNESSES WHO TESTIFIED CAN BE  
21 ADMITTED INTO THE RECORD. THEY ARE PROPERLY BEFORE THE  
22 COURT. IT'S RULE 65, WHICH ALLOWS DECLARATIONS.

23 MR. FIELD: YOUR HONOR, IF I MIGHT, WE  
24 HAD UNDERSTOOD THEIR REQUESTS AND THE COURT'S RULING  
25 YESTERDAY TO BE THAT THE AFFIDAVITS OF THEIR WITNESSES



1 WHO DID TESTIFY WERE ALSO ADMITTED IN ADDITION TO DOE  
2 FOSTER MOTHER NUMBER 1. IF THAT WAS NOT THE CASE, WE  
3 WOULD NOT BE MAKING THE MOTION AS TO THE AFFIDAVITS OF  
4 OUR WITNESSES WHO TESTIFIED.

5 THE COURT: OKAY. SO THE WITNESSES WILL  
6 BE -- THE AFFIDAVITS WILL BE PERMITTED TO BE ADMITTED.

7 MR. RIENZI: TO MAKE SURE I AM CLEAR  
8 BECAUSE I -- I THINK WE DID NOT HAVE --

9 MR. FIELD: TESTIFYING WITNESSES PLUS DOE  
10 FOSTER MOTHER NUMBER 1.

11 MR. RIENZI: SO I THINK I CAN WITHDRAW MY  
12 OBJECTION TO THE ALI AND FIGUEROA DECLARATIONS, BUT THEN  
13 THE FULTON, PAUL, SIMMS-BUSCH, AMATO AND DOE MOTHER 1  
14 DECLARATIONS, I THINK WE HAVE AGREEMENT THEY ARE ALL IN,  
15 ALONG WITH ALI AND FIGUEROA.

16 THE COURT: WELL, NOT AGREEMENT AS TO DOE  
17 MOTHER 1.

18 MR. RIENZI: DOE MOTHER 1 YOU PERMITTED.

19 THE COURT: I PERMITTED THAT.

20 MR. RIENZI: SO THEN YES, I WITHDRAW MY  
21 OBJECTION TO THEIRS, AS LONG AS WE ARE CLEAR ON THE  
22 UNDERSTANDING AS TO ALL OF OUR DECLARATIONS.

23 THE COURT: OKAY.

24 MS. CORTES: THAT WOULD BE IT, YOUR  
25 HONOR. THEN WE WOULD REST.

1                   YOUR HONOR, JUST TO MAKE THE RECORD  
2                   CLEAR, AND I AM ASSUMING NO OBJECTION FROM MR. RIENZI,  
3                   WE WOULD ALSO MOVE -- I THINK I SAID THIS, BUT JUST TO  
4                   BE ABUNDANTLY CLEAR, I WOULD MARK AND MOVE TO ADMIT  
5                   PLAINTIFF'S EXHIBIT 13 AND 15 INTO EVIDENCE.

6                   THE COURT: YES, I BELIEVE THAT THEY WERE  
7                   ADMITTED PREVIOUSLY.

8                   MR. RIENZI: AND, YOUR HONOR, TO THE  
9                   EXTENT THERE WAS ANY LACK OF CLARITY, I WOULD ALSO MOVE  
10                  TO ADMIT ALL OF THE EXHIBITS THAT WE HAD IN, OBVIOUSLY  
11                  WITH THE EXCEPTION OF THE TWEETS THAT WE HAD THE OFFER  
12                  OF PROOF ON EARLIER THIS MORNING.

13                  THE COURT: YES. THE TWEETS -- SOME OF  
14                  THEM WERE MARKED, SOME OF THEM WERE NOT MARKED, BUT THEY  
15                  ARE PART OF THE RECORD.

16                  MR. RIENZI: THANK YOU, YOUR HONOR.

17                  THE COURT: OKAY. BEFORE WE PROCEED TO  
18                  CLOSING, IS THERE ANYTHING FURTHER FROM THE PLAINTIFF?

19                  MR. RIENZI: NOTHING ON EVIDENCE, YOUR  
20                  HONOR. ONE HOUSEKEEPING DETAIL I JUST WANTED TO BE  
21                  CLEAR ON. I UNDERSTAND OUR DEADLINE FOR RESPONDING TO  
22                  THE MOTION TO INTERVENE TO BE FRIDAY, JUNE 29TH, AND I  
23                  AM CALCULATING THAT BASED ON WHEN WE ACTUALLY RECEIVE  
24                  THE BRIEF. IF YOU RECALL, THERE WAS AN EARLIER FILING  
25                  THAT ESSENTIALLY ALERTED EVERYBODY -- AND I APPRECIATE

1 IT, ALERTED EVERYBODY THAT SOMETHING WOULD BE COMING.  
2 AND I JUST WANT TO MAKE SURE THE COURT IS NOT THINKING  
3 THAT OUR DEADLINE RUNS FROM THAT EARLIER ALERT. I  
4 ASSUME WE GET THE TWO WEEKS FROM WHEN THEY ACTUALLY  
5 FILED THE MOVING PAPERS.

6 MS. ROPER: NO OBJECTION FROM THE  
7 POTENTIAL INTERVENORS.

8 THE COURT: OKAY. THAT'S 6/29?

9 MR. RIENZI: THAT'S WHAT I HAVE, YOUR  
10 HONOR.

11 THE COURT: BEFORE THE COURT HEARS  
12 CLOSING ARGUMENTS, I BELIEVE THAT WE HAVE A REQUEST FROM  
13 THE -- AT THIS POINT THE ACLU TO ADDRESS THE COURT?

14 MS. ROPER: YES, YOUR HONOR, THE ACLU AND  
15 THE PARTIES THAT REPRESENTS AS AMICI PHILADELPHIA FAMILY  
16 PRIDE. BUT ESSENTIALLY, YES, YOUR HONOR, AN ATTORNEY  
17 FROM THE ACLU WOULD ARGUE.

18 THE COURT: THE COURT IS INCLINED TO  
19 PERMIT IT, BUT I GUESS THE QUESTION IS AT WHAT POINT. I  
20 THINK IT WOULD BE APPROPRIATE TO LET THE PLAINTIFFS  
21 PROCEED, THEN HEAR FROM THE DEFENSE, THE AMICI, AND THEN  
22 ANY RESPONSE THAT COUNSEL FOR PLAINTIFFS WISH TO MAKE.

23 MS. ROPER: IT CERTAINLY SUITS US, YOUR  
24 HONOR. WE DON'T INTEND TO REPEAT THINGS THE CITY HAS  
25 ALREADY SAID. WE WILL TRY TO RESPECT EVERYBODY'S TIME.

1 THE COURT: WILL COUNSEL NEED A FEW  
2 MINUTES BEFORE WE PROCEED?

3 MR. RIENZI: I WOULD LOVE A FEW MINUTES  
4 BEFORE WE START.

5 THE COURT: OKAY, THEN WE WILL TAKE A FEW  
6 MINUTES.

7 MR. RIENZI: THANK YOU VERY MUCH.

8 MS. CORTES: THANK YOU, YOUR HONOR.

9 (BRIEF RECESS.)

10 THE COURT: ARE WE READY TO PROCEED?

11 MR. RIENZI: I AM, YOUR HONOR.

12 THANK YOU, YOUR HONOR. AS YOU KNOW, WE  
13 ARE HERE ON PLAINTIFFS' MOTION FOR A TEMPORARY  
14 RESTRAINING ORDER OR A PRELIMINARY INJUNCTION. AS YOU  
15 HAVE HEARD FROM THE WITNESSES, THE SITUATION IS URGENT.  
16 RIGHT NOW THERE IS ONGOING HARM. THERE ARE BEDS THAT  
17 ARE EMPTY FROM PARENTS WHO WORK WITH CATHOLIC SOCIAL  
18 SERVICES TO WHOM THE CITY IS REFUSING TO SEND CHILDREN,  
19 NOT BECAUSE THE CITY THINKS THOSE ARE BAD HOMES, BECAUSE  
20 THE CITY IS FREEZING INTAKE TO THOSE HOUSES BECAUSE OF A  
21 SEPARATE FIGHT. RIGHT NOW THERE ARE ACTUALLY CHILDREN  
22 IN CONGREGATE CARE AND ELSEWHERE WHOSE LIVES WOULD BE  
23 IMPROVED IF THEY WERE PLACED IN THOSE HOMES, AND THEY  
24 ARE NOT BEING PLACED IN THOSE HOMES. WE KNOW ABOUT SOME  
25 OF THEM. WE KNOW SOME OF THEIR NAMES. WE KNOW DOE

1 CHILD 1 BECAUSE WE FOUND OUT ABOUT DOE CHILD 1. THERE  
2 ARE A LOT OF KIDS WHOSE NAMES WE DON'T KNOW WHO COULD BE  
3 IN THOSE HOMES. YOU HEARD JIM AMATO TESTIFY THAT  
4 TYPICALLY THEY NEVER HAVE MORE THAN FOUR OR FIVE  
5 VACANCIES AND NOW THEY ARE GETTING UP TO 26. WELL, I  
6 DON'T KNOW THE NAMES OF THOSE KIDS, BUT THOSE ARE REAL  
7 HUMAN BEINGS, THEY BELONG IN GOOD FOSTER HOMES, THERE  
8 ARE LOVING HOMES AVAILABLE, AND BECAUSE OF THE CITY'S  
9 VIOLATION OF THE LAW, THEY ARE NOT ALLOWED TO BE THERE.

10 YOU HEARD MRS. PAUL TESTIFY ABOUT THE  
11 HARM TO HER, ABOUT THE FACT THAT THIS IS HER GIFT, THIS  
12 IS WHAT SHE DOES FOR THE WORLD. SHE HAS DONE IT FOR 133  
13 CHILDREN. SHE WANTS TO CONTINUE PARTICIPATING, THE CITY  
14 WILL NOT SEND CHILDREN HER WAY. YOU HEARD JAMES AMATO  
15 TESTIFY ABOUT HOW THE JUNE 30TH DEADLINE WILL IMPACT,  
16 HOW LAYOFFS WILL NEED TO START SOON WITHOUT NEW  
17 REFERRALS, HOW THE FOSTER PROGRAM WILL NEED TO SHUT DOWN  
18 WITHIN A MATTER OF MONTHS.

19 THE CITY SAYS IT WILL ACCEPT A NEW  
20 CONTRACT, BUT IT WILL ONLY ACCEPT A NEW CONTRACT THAT  
21 EITHER A, INVOLVES CATHOLIC AGREEING TO VIOLATE ITS  
22 RELIGIOUS BELIEFS, WHICH IT SIMPLY CANNOT DO. OR B,  
23 REQUIRES CATHOLIC TO PROCEED WITH NO REFERRALS, WHICH IS  
24 SUICIDE FOR THE FOSTER AGENCY. SO THE SITUATION IS  
25 DIRE, THE HARM IS REAL, THERE ARE ACTUAL HUMAN BEINGS

1 WHO ARE AND WILL CONTINUE TO SUFFER WITHOUT RELIEF.

2 FORTUNATELY, STATE AND FEDERAL LAW MAKE  
3 THE CITY'S ACTIONS ILLEGAL AND PROVIDE A FIRM BASIS FOR  
4 A TEMPORARY RESTRAINING ORDER OR A PRELIMINARY  
5 INJUNCTION. SIMPLY PUT, THE GOVERNMENT IS ONLY ALLOWED  
6 TO FORCE SOMEBODY TO VIOLATE THEIR RELIGIOUS BELIEFS,  
7 WHICH IS PRECISELY WHAT THE CITY IS TRYING TO DO.  
8 GOVERNMENTS ARE ONLY ALLOWED TO PUT SOMEBODY IN THAT  
9 POSITION IF THEY HAVE A COMPELLING GOVERNMENT INTEREST  
10 AND THEY ARE USING THE LEAST RESTRICTIVE MEANS TO PURSUE  
11 THAT INTEREST. AND WHAT THE TESTIMONY MADE CLEAR OVER  
12 AND OVER AGAIN IS THAT THE GOVERNMENT'S CASE IS NOWHERE  
13 CLOSE TO THOSE STANDARDS.

14 LET ME START WITH THE RELIGIOUS FREEDOM  
15 PROTECTION ACT. THIS IS THE PENNSYLVANIA STATUTE. IT  
16 IS PARALLEL TO THE FEDERAL RFRA STATUTE THAT THE SUPREME  
17 COURT HAS RECENTLY INTERPRETED IN SEVERAL CASES. WHAT  
18 THE PENNSYLVANIA RFRA SAYS IS THAT THE GOVERNMENT CANNOT  
19 IMPOSE A SUBSTANTIAL BURDEN ON SOMEONE'S SINCERE  
20 RELIGIOUS EXERCISE UNLESS IT HAS A COMPELLING GOVERNMENT  
21 INTEREST, AND THE GOVERNMENT HAS TO DEMONSTRATE THAT.  
22 THE GOVERNMENT MUST DEMONSTRATE A COMPELLING GOVERNMENT  
23 INTEREST AND THAT IT IS USING THE LEAST RESTRICTIVE  
24 MEANS.

25 FIRST, SINCERE RELIGIOUS EXERCISE. I

1 THINK THAT MIGHT BE THE ONLY THING OR ONE OF THE FEW  
2 THINGS THAT THERE IS NO DISPUTE IN THE COURTROOM IN  
3 FRONT OF YOUR HONOR OVER THE LAST THREE DAYS. I DON'T  
4 THERE IS ANY DOUBT THAT CATHOLIC IS ENGAGED IN A SINCERE  
5 RELIGIOUS EXERCISE. THERE ARE FOLKS WHO DISAGREE WITH  
6 THAT EXERCISE. THERE ARE FOLKS WHO THINK THEY SHOULD  
7 HAVE A DIFFERENT VIEW OF THEIR RELIGIOUS PRINCIPLES, BUT  
8 I DID NOT HEAR ANYONE TO SUGGEST THAT CATHOLIC WAS  
9 ACTING ON ANYTHING OTHER THAN ITS SINCERE RELIGIOUS  
10 BELIEFS.

11 PENNSYLVANIA LAW GIVES FOUR WAYS IN WHICH  
12 A GOVERNMENT ACTION CAN IMPOSE A SUBSTANTIAL BURDEN, AND  
13 HERE EVERY ONE OF THEM IS MET. ONE ALONE WOULD DO, BUT  
14 ALL FOUR ARE MET. THE GOVERNMENT'S ACTION CONSTRAINS OR  
15 INHIBITS CONDUCT OR ITS EXPRESSION MANDATED BY A  
16 PERSON'S SINCERELY-HELD RELIGIOUS BELIEFS. THAT'S THE  
17 CASE HERE. CATHOLIC TAKES CARE OF CHILDREN BECAUSE OF  
18 JESUS' INJUNCTION TO TAKE CARE OF CHILDREN AND TO TAKE  
19 CARE OF WIDOWS AND ORPHANS, IN THE BIBLE. IT'S  
20 OBVIOUSLY SINCERE RELIGIOUS BELIEF.

21 THEIR BELIEFS ABOUT SEX AND MARRIAGE ARE  
22 ALSO SINCERE RELIGIOUS BELIEFS. THERE HAS BEEN NO CLAIM  
23 THAT IT IS ANYTHING OTHER THAN A SINCERE BELIEF THAT  
24 THEY ARE ACTING ON. SIGNIFICANTLY CURTAILS A PERSON'S  
25 ABILITY TO EXPRESS ADHERENCE TO THE PERSON'S RELIGIOUS

1 FAITH. WELL, BY FORCING CATHOLIC TO CERTIFY THE  
2 RELATIONSHIPS OF SAME-SEX COUPLES, THE GOVERNMENT WOULD  
3 BE CURTAILING CATHOLIC'S ABILITY TO EXPRESS ADHERENCE TO  
4 THEIR RELIGIOUS FAITH. THEY WOULD BE FORCING THEM AS A  
5 REQUIREMENT TO HELP KIDS TO PUBLICLY VIOLATE THEIR  
6 RELIGIOUS BELIEFS.

7 AND TO BE CLEAR, CATHOLIC IS NOT SAYING,  
8 I NEED TO GO IN AND TELL EVERYBODY COUPLE A OR COUPLE B  
9 IS A BAD COUPLE. CATHOLIC IS NOT RUSHING TO SAY, LET ME  
10 GO PASS JUDGMENT. CATHOLIC IS SAYING, PLEASE LET ME  
11 STAND ASIDE. PLEASE LET ME STAND ASIDE. I DON'T WANT  
12 TO HAVE TO SIT DOWN AND WRITE EVALUATIONS OF SOME  
13 COUPLE'S LIFE THAT MY CHURCH DISAGREES WITH. I DON'T  
14 WANT TO WRITE THAT. AND SO CATHOLIC FOR YEARS HAS JUST  
15 HAD THE POSITION THAT IF SOMEBODY COMES AND ASKS ME, I  
16 AM JUST GOING TO STEP ASIDE, RIGHT.

17 THEY ARE NOT GOING TO SAY, NO, YOU CAN'T  
18 BE A FOSTER PARENT. THEY JUST WANT TO SAY I HAVE GOT  
19 RELIGIOUS BELIEFS THAT DON'T MATCH WITH WHAT YOU WANT TO  
20 DO, AND SO I AM NOT REALLY THE RIGHT PERSON TO WRITE  
21 THIS UP FOR YOU. BUT GUESS WHAT, THERE ARE 28 OTHERS IN  
22 THE CITY WHO ARE HAPPY TO DO IT. NOW, THAT'S UTTERLY  
23 HYPOTHETICAL, YOUR HONOR. IT'S UTTERLY HYPOTHETICAL.  
24 WE TALKED ABOUT SPECULATION A LOT WHEN PEOPLE WERE  
25 OBJECTING TO EACH OTHER'S QUESTIONS. THE WHOLE



1 CONTROVERSY IS SPECULATIVE BECAUSE THERE IS NO EVIDENCE  
2 OF A SINGLE ACTUAL APPLICANT EVER. NO EVIDENCE OF A  
3 SINGLE ACTUAL APPLICANT EVER WHO HAS ASKED CATHOLIC TO  
4 DO A HOME STUDY FOR FOSTER CARE AND WHO CATHOLIC HAS  
5 REFERRED AWAY. THERE'S NOT ONE, BECAUSE IT'S A  
6 HYPOTHETICAL DISPUTE. IN THAT HYPOTHETICAL DISPUTE,  
7 CATHOLIC'S RELIGIOUS BELIEFS ARE CLEAR AND THEIR  
8 RELIGIOUS EXERCISE WOULD BE CLEAR. THEY WOULD SAY, I  
9 CAN'T DO IT. BUT IT'S NEVER HAPPENED.

10 IT'S ALSO A SUBSTANTIAL BURDEN IF THE  
11 GOVERNMENT DENIES A PERSON THE REASONABLE OPPORTUNITY TO  
12 ENGAGE IN ACTIVITIES WHICH ARE FUNDAMENTAL TO THE  
13 PERSON'S RELIGION. WELL, TAKING CARE OF ORPHANS,  
14 FUNDAMENTAL, FUNDAMENTAL TO THE CATHOLIC CHURCH'S  
15 RELIGION. AND IT'S WORK THEY WERE DOING IN THE CITY  
16 LONG BEFORE THE CITY WAS DOING THE WORK IN THE CITY.  
17 THE CITY HAS IMPOSED A REGIME THAT SAYS, WELL, NOW YOU  
18 CAN ONLY DO IT UNDER CONTRACT WITH ME, AND MOST OF THE  
19 TIME CATHOLIC IS TOTALLY FINE TO DO IT THROUGH CONTRACT  
20 WITH THE CITY. BUT ULTIMATELY THIS WAS CHURCH WORK LONG  
21 BEFORE IT WAS CITY WORK. AND WHAT THE CITY IS SAYING  
22 NOW IS WELL, YOU GOT TO VIOLATE A COUPLE OF YOUR  
23 RELIGIOUS BELIEFS IF YOU WANT TO STILL TAKE CARE OF THE  
24 KIDS. THAT'S WHAT THEY ARE SAYING, AND ON PENNSYLVANIA  
25 LAW, THAT'S A SUBSTANTIAL BURDEN ON RELIGION.

1 THE FOURTH WAY YOU GET A SUBSTANTIAL  
2 BURDEN COMPELS CONDUCT OR EXPRESSION WHICH VIOLATES A  
3 SPECIFIC TENET OF A PERSON'S FAITH. AGAIN, THE SAME  
4 THING, RIGHT. THE GOVERNMENT IS TRYING TO FORCE  
5 CATHOLIC TO CERTIFY THINGS THAT IT JUST CAN'T CERTIFY  
6 TO. AND AGAIN, CATHOLIC IS NOT RUSHING TO SAY, I WANT  
7 TO GO CONDEMN, THEY ARE SAYING I WANT TO STAND ASIDE.  
8 AND IF YOU LET ME STAND ASIDE, I WANT TO GO TAKE CARE OF  
9 THOSE KIDS WHICH I HAVE BEEN DOING SINCE LONG BEFORE THE  
10 CITY DID.

11 UNDER PENNSYLVANIA LAW, THE ONLY WAY THE  
12 CITY CAN GET AWAY WITH IMPOSING THOSE BURDENS IS IF IT  
13 HAS A COMPELLING GOVERNMENT INTEREST. HERE YOU SAW THE  
14 EVIDENCE, THEY CAN'T COME CLOSE TO MEETING THAT BURDEN.  
15 THEY CAN'T COME CLOSE TO MEETING IT. WHY NOT? A COUPLE  
16 OF REASONS. ONE, THERE IS NO PROOF THAT ANYONE HAS EVER  
17 BEEN HARMED. THERE'S NO PROOF A SINGLE SOUL HAS EVER  
18 ASKED FOR THE SERVICE. ABSENT PROOF OF AT LEAST  
19 SOMEBODY BEING HARMED, RIGHT. EVEN THE EXPERT AT THE  
20 END, MR. CERVONE. TO HIS CREDIT, VERY HONEST MAN, SAID  
21 AT THE END, I AM JUST -- I AM PARAPHRASING, BUT HE SAID  
22 I SAID MAY, I DON'T REALLY KNOW. HE SAID MAY. HE DOES  
23 NOT REALLY KNOW. THE CITY DOES NOT REALLY KNOW.

24 WHEN MS. ALI WAS ON THE STAND AND IT WAS  
25 ASKED, IS THAT A REALLY IMPORTANT INTEREST -- OR I THINK

1 FIRST THE WORD WAS COMPELLING AND THEN THERE MAY HAVE  
2 BEEN AN OBJECTION TO IT. BUT SHE WAS ASKED ABOUT THE  
3 STRENGTH OF THAT INTEREST, WHAT'S THE STRENGTH OF YOUR  
4 INTEREST IN MAKING SURE EVERY AGENCY DOES THE HOME  
5 STUDIES? HER ANSWER WAS NOT, IT'S SUPREMELY IMPORTANT.  
6 HER ANSWER WAS, IT'S AN INTEREST LIKE ANY OTHER INTEREST  
7 THAT WE HAVE. THAT WAS HER ANSWER, IT'S IN THE  
8 TRANSCRIPT FROM MONDAY AFTERNOON OR TUESDAY. IT WAS  
9 NOT, THIS IS A SUPREMELY IMPORTANT INTEREST.

10 AND HERE IS HOW YOU ALSO KNOW THAT IT'S  
11 NOT A SUPREMELY IMPORTANT INTEREST, NO WITNESS COULD  
12 NAME ANY PLACE WHERE IT WAS EVER WRITTEN DOWN BEFORE,  
13 RIGHT. AND THIS IS A THEME THAT RUNS THROUGHOUT THE  
14 GOVERNMENT'S CASE. THEIR WHOLE CONTRACT ARGUMENT  
15 DEPENDS ON FOSTER CARE BEING A PUBLIC ACCOMMODATION.  
16 BEING A PUBLIC ACCOMMODATION, THEREFORE THE FAIR  
17 PRACTICE ORDINANCE COVERS IT. WELL, THEY HAVE BEEN  
18 RUNNING A FOSTER CARE SYSTEM FOR YEARS. BUT THERE IS NO  
19 INDICATION ANYPLACE THAT THEY HAVE EVER TAKEN THE  
20 POSITION THAT WHAT THEY WERE RUNNING IS A PUBLIC  
21 ACCOMODATION, NO INDICATION THAT THEY EVER TOLD THE  
22 AGENCIES IT WAS A PUBLIC ACCOMODATION. THERE'S JUST  
23 NOTHING.

24 IF IT WERE A PUBLIC ACCOMODATION, YOU  
25 COULD NOT DO ALL THE THINGS THAT THE STATE LAW REQUIRES

1 YOU TO DO, LIKE LOOK INTO SOMEBODY'S MENTAL STABILITY,  
2 LOOK INTO SOMEBODY'S EXISTING FAMILY RELATIONSHIPS,  
3 RIGHT. IMAGINE A WORLD WHERE YOU COULD DO THOSE THINGS  
4 -- WELL, HERE IS HOW YOU KNOW IT'S NOT A PUBLIC  
5 ACCOMMODATION. YOU CAN'T DO THOSE THINGS BEFORE SELLING  
6 SOMEBODY A CUP OF COFFEE OR A TICKET ON THE TRAIN,  
7 RIGHT. YOU CAN'T SAY, WELL, YOU ARE NOT COMING IN HERE  
8 BECAUSE I THINK YOU HAVE A MENTAL DISABILITY. YOU CAN'T  
9 SAY, YOU CAN'T COME IN HERE BECAUSE I HAVE EVALUATED  
10 YOUR EXISTING FAMILY RELATIONSHIPS AND I DON'T THINK  
11 THEY ARE THAT GREAT, RIGHT. YOU CAN'T DO THAT IN A REAL  
12 PUBLIC ACCOMMODATION.

13 FOSTER CARE IS NOT A PUBLIC  
14 ACCOMMODATION, NEVER HAS BEEN. IT'S A MADE-UP THEORY  
15 FOR THIS CASE THAT NO ONE CAN POINT TO ANY DOCUMENT  
16 ANYPLACE REFERENCING BEFORE THIS CASE. IT'S A NEWLY  
17 MINTED THEORY FOR THIS CASE, BUT IT DOES NOT WORK.  
18 BECAUSE BY DEFINITION FOSTER CARE IS NOT ABOUT EVERYBODY  
19 WHO LINES UP AND WANTS IT GETS IT. IT'S ABOUT LOOKING  
20 AFTER THE INTEREST OF CHILDREN. AND THE LAW HAS ALLOWED  
21 FOR YEARS, FOR MANY YEARS, DIFFERENT AGENCIES WITH  
22 DIFFERENT SPECIALTIES AND DIFFERENT REQUIREMENTS. STATE  
23 LAW DOES NOT SAY, THESE ARE THE ONLY REQUIREMENTS AND  
24 YOU MAY DO NO MORE. THAT IS NOT WHAT IT SAYS. STATE  
25 LAW SAYS THAT YOU GET TO CONSIDER THESE THINGS. IT SAYS

1 YOU ALSO CAN CONSIDER AN APPLICANT'S ABILITY TO WORK  
2 WITH THE AGENCY. AND IT CERTAINLY DOES NOT SAY YOU MAY  
3 ADD NO MORE, RIGHT.

4 AND THE CITY'S OWN WEBPAGE, WHICH MAYBE  
5 THEY WANT TO CHANGE NOW BECAUSE THEY REALIZE THAT IT'S  
6 INCONSISTENT WITH THEIR THEORY HERE. THE CITY'S OWN  
7 WEBPAGE SAYS THAT DIFFERENT AGENCIES CAN HAVE DIFFERENT  
8 REQUIREMENTS. THE CITY'S WEBPAGE REFERS FOSTER -- THE  
9 CITY'S FOSTER PARENT HANDBOOK REFERS THEM TO THAT STATE  
10 ASSOCIATION. THAT STATE ASSOCIATION SAYS THESE ARE  
11 MINIMUM REQUIREMENTS. EVERYTHING THAT PREDATES THIS  
12 CONTROVERSY SAYS THAT AGENCIES ARE ALLOWED TO HAVE THEIR  
13 OWN REQUIREMENTS AND THAT'S FINE. IT'S A JUDGMENT-CALL  
14 TYPE OF SITUATION, NOT A PUBLIC ACCOMMODATION. NOT  
15 EVERYBODY GETS ONE. IN REAL PUBLIC ACCOMMODATIONS, YOU  
16 CAN'T CONSIDER THE RACE OF THE CHILD OR THE RACIAL  
17 WISHES OF A FOSTER PARENT BEFORE PLACING THEM, BUT THEY  
18 DO. YOU CAN'T CONSIDER THE DISABILITY OF SOMEBODY  
19 BEFORE LETTING THEM DO SOMETHING, BUT THEY DO. THEY  
20 HAVE NOT DONE TO SHUT ANYBODY DOWN, THEY HAVE NOT TURNED  
21 OFF INTAKE TO THOSE PEOPLE BECAUSE IT'S NOT A PUBLIC  
22 ACCOMODATION. IT'S A NEWLY MINTED ARGUMENT. IT HAS NO  
23 BASIS IN THE WAY THEY HAVE DONE ANYTHING.

24 IF THAT WERE REAL, IF IT WERE ACTUALLY A  
25 COMPELLING INTEREST TO ENFORCE THAT, THEY WOULD ENFORCE

1 IT ON RACE AND ON DISABILITY, AND THEY WOULD HAVE TALKED  
2 ABOUT IT AND APPLIED IT TO THEMSELVES SOMETIME IN THE  
3 PRECEDING YEARS. THEY MADE IT UP FOR THIS CASE, YOUR  
4 HONOR, IT'S NOT REAL.

5 THE CITY ALSO LACKS A COMPELLING INTEREST  
6 BECAUSE THEY HAVE NO EVIDENCE THAT ANYBODY HAS ACTUALLY  
7 BEEN HARMED. AGAIN, THEY ARE CLAIMING TO RECTIFY A  
8 HARM. THERE IS NO INDICATION ANYBODY HAS BEEN HARMED.  
9 THERE IS NO INDICATION THAT SAME-SEX COUPLES ARE  
10 KNOCKING ON THE DOOR OF THE CATHOLIC CHURCH AND SAYING,  
11 HEY, CATHOLIC CHURCH, I WOULD LIKE YOU TO BE THE ONE WHO  
12 COMES IN AND EVALUATES MY FAMILY RELATIONSHIPS, RIGHT.  
13 THE CITY TELLS PEOPLE, GO LOOK FOR SOMEBODY WHO IS A  
14 GOOD FIT, RIGHT, THEY SAY LOOK FOR SOMEBODY WHO IS A  
15 GOOD FIT.

16 SO FAR AS WE KNOW, THERE HAVE BEEN NOT  
17 SAME-SEX COUPLES WHO GO TO THE CATHOLIC CHURCH AND SAY,  
18 COME ON INTO MY HOUSE AND TELL ME WHAT YOU THINK OF MY  
19 FAMILY RELATIONSHIPS. THAT ACTUALLY IS NOT TERRIBLY  
20 SURPRISING, RIGHT. THE CATHOLIC CHURCH HAS WELL-KNOWN  
21 TEACHINGS ON SEXUALITY AND MARRIAGE, AND IT'S ENTIRELY  
22 LIKELY THAT GAY FAMILIES DO NOT LOOK AT THE CATHOLIC  
23 CHURCH AND SAY, I WOULD LIKE YOU TO COME IN AND EVALUATE  
24 MY FAMILY LIFE. AND SO PEOPLE GO TO AGENCIES THAT ARE  
25 GOOD FITS FOR THEM. RELIGIOUS CATHOLICS GO TO CATHOLIC.

1       THERE ARE -- AS COMMISSIONER FIGUEROA SAID, THERE ARE 28  
2       AGENCIES IN THE CITY THAT PROVIDE HOME STUDIES FOR LGBT  
3       COUPLES.  ALTHOUGH SHE THINKS THAT'S TRUE, THEY ACTUALLY  
4       NEVER CHECKED WITH MOST OF THE SECULAR AGENCIES, BUT SHE  
5       THINKS THAT'S TRUE.

6                       THERE IS NO INDICATION THAT THERE IS A  
7       PROBLEM.  THERE IS NO INDICATION THAT A SINGLE SOUL HAS  
8       EVER BEEN DENIED THE ABILITY TO BE A FOSTER PARENT BY  
9       CATHOLIC'S RELIGIOUS BELIEFS.  AND SO IN LIGHT OF ALL OF  
10      THAT, THEY SIMPLY DON'T HAVE A COMPELLING GOVERNMENT  
11      INTEREST UNDER STATE LAW.

12                      THEY CERTAINLY HAVE NOT USED THE LEAST  
13      RESTRICTIVE MEANS AVAILABLE TO PURSUE THAT INTEREST.  
14      THERE ARE OTHER WAYS TO LET PEOPLE BECOME FOSTER  
15      PARENTS.  THERE ARE LOTS OF AGENCIES, RIGHT.  I THINK  
16      IT'S VERY TELLING THE TESTIMONY YOU HEARD OVER THE LGBTQ  
17      FOSTER PARENT RECRUITING EVENT IN THE MAYOR'S OFFICE OF  
18      LGBT AFFAIRS.  THE OFFICE OF LGBT AFFAIRS IS A PART OF  
19      CITY GOVERNMENT AND IT EXISTS -- IT EXISTS TO SERVE LGBT  
20      PEOPLE.  AND THERE'S NOT A PROBLEM WITH THAT, THERE IS  
21      NOTHING WRONG WITH THAT.  WHY?  BECAUSE IT'S NOT LIKE  
22      PEOPLE WHO ARE NOT LGBT CAN'T GO GET GOVERNMENT  
23      SERVICES.  THEY CAN'T GET SERVICE FROM THAT OFFICE, BUT  
24      THEY CAN GET SERVICE FROM ANY OTHER OFFICE AND IT'S  
25      FINE.  SO THE CITY DOES THAT DIRECTLY AS THE CITY, BUT

1 THE CITY IS SAYING THAT A NETWORK OF CONTRACTORS WHO ARE  
2 PRIVATE ENTITIES, WHO ARE NOT THE CITY, SOME OF WHOM ARE  
3 RELIGIOUS, THEY HAVE TO SERVE EVERYBODY ALL THE TIME,  
4 RIGHT, THAT'S THE CLAIM. CATHOLIC CAN ONLY DO THIS IF  
5 IT SERVES EVERYBODY ALL THE TIME.

6 AND I DON'T THINK IT'S JUST THAT THE CITY  
7 WANTS THEM TO DO THE HOME STUDY, I ASSUME THE CITY WANTS  
8 THEM TO DO THE HOME STUDY AND INSISTS -- AND INSISTS  
9 THAT THEY SAY THAT THESE COUPLES RELATIONSHIPS ARE GOOD  
10 AND THIS WOULD BE A GOOD PLACE TO RAISE CHILDREN.

11 THE COURT: NOW THAT'S SPECULATIVE.

12 MR. RIENZI: IT IS SPECULATIVE, YOUR  
13 HONOR. BUT I DON'T THINK IT WOULD DO MUCH GOOD IF WHAT  
14 THEY WERE SAYING WAS YOU HAVE GOT TO DO THE HOME STUDY,  
15 BUT YOU ARE FREE TO SAY NO. MAYBE THAT'S THEIR IDEA,  
16 BUT THEY SURE DON'T HAVE A COMPELLING INTEREST IN THAT,  
17 RIGHT. IF WHAT THEY ARE SAYING IS YOU GOT TO DO THE  
18 HOME STUDY, BUT WE DON'T CARE WHAT YOU SAY IN THE  
19 OUTCOME AND YOU ARE ALLOWED TO SAY THAT I DON'T THINK  
20 THIS IS A GOOD RELATIONSHIP. THEY REALLY COULD NOT  
21 POSSIBLY HAVE A COMPELLING INTEREST IN THAT BECAUSE THAT  
22 HELPS NOBODY. THAT WOULD REALLY JUST BE TRYING TO FORCE  
23 A RELIGIOUS GROUP TO VIOLATE ITS BELIEFS WITH NO BENEFIT  
24 TO ANYBODY. SO I DON'T THINK THAT'S WHAT THEY MEAN, BUT  
25 I AGREE WITH YOU, AND TO BE CLEAR, I DON'T MEAN TO



1 SUGGEST THERE WAS EVIDENCE ON THAT POINT.

2 THE GOVERNMENT HAS ALSO VIOLATED THE FREE  
3 EXERCISE CLAUSE. UNDER THE FREE EXERCISE CLAUSE, THE  
4 GOVERNMENT CAN'T -- WELL, THE GOVERNMENT FACES STRICT  
5 SCRUTINY IN SEVERAL DIFFERENT WAYS UNDER THE FREE  
6 EXERCISE CLAUSE. FIRST, IT'S RULE THAT YOU MUST DO  
7 EVERY HOME STUDY THAT SOMEBODY ASKS YOU FOR IS NOT A  
8 NEUTRAL AND GENERALLY APPLICABLE RULE. NOBODY CAN FIND  
9 ANY EXAMPLE OF WHEN THEY HAVE EVER SAID IT BEFORE THIS  
10 CONTROVERSY. YOU HEARD TESTIMONY FROM JIM AMATO AND  
11 FROM TONI SIMMS-BUSCH ABOUT THE MANY CIRCUMSTANCES IN  
12 WHICH FOSTER AGENCIES DO SEND PEOPLE TO OTHER AGENCIES  
13 THAT THEY THINK ARE BETTER FITS FOR THEM.

14 THE CLAIMED POLICY THAT YOU MUST DO EVERY  
15 HOME STUDY IS NOT NEUTRAL AND IT'S NOT GENERALLY  
16 APPLICABLE. IN FACT, IT HAS NOT BEEN APPLIED AND IT'S  
17 NOT RELIGIOUSLY NEUTRAL BECAUSE IT WAS INVENTED -- IT  
18 WAS INVENTED TO DEAL WITH THE SITUATION OF TWO RELIGIOUS  
19 ENTITIES. THAT'S WHY IT WAS INVENTED, THAT'S WHY NO ONE  
20 CAN TALK ABOUT ANY REFERENCE TO IT ANY TIME OTHER THAN  
21 2018, BECAUSE IT DID NOT EXIST.

22 THE CITY WHEN IT SET OUT TO EXAMINE THE  
23 PROBLEM WITH ONE EXCEPTION THERE WAS ADDED TODAY AFTER  
24 THE FACT, BUT WITH ONE EXCEPTION ONLY INQUIRED OF  
25 RELIGIOUS GROUPS. THEY DID NOT ASK WHETHER ANY OF THE

1 NONRELIGIOUS AGENCIES CERTIFIED SAME-SEX COUPLES AT ALL.  
2 AND SO THERE IS ONE ADDITION AT THE END OF ONE GROUP  
3 CALLED NET WHO HAPPENS TO BE FRIENDS WITH THE  
4 COMMISSIONER. THE REST OF THE NONRELIGIOUS GROUPS HAVE  
5 NEVER EVEN BEEN ASKED, RIGHT. SO THE GOVERNMENT ONLY  
6 SET OUT TO ASK THE RELIGIOUS GROUPS. AND THE GOVERNMENT  
7 HAS NEVER TOLD THE NONRELIGIOUS GROUPS, EITHER TELL ME  
8 YOUR POLICY ON SAME-SEX COUPLES, RIGHT. IT WOULD BE  
9 INTERESTING TO KNOW THAT. THE CITY ACTUALLY DOES NOT  
10 EVEN KNOW IT EVEN TODAY, CAN'T BE THAT COMPELLING,  
11 RIGHT. BUT ALSO, THEY HAVE NOT ASKED THEM, TELL ME  
12 WHETHER YOU DO A HOME STUDY FOR EVERYBODY WHO KNOCKS ON  
13 THE DOOR. THEY HAVE NOT TOLD THEM THAT THEY MUST DO  
14 THAT HOME STUDY AND THEY HAVE NOT INQUIRED AS TO WHETHER  
15 THEY ARE ACTUALLY DOING THAT HOME STUDY. THIS IS NOT A  
16 NEUTRAL AND GENERALLY APPLICABLE LAW, THIS IS A TARGETED  
17 -- A TARGETED INVESTIGATION ONLY ASKING ABOUT RELIGIOUS  
18 GROUPS, NOT APPLIED TO ANY OF THE NONRELIGIOUS GROUPS.

19 YOU HEARD ALSO FROM BOTH JIM AMATO AND  
20 FROM COMMISSIONER FIGUEROA ABOUT THE DIRECT RELIGIOUS  
21 DISCUSSIONS THAT THE GOVERNMENT ENGAGED IN WITH  
22 CATHOLIC. AGAIN, THE GOVERNMENT HAS NO DOUBT THAT  
23 CATHOLIC IS A RELIGIOUS ENTERPRISE. I DON'T THINK THEY  
24 HAVE ANY REAL -- THEIR LAWYER AT ONE POINT SAID FOSTER  
25 CARE WAS A BUSINESS. I DON'T THINK FROM WHAT YOU HEARD

1 FROM ANY OF THE WITNESSES, INCLUDING THE CITY'S  
2 WITNESSES, THAT IT'S PLAUSIBLE TO SAY THIS IS A  
3 BUSINESS. CATHOLIC DOES IT AT A LOSS OF ABOUT  
4 \$3.8 MILLION A YEAR.

5 BUT WHEN TALKING ABOUT WHAT CATHOLIC  
6 SHOULD DO, COMMISSIONER FIGUEROA SAID TIMES HAVE  
7 CHANGED, IT'S NOT 100 YEARS AGO. YOU OUGHT TO LISTEN TO  
8 POPE FRANCIS. AND THERE WAS A LITTLE BIT OF A TENSION  
9 BETWEEN COMMISSIONER FIGUEROA'S TESTIMONY AND JIM  
10 AMATO'S. MR. AMATO TESTIFIED THAT SHE ALSO SAID YOU  
11 OUGHT TO LISTEN TO POPE FRANCIS INSTEAD OF THE  
12 ARCHDIOCESE OR INSTEAD OF THE ARCHBISHOP.

13 IT'S A GOVERNMENT OFFICIAL IN A  
14 GOVERNMENT BUILDING TELLING A RELIGIOUS ORGANIZATION  
15 WHICH RELIGIOUS LEADER TO LISTEN TO. THAT'S OUTRAGEOUS.  
16 THAT'S FAIRLY UNPRECEDENTED. THE GOVERNMENT DOES NOT  
17 GET TO GO TO THE RELIGIOUS GROUP AND SAY, I AM GOING TO  
18 TELL YOU WHICH RELIGIOUS LEADER YOU ARE GOING TO LISTEN  
19 TO. AND IF YOU DON'T DO IT MY WAY, WE ARE GOING TO TAKE  
20 YOU OUT OF THE FOSTER CARE BUSINESS. BUT THAT'S  
21 ESSENTIALLY WHAT THE CITY IS DOING. THEY TOLD US WHAT  
22 SET OF RELIGIOUS BELIEFS WE OUGHT TO FOLLOW. THE  
23 ARCHDIOCESE JUST CAN'T FOLLOW THOSE, THEY DISAGREE.  
24 THEY HAVE A DISAGREEMENT ABOUT A LOT OF THINGS, BUT THE  
25 GOVERNMENT SHOULD NOT BE TELLING PEOPLE WHICH RELIGIOUS

1 BELIEFS TO FOLLOW, WHICH RELIGIOUS LEADER TO FOLLOW.

2 THE GOVERNMENT CERTAINLY SHOULD NOT HAVE  
3 THE OPINION THAT THERE ARE CERTAIN RELIGIOUS BELIEFS  
4 THAT YOU REALLY OUGHT TO LET GO OF BY NOW, YOU REALLY  
5 OUGHT TO LET GO OF THAT ONE. THE GOVERNMENT HAS NO  
6 BUSINESS HAVING AN OPINION ON THAT, AND THEY CERTAINLY  
7 HAVE NO BUSINESS DIRECTLY TELLING RELIGIOUS GROUPS WHAT  
8 RELIGIOUS BELIEFS ARE OKAY AND WHAT ARE NOT OKAY. THAT  
9 IS OUTRIGHT AND OPEN RELIGIOUS DISCRIMINATION FROM A  
10 GOVERNMENT OFFICIAL IN A GOVERNMENT OFFICE. THEY ARE  
11 NOT ALLOWED TO DO IT.

12 SO YOU HAVE THE INVESTIGATION THAT STARTS  
13 WITH ONLY CALLING THE RELIGIOUS, THE INVESTIGATION THAT  
14 CONTINUES, WITH ONE EXCEPTION, NOT CHECKING WITH ANY OF  
15 THE NONRELIGIOUS EITHER ABOUT THIS OR ANY OTHER REFERRAL  
16 SITUATION, AND THEN YOU HAVE THE GOVERNMENT TELLING THEM  
17 THEY OUGHT TO GET OVER THEIR RELIGIOUS BELIEFS, THEY  
18 OUGHT TO LISTEN TO A CERTAIN RELIGIOUS LEADER.

19 THE COURT: WELL, IT'S NOT JUST A CERTAIN  
20 RELIGIOUS LEADER, IT'S THE HEAD OF THE CATHOLIC CHURCH.

21 MR. RIENZI: OH, IT SURE IS, YOUR HONOR.  
22 BUT THE GOVERNMENT DOES NOT GET TO BE THE ONE WHO  
23 FIGURES OUT WHAT POPE FRANCIS MEANS. BUT ARCHBISHOP  
24 CHAPUT HAS A DIFFERENT VIEW OF WHAT POPE FRANCIS MEANT  
25 THAN THE PHILLY INQUIRER DOES. I AM NOT COMPETENT TO

1 TELL THE ANSWER TO THAT EITHER, BUT THE GOVERNMENT SURE  
2 IS NOT COMPETENT TO TELL THAT, RIGHT, SO "YOU OUGHT TO  
3 LISTEN TO THE POPE" IS NOT A NEUTRAL STATEMENT, RIGHT.  
4 I THINK THEY HAVE A PRETTY CLEAR VIEW OF WHAT THEY THINK  
5 THE POPE MEANS. AND I DON'T THINK THE GOVERNMENT HAS  
6 GOT ANY BUSINESS HAVING A VIEW ON THE SUBJECT. THE  
7 GOVERNMENT HAS NO COMPETENCE AND NO AUTHORITY TO HAVE A  
8 VIEW ON THAT SUBJECT, CERTAINLY NOT TO THREATEN  
9 RELIGIOUS GROUPS WITH IT.

10 COMPELLED SPEECH, YOUR HONOR. UNDER --  
11 AND JUST TO FINISH UP ON FREE EXERCISE. UNDER ANY OF  
12 THESE THEORIES, UNDER THE RELIGIOUS DISCRIMINATION  
13 THEORY, UNDER THE NOT-NEUTRAL AND GENERALLY-APPLICABLE  
14 THEORY AND UNDER THE THEORY THAT THERE ARE  
15 INDIVIDUALIZED GOVERNMENT EXEMPTIONS AND INDIVIDUALIZED  
16 GOVERNMENT ASSESSMENTS. YOU GET TO STRICT SCRUTINY  
17 UNDER THE FREE EXERCISE CLAUSE. ANY ONE OF THEM WILL  
18 DO, WE HAVE GOT ALL OF THEM. AND UNDER STRICT SCRUTINY  
19 AGAIN, THE GOVERNMENT CAN ONLY WIN IF IT COULD PROVE A  
20 COMPELLING GOVERNMENT INTEREST AND LEAST-RESTRICTIVE  
21 MEANS. IT CAN'T, IT HAS NOT -- FROM THEIR OWN MOUTHS  
22 THEY ACTUALLY SAID IT IS NOT THAT COMPELLING, THEY HAVE  
23 TO LOSE.

24 THERE'S ALSO A COMPELLED SPEECH CLAIM.  
25 THE GOVERNMENT WANTS TO FORCE CATHOLIC TO PROVIDE THESE

1 CERTIFICATIONS. CATHOLIC DOES NOT WANT TO DO IT. THAT  
2 IS A CLEAR CASE OF COMPELLED SPEECH. THE GOVERNMENT IS  
3 NOT ALLOWED TO SAY TO CATHOLIC, YOU HAVE TO SAY THE  
4 THINGS I WANT YOU TO SAY. BUT THAT'S WHAT THEY ARE  
5 TRYING TO DO. THEY ARE SAYING, IF YOU WANT TO DO FOSTER  
6 CARE FOR THESE OTHER FAMILIES, YOU ARE GOING TO HAVE TO  
7 MAKE THESE CERTIFICATIONS AND YOU ARE GOING TO HAVE TO  
8 EXPRESS YOUR OPINIONS ABOUT THESE FAMILIES AND THEIR  
9 RELATIONSHIPS. CATHOLIC DOES NOT WANT TO. UNDER THE  
10 FIRST AMENDMENT, THEY CAN'T BE REQUIRED TO.

11 YOU HEARD A LITTLE BIT OF TESTIMONY FROM  
12 THE CITY CLAIMING THAT RECRUITMENTS AND SIGNING UP OF  
13 FAMILIES -- I GUESS THEY SAID A COUPLE OF DIFFERENT  
14 THINGS. AT TIMES THEY SAID RECRUITMENT AND SIGNING UP  
15 OF FAMILIES IS PART OF THE CONTRACT. THERE IS NO  
16 INDICATION THAT THEY PAY ANYTHING FOR THAT. THERE IS NO  
17 INDICATION THAT THEY CHECK ANYTHING ON THAT. ELSEWHERE  
18 THEY SEEM TO SAY IT'S NOT DHS'S JOB, IT'S SOMEBODY  
19 ELSE'S JOB.

20 CERTAINLY CATHOLIC IS NOT ACTING AS THE  
21 CITY AND CERTAINLY IT IS NOT SPENDING MONEY UNDER THE  
22 CONTRACT WHEN IT JUST STEPS ASIDE. SO YOU MIGHT HAVE AN  
23 ARGUMENT ABOUT MAYBE THERE IS OVERHEAD AND SOMETHING  
24 ELSE, BUT WHEN CATHOLIC JUST SAYS, YOU KNOW WHAT, I  
25 CAN'T DO THAT, THEY ARE NOT SPENDING THE CITY'S MONEY,

1       THEY ARE NOT OPERATING AS THE CITY, THEY ARE OPERATING  
2       AS THEMSELVES AND THEY ARE STEPPING ASIDE. THEY ARE NOT  
3       TAKING ACTIONS UNDER THAT CONTRACT. THEY ARE CHOOSING  
4       NOT TO AND THEY ARE EXERCISING A STATUTORY AND  
5       CONSTITUTIONAL RIGHT TO CHOOSE NOT TO DO THAT.

6               THE CITY DOES NOT DENY AND, IN FACT, HAS  
7       BEEN CRYSTAL CLEAR THAT IT IS ATTEMPTING TO FORCE  
8       CATHOLIC TO MAKE WRITTEN CERTIFICATIONS ENDORSING THE  
9       RELATIONSHIPS OF COUPLES IN SAME-SEX MARRIAGE WHO APPLY  
10      FOR HOME STUDIES. THAT'S THE ONLY THING CATHOLIC COULD  
11      DO TO SATISFY THEM HERE. THEY HAVE TO FILL OUT THOSE  
12      STATE CRITERIA, AND IF THEY DON'T, THE CITY SAYS YOU ARE  
13      OUT OF LUCK AND YOU ARE OUT OF FOSTER CARE.

14             THE CITY IS RIGHT THAT WHEN THE CITY IS  
15      CONTRACTING THE CITY GETS A MEASURE OF DISCRETION. BUT  
16      THE CITY DOES NOT GET THE DISCRETION TO FORCE PEOPLE TO  
17      ENGAGE IN COMPELLED SPEECH AND IT DOES NOT GET THE  
18      DISCRETION TO FORCE PEOPLE TO VIOLATE THEIR RELIGIOUS  
19      BELIEFS. HERE, THEY ARE DOING BOTH OF THEM AND THEY  
20      MUST LOSE.

21             THE CITY ACTS LIKE IT WILL BE BIG DEAL,  
22      AND MR. CERVONE AT TIMES ACTED LIKE IT WOULD BE A BIG  
23      DEAL IF YOU MAINTAIN THE STATUS QUO. AND BY STATUS QUO,  
24      I MEAN THE STATUS QUO ANTE. SO THE STATUS QUO I AM  
25      REFERRING TO IS THE STATUS QUO BEFORE THEY CUT OFF

1 REFERRALS. SO UNTIL EARLY MARCH IS WHAT I MEAN BY THE  
2 STATUS QUO, BECAUSE THAT'S WHAT WE ARE ASKING YOUR HONOR  
3 TO PUT BACK IN PLACE, AT LEAST FOR A PERIOD OF TIME  
4 WHILE WE LITIGATE THE REST OF THE CASE.

5 THE CITY ACTS LIKE IT WOULD BE A BIG DEAL  
6 TO RESUME THAT STATUS QUO. THE REALITY IS THEY OPERATED  
7 UNDER THAT STATUS QUO FOR A LONG TIME AND NOBODY HAD A  
8 PROBLEM. THERE WAS NO PROBLEM. THERE IS NOT A SINGLE  
9 SAME-SEX FOSTER PARENT APPLICANT WHO HAS NOT BEEN ABLE  
10 TO BECOME A FOSTER PARENT, ZERO. AND YOU HEARD MR.  
11 AMATO'S TESTIMONY THAT ACTUALLY SINGLE SAME-SEX PEOPLE  
12 WHO APPLY TO THEM GET CERTIFIED, RIGHT. IT'S REALLY  
13 THIS NARROW ISSUE. AS A RELIGIOUS MATTER, THE CHURCH  
14 CAN'T DO THE CERTIFICATION ABOUT THE RELATIONSHIPS.  
15 THAT'S IT. AND THE CITY'S SOLUTION IS YOU ARE GONE, YOU  
16 ARE OUT OF THIS WORK, AND SURE IT'S BAD IF SOME KIDS GET  
17 TRANSFERRED, SURE IT'S BAD IF SOME HOMES SAY EMPTY, SURE  
18 IT'S BAD IF SOME KIDS STAY AT PLACES THEY SHOULDN'T BE,  
19 BUT WE WILL EVENTUALLY CATCH UP AND SORT IT OUT.

20 BUT THAT'S NOT THE LAW. THE LAW IN THIS  
21 COUNTRY ALLOWS FOR DIVERSITY. IT ALLOWS FOR DIVERSITY.  
22 AND SO IT ALLOWS A WORLD IN WHICH YOU HAVE BOTH GAY  
23 FOSTER PARENTS AND A CATHOLIC AGENCY THAT HAS DIFFERENT  
24 BELIEFS ABOUT RELIGION AND SEX. AND THEY DON'T ALL HAVE  
25 TO AGREE ON EVERYTHING ALL THE TIME. I THINK ONE OF THE



1 TEACHINGS OF THE MASTERPIECE CASE, WHICH JUST CAME OUT A  
2 COUPLE OF WEEKS AGO, WAS PRECISELY THAT WE HAVE TO FIND  
3 WAYS TO ACTUALLY LIVE TOGETHER IN THIS SOCIETY OF PEOPLE  
4 WHO DON'T ALL SHARE THE SAME BELIEFS. IT'S A FREE  
5 PEOPLE. SO IN A FREE PLACE WE ARE NOT ALWAYS GOING TO  
6 SHARE THE SAME BELIEFS. IT CAN'T BE THE CASE THAT WE  
7 GET TO A POINT WHERE THERE IS ONE ACCEPTABLE VIEW ON  
8 MARRIAGE AND THEN YOU CAN'T DO ANY SOCIAL WORK IN THE  
9 CITY OR YOU CAN'T DO THIS SOCIAL WORK UNLESS YOU SHARE  
10 IT.

11 IN MASTERPIECE, THE MAJORITY ACTUALLY  
12 TALKED ABOUT THE SITUATION OF A CHURCH REFUSING TO DO A  
13 SAME-SEX WEDDING AND THEY SAID THAT WAS THE EASY CASE,  
14 RIGHT. THEY SAID THE HARDER CASE, SELLERS OF COMMERCIAL  
15 SERVICES, THE BUSINESS GUY SELLING THE CAKES, EVEN THAT  
16 THAT GUY WON, BUT THE EASY CASE TO THEM IN THEIR OPINION  
17 WAS THE CLERGY WHO SAYS, I CAN'T DO THE WEDDING. WELL,  
18 CATHOLIC IS PRECISELY IN THAT SITUATION, RIGHT.  
19 CATHOLIC IS LIKE THE CLERGY. THEY ARE PART OF THE  
20 CATHOLIC CHURCH AND THEY ARE SIMPLY SAYING, LOOK, I  
21 CAN'T DO THINGS THAT OPENLY AND DIRECTLY VIOLATE MY  
22 RELIGIOUS BELIEFS. I WANT TO GO TAKE CARE OF THE KIDS  
23 IN THE CITY AS I HAVE FOR DECADES, I CAN'T DO THIS THING  
24 THAT VIOLATES MY RELIGIOUS BELIEF. WHAT MASTERPIECE  
25 SAID ABOUT THAT IS THAT THAT'S OKAY BECAUSE PEOPLE CAN

1 ACCEPT THAT THAT IS A RELIGIOUS EXERCISE AND BECAUSE  
2 IT'S NOT STANDING IN THE WAY OF PEOPLE GETTING -- IT'S  
3 NOT HARMING DIGNITY OR STANDING IN THE WAY OF PEOPLE  
4 GETTING SERVICES, BECAUSE THEY CAN GET SERVICES  
5 ELSEWHERE.

6 THE SAME IS TRY HERE. MARRIAGES, LIKE  
7 FOSTER CARE, HAVE SOME RELATIONSHIP TO THE GOVERNMENT,  
8 RIGHT. YOU NEED A LICENSE FROM THE GOVERNMENT TO GET  
9 MARRIED. SO IT'S NOT THAT IT'S UTTERLY UNCONNECTED TO  
10 THE GOVERNMENT. BUT WHAT IT IS IS THAT PEOPLE CAN  
11 UNDERSTAND NOT EVERY CHURCH HAS TO HAVE THE SAME VIEWS  
12 ABOUT SEX AND MORALITY. IT'S KIND OF RIDICULOUS TO  
13 THINK THAT EVERY CHURCH IS GOING TO HAVE IDENTICAL VIEWS  
14 ON THOSE THINGS, AND THE GOVERNMENT SHOULD NOT BE IN THE  
15 POSITION OF TRYING TO CRUSH ONE, TRYING TO KICK IT OUT  
16 OF THE PUBLIC SPHERE BECAUSE IT HAS THE WRONG VIEWS.  
17 TEACHINGS OF OBERGEFELL AND MASTERPIECE ACTUALLY BOTH  
18 POINT IN THE DIRECTION OF SAYING, WE ARE ALLOWED TO HAVE  
19 DISAGREEMENT AND WE HAVE GOT TO FIND WAYS TO WORK  
20 TOGETHER. AND HERE THE LOGICAL WAY TO WORK TOGETHER IS  
21 TO LET CATHOLIC KEEP TAKING CARE OF KIDS, BUT NOT KICK  
22 THEM OUT OF THE SPHERE JUST BECAUSE THEY HAVE A  
23 DIFFERENT SET OF RELIGIOUS BELIEFS. THE CITY MAY WISH  
24 THAT THEY WOULD MOVE ON FROM THOSE BELIEFS. MR. CERVONE  
25 MAY WISH THAT THEY WOULD MOVE ON FROM THOSE BELIEFS, BUT

1       THEY ARE ENTITLED TO HAVE THEM.    STATE AND FEDERAL LAW  
2       LET THEM HAVE THEM.

3                         WITH THAT, YOUR HONOR, WE SUGGEST THAT --  
4       WE VERY MUCH ASK THIS COURT TO PROVIDE A TEMPORARY  
5       RESTRAINING ORDER OR PRELIMINARY INJUNCTION AND DO TO SO  
6       AS QUICKLY AS POSSIBLE.    AND IF I COULD THEN RESERVE THE  
7       REST OF MY ARGUMENTS FOR REBUTTAL AFTERWARD.    THANK YOU.

8                         THE COURT:    OKAY.    I WILL HEAR FROM THE  
9       CITY.

10                        MS. EWING:    MAY IT PLEASE THE COURT,  
11       CATHOLIC SOCIAL SERVICES ASKED FOR THIS HEARING FOR THE  
12       EXTRAORDINARY RELIEF OF A TEMPORARY RESTRAINING ORDER ON  
13       THE BASIS THAT IT WOULD SUFFER IMMEDIATE AND IRREPARABLE  
14       HARM UNLESS THE CITY WILL BE ORDERED TO OPERATE UNDER AN  
15       EXPIRED CONTRACT OR SOON-EXPIRED CONTRACT OR TO ENTER  
16       INTO A NEW FULL CONTRACT WITH CSS IMMEDIATELY.    THERE  
17       HAVE BEEN MULTIPLE DAYS OF TESTIMONY WHICH HAVE  
18       DEMONSTRATED THAT THERE IS NO NEED FOR SUCH  
19       EXTRAORDINARY RELIEF IN THIS CASE.    NONE OF THE HARMS  
20       THAT CATHOLIC SOCIAL SERVICES FOCUSED ON, WHETHER ITS  
21       OWN LOSS OF BUSINESS, OR ITS FOSTER PARENTS' INTEREST,  
22       OR ITS FAILED ATTEMPT TO SUGGEST THAT THE CITY IS NOT  
23       ACTING IN THE BEST INTEREST OF CHILDREN, SATISFIES THE  
24       INJUNCTION STANDARD.    NOR IS CSS LIKELY TO SUCCEED ON  
25       THE MERITS, AND BOTH THE CITY AND THE PUBLIC INTEREST

1 WILL SUFFER IF THIS COURT WERE TO ISSUE AN INJUNCTION.

2 I AM GOING TO FOCUS ON THE KEY EVIDENCE  
3 FROM THIS WEEK'S HEARING AND A FEW ISSUES WHICH WERE  
4 DIRECTLY RAISED BY CATHOLIC. SINCE THIS WAS AN  
5 EVIDENTIARY HEARING AND IN THE INTEREST OF BREVITY, THE  
6 CITY RELIES ON OUR BRIEFING FOR ANY MERITS ARGUMENTS  
7 THAT I DO NOT DISCUSS AGAIN TODAY.

8 FIRST, I WANT TO TALK ABOUT HARM A LITTLE  
9 BIT. CATHOLIC HAS PRESENTED NO EVIDENCE OF URGENT OR  
10 ACTUAL IRREPARABLE HARM THAT WOULD MERIT AN INJUNCTION.  
11 ALL OF THEIR ATTEMPTS TO SHOW HARM HAVE EITHER FAILED OR  
12 THEY ARE IRRELEVANT TO A TRO, PRELIMINARY INJUNCTION  
13 ANALYSIS. FIRST, CATHOLIC SOCIAL SERVICES ARGUED THAT  
14 THEY WON'T BE ABLE TO PROVIDE FOSTER CARE AS PART OF ITS  
15 RELIGIOUS MISSION WITHOUT A CONTRACT WHICH ALLOWS NEW  
16 PLACEMENTS. BUT THEIR OWN TESTIMONY ABOUT THEIR OTHER  
17 FOSTER CARE ACTIVITIES, SUCH AS CONGREGATE CARE, THEIR  
18 CONTRACTS WITH OTHER COUNTIES TO PROVIDE FOSTER CARE,  
19 AND INDEED THEIR OTHER CONTRACTS WITH THE CITY ALL SHOW  
20 THAT CATHOLIC SOCIAL SERVICES WILL BE ABLE TO EXERCISE  
21 ITS CHARITABLE MISSIONS TO BE TAKING CARE OF CHILDREN,  
22 AND REBUT THEIR CLAIM. AND THEIR HARMS TO -- THAT ARE  
23 IN THE NATURE OF BUSINESS LOSSES, SUCH AS WHETHER THEY  
24 WILL LOSE CONTRACTS SO THAT THEY MAY HAVE TO DOWNSIZE,  
25 THESE TYPES OF HARMS ARE NOT CONSIDERED IRREPARABLE IN

1 THIS CIRCUIT. AND IT IS NOT CRITICAL. ONE OF THE SORT  
2 OF THINGS THAT WE HAVE -- THERE HAS BEEN A LOT OF  
3 DISCUSSION WHETHER THEY ARE A BUSINESS, WHETHER THEY ARE  
4 NOT A BUSINESS. THEY ARE A NONPROFIT COOPERATION WITH  
5 EMPLOYEES AND THEY ENGAGE IN -- AND THEY ENTER INTO  
6 CONTRACTS TO PERFORM SERVICES AND ARE CLAIMING BUSINESS  
7 HARMS.

8 SECOND, THEY TRIED TO PORTRAY A FOSTER  
9 CARE CRISIS, ALTHOUGH IT IS UNCLEAR HOW CATHOLIC ITSELF  
10 IS HARMED BY THAT ALLEGATION IN A WAY THAT WOULD WARRANT  
11 A TRO. BUT EVEN THEIR CLAIM THERE THAT THIS IS SOME  
12 KIND OF OVERALL URGENT FOSTER CARE CRISIS WAS BELIED BY  
13 THE TESTIMONY OF -- CERTAINLY BY THE DHS WITNESSES.  
14 SIMILARLY, THERE IS NO EVIDENCE OF ANY CRISIS THAT HAS  
15 RESULTED FROM DHS HALTING THE INTAKE TO CATHOLIC SOCIAL  
16 SERVICES. THEIR EVIDENCE IS THAT THERE ARE SOME OPEN  
17 CATHOLIC FOSTER HOMES.

18 THEY HAVE ALSO TRIED TO ARGUE THAT THE  
19 WAY THAT THE DEPARTMENT OF HUMAN SERVICES HAS HANDLED  
20 EXCEPTIONS TO INTAKE FOLLOWING THE INTAKE CLOSURE HAS  
21 SOMEHOW HARMED OR THREATENED TO HARM CHILDREN. AGAIN,  
22 THE EVIDENCE THAT HAS BEEN PRESENTED IS THAT DHS IS  
23 LOOKING AT THIS ISSUE FROM THE PRISM OF THE BEST  
24 INTEREST OF THE CHILDREN, THAT THEY HAVE DETERMINED THAT  
25 ALL CURRENT KIDS CAN REMAIN WITH THEIR FAMILIES UNTIL

1       THEY LEAVE THE SYSTEM, THAT IF NECESSARY THAT FOSTER  
2       FAMILIES WILL BE ABLE TO WORK WITH OTHER AGENCIES AS HAS  
3       BEEN DONE IN THE PAST WITH MANY OTHER CLOSURES OR LOSSES  
4       OF CONTRACTS FOR FOSTER CARE. AND THE TESTIMONY FROM  
5       THE THREE FOSTER PARENTS DID NOT RULE THIS OUT. NOT  
6       SURPRISINGLY, BECAUSE YOU WOULD EXPECT THAT THEY WOULD  
7       WANT TO STAY IF THEY HAVE A BOND WITH THE CHILD, THAT  
8       THAT WOULD BE THE DETERMINATIVE FACTOR. BUT THE  
9       EVIDENCE IS ALSO THAT DH LEADERSHIP HAS AND WILL ALLOW  
10      INTAKE EXCEPTIONS FOR BEST INTEREST REASONS. AND THESE  
11      ARE REASONS SUCH AS SIBLINGS COMING INTO CARE AND GOING  
12      TO THE FOSTER FAMILY THAT IS LOOKING AFTER OTHER  
13      SIBLINGS IN THE FAMILY. OR IF THERE IS A FORMER FOSTER  
14      PARENT INVOLVED WHERE THAT WOULD BE A GOOD FIT TO GO  
15      BACK. BUT THERE HAS BEEN NO EVIDENCE THAT WHERE -- IN  
16      ANY INSTANCE IN WHICH DHS LEADERSHIP HAS BEEN ASKED FOR  
17      AN EXEMPTION OR IT HAS BEEN BROUGHT TO THEIR ATTENTION  
18      THAT THERE IS ONE OF THESE CASES THAT ANY PERMISSION HAS  
19      BEEN DENIED. IT HAS ALWAYS BEEN GRANTED.

20                       SO FINALLY, WE HAVE THE TESTIMONY OF MR.  
21      AMATO WHO APPEARED TO TESTIFY THAT DHS, YOU KNOW, WOULD  
22      NEGOTIATE AN INTERIM TRANSITIONAL CONTACT WITH THE CITY  
23      TO -- RATHER THAN WALK AWAY FROM -- ON JUNE 30TH WITH NO  
24      CONTRACT AND CLOSE ITS FOSTER HOMES. THE CITY HAS  
25      OFFERED AN INTERIM AGREEMENT TO CSS WHICH WILL EVEN KEEP

1 COMPENSATION RATES THE SAME AS IN THE CURRENT CONTRACT  
2 AND WILL LAST -- WE HAVE OFFERED THEM A ONE-YEAR  
3 CONTRACT IN ORDER TO ALLOW THE RELATIONSHIP TO WIND DOWN  
4 WITH -- YOU KNOW, IN AN ORDERLY FASHION. THAT IN ITSELF  
5 REMOVES ANY URGENCY WHICH COULD WARRANT ANY  
6 EXTRAORDINARY RELIEF FROM THIS COURT.

7 NOW, I WOULD LIKE TO TALK A LITTLE BIT  
8 ABOUT THE MERITS, ANOTHER PRONG OF THE TRO, PRELIMINARY  
9 INJUNCTION ANALYSIS. THERE HAVE BEEN MANY ARGUMENTS  
10 MADE IN THIS CASE WHICH THE CITY REGARDS AS EITHER  
11 DWELLING ON IRRELEVANT POINTS OR TO THE EXTENT THEY ARE  
12 IRRELEVANT, OFFERING INADEQUATE EVIDENCE TO SUSTAIN  
13 THEM. I WANT TO GO THROUGH A FEW OF THOSE. FOR  
14 EXAMPLE, WHETHER OR NOT CATHOLIC SOCIAL SERVICES IS  
15 PERFORMING ITS FOSTER CARE WORK AS A RELIGIOUS MISSION  
16 IS NOT THE POINT. THIS IS NOT A CASE IN WHICH THE CITY  
17 IS COMING IN TO INTERFERE WITH PRIVATE CHARITABLE WORK.  
18 THE FACT THAT -- IT'S THE OPPOSITE, IT'S -- CATHOLIC  
19 SOCIAL SERVICES HAS ACCEPTED A CONTRACT FROM THE CITY OF  
20 PHILADELPHIA TO PERFORM WORK WHICH THE CITY OF  
21 PHILADELPHIA IS CHARGED WITH BY THE COMMONWEALTH TO TAKE  
22 CARE OF ABUSED AND NEGLECTED CHILDREN BY PROVIDING THEM  
23 WITH FOSTER CARE. AND WE HAVE DELEGATED THROUGH  
24 CONTRACTS PART OF THAT OBLIGATION, PART OF THE PROVIDING  
25 OF FOSTER CARE TO THE 28 OR 29 OR 30 FOSTER CARE

1 AGENCIES WHICH HAVE ENTERED INTO CONTRACTS WITH THE  
2 CITY. YOU DON'T HAVE TO SIGN A CONTRACT. YOU CAN  
3 NEGOTIATE THE CONTRACT, YOU CAN WALK AWAY. IF A  
4 PROVISION IS A DEAL BREAKER FOR ONE SIDE OR THE OTHER,  
5 YOU HAVE TO WALK AWAY, ONE SIDE OR THE OTHER.

6 SO THE FIRST POINT IS THAT YOU ARE NOT  
7 SUBSTANTIALLY BURDENED IF YOU AGREE TO A PROVISION IN A  
8 CONTRACT. YOU CAN'T THEN UNILATERALLY CHANGE THAT  
9 OBLIGATION AFTER THE CONTRACT HAS BEEN IN EFFECT AND SAY  
10 IT DOES NOT APPLY TO ME BECAUSE I HAVE THIS EXCEPTION OR  
11 FOR RELIGIOUS REASONS. THAT'S SOMETHING THAT NEEDS TO  
12 BE WORKED OUT UP FRONT. THESE CONTRACTS ARE TO PROVIDE  
13 PUBLIC SOCIAL SERVICES. THEY ARE PAID FOR WITH TAXPAYER  
14 DOLLARS AND OBVIOUSLY YOU HAVE SEEN, IT'S AN EXHIBIT, IT  
15 HAS MANY TERMS. BUT ONE OF THE -- CERTAINLY THE CITY  
16 DISAGREES WITH CATHOLIC SOCIAL SERVICES AS TO WHETHER  
17 THE CONTRACT REQUIRES THEM TO RECRUIT AND CERTIFY FOSTER  
18 PARENTS. I THINK IF YOU READ THE CONTRACT AND AS WE  
19 HAVE EXPLAINED IN OUR BRIEFS, IT IS PART OF THEIR SCOPE  
20 OF SERVICES. AND WE BELIEVE IT IS PART OF THEIR SCOPE  
21 OF SERVICES AND PART OF THE OVERALL COMPENSATION  
22 STRUCTURE. THE COMMONWEALTH OF PENNSYLVANIA SETS THE  
23 CRITERIA FOR EVALUATING PROSPECTIVE FOSTER FAMILIES, AND  
24 NONE OF THESE CRITERIA ARE RELIGIOUS IN NATURE.

25 ANOTHER PROVISION OF OUR CONTRACT IS THAT



1 -- AND IT'S CLEARLY SET FORTH IN THE CONTRACT, IS THAT  
2 ALL FAMILIES MUST BE TREATED EQUALLY UNDER THE -- AND  
3 WITH NO DISCRIMINATION. I HAVE HEARD ALL KINDS OF  
4 EFFORTS TO MINIMIZE THE REFERENCES TO THE FAIR PRACTICES  
5 ORDINANCE IN THE CONTRACT AND I WILL GET TO THAT IN A  
6 SECOND, BUT THE NONDISCRIMINATION PROVISIONS IN THE  
7 CONTRACT ARE PUT THERE FOR A REASON. IT IS NOT  
8 SOMETHING THAT -- YOU KNOW, I HAVE HEARD A LOT OF  
9 ARGUMENT OF WELL, NO ONE HAS EVER TRIED TO APPLY THIS,  
10 HERE IS -- WE HAVE NOT CALLED EVERY ONE OF OUR  
11 CONTRACTORS TO ASK WHETHER THEY ARE COMPLYING WITH IT.  
12 IT'S A PROVISION OF THE CONTRACT. WE HAVE A RIGHT TO  
13 EXPECT THAT WHEN OUR CONTRACTOR SIGN A CONTRACT THAT  
14 THEY ARE DOING WHAT THEY SAY THEY ARE GOING TO DO AND  
15 HAVE OBLIGED THEMSELVES TO DO UNLESS WE FIND OUT TO THE  
16 CONTRARY. AND IN THIS CASE, IT WAS ONLY WHEN THE  
17 INQUIRER ARTICLE CAME OUT AND IN THE AFTERMATH OF THE  
18 INQUIRER ARTICLE THROUGH INQUIRIES, CATHOLIC SOCIAL  
19 SERVICES CLEARLY STATED THAT IT WOULD NOT BE ABLE TO  
20 COMPLY WITH THAT PROVISION THAT WAS IN THE CONTRACT.

21 AND SO AT THAT POINT, YOU KNOW, WE  
22 REACHED THE DECISION THAT THE CONTRACT IS COMING TO AN  
23 END, AND IT LOOKS AS IF THEY ARE NOT GOING TO BE ABLE TO  
24 ENTER INTO A NEW ONE AND MAKE THE DECISION TO SIGN WHEN  
25 WE BOTH KNOW THAT THIS IS VERY IMPORTANT AND A DEAL

1 BREAKER TO THE CITY.

2 I WANT TO GO TO THE PUBLIC ACCOMMODATION

3 ARGUMENT WHICH I'VE HEARD A LOT ABOUT, AND I THINK THIS

4 IS MOSTLY ANOTHER RED HERRING AND I WILL EXPLAIN WHY.

5 WE DON'T HAVE TO PARSE THE FAIR PRACTICES ORDINANCE AND

6 ALL OF ITS APPLICATIONS. ALTHOUGH WE DO TAKE THE

7 POSITION THAT RECRUITING AND SELECTING AND SUPPORTING

8 FOSTER PARENTS IS A SERVICE, AND A SERVICE IS INCLUDED

9 IN THE FAIR PRACTICES ORDINANCE. AND THERE IS NO

10 EXCEPTION IN THE FAIR PRACTICES ORDINANCE FOR PRIVATE

11 BUSINESSES, SO WE THINK THAT IT DOES APPLY. BUT THE NEW

12 CONTRACTS THAT WILL BE -- THAT HAVE BEEN EXTENDED TO --

13 THE FULL CONTRACTS TO THE AGENCIES WITH WHICH WE ARE

14 WORKING ON FULL RENEWALS, AND THE FULL CONTRACT

15 CONSISTENTLY THAT WE WOULD BE OFFERING TO CATHOLIC

16 SOCIAL SERVICES, AS THERE WAS TESTIMONY, CLARIFY THAT

17 THE CONTRACT OBLIGATION IS NOT TO DISCRIMINATE AGAINST

18 ANY OF THE PROTECTED CATEGORIES UNDER THE FAIR PRACTICES

19 ORDINANCE FOR THE LENGTH OF THE NEW CONTRACT. AND SO

20 WHETHER OR NOT, YOU KNOW, JUST STANDING ALONE EVERY

21 DEFINITION OF THE FAIR PRACTICES ORDINANCE IS MET, WHICH

22 WE THINK IT IS, BUT WE HAVE MADE IT CLEAR THAT IN THE

23 UPCOMING CONTRACT AND IN THE CONTRACT GOING FORWARD THAT

24 THERE CAN BE NO DISCRIMINATION ON THE BASIS OF SEXUAL

25 ORIENTATION.

1                   AND I HAVE ALSO HEARD A LOT ABOUT, YOU  
2                   KNOW, FOSTER CARE BEING -- YOU KNOW, WHETHER FOSTER CARE  
3                   IS A SERVICE OR NOT, I GUESS. THE PARTS THAT ARE OF  
4                   CONCERN TO US ARE REFUSALS TO DEAL AND REFUSALS TO  
5                   CERTIFY IN A NONDISCRIMINATORY WAY. THESE ARE THE  
6                   CLASSIC PIECES OF AN ANTIDISCRIMINATION LAW. AND SO THE  
7                   DHS WITNESSES TESTIFIED VERY CLEARLY AND EXTENSIVELY  
8                   THAT IT IS THE CHOICE OF THE FOSTER PARENT TO BE -- TO  
9                   CHOOSE THE FOSTER SERVICE PROVIDER. THEY CAN RECEIVE  
10                  INFORMATION, BUT IT IS THEIR ULTIMATE CHOICE. AND THE  
11                  DISCRIMINATION PROBLEM COMES INTO PLAY WHEN THE FOSTER  
12                  CARE AGENCY REFUSES TO DEAL WITH THEM. THAT IS THE SAME  
13                  TYPE -- IN CONCEPT, THE SAME TYPE OF DISCRIMINATION OF  
14                  REFUSING TO SELL SOMEBODY SOMETHING, REFUSING TO PROVIDE  
15                  A SERVICE FOR THEM, ANOTHER KIND OF SERVICE. YOU ARE  
16                  SAYING, YOU NEEDN'T APPLY HERE, WE ARE NOT HERE FOR YOU.  
17                  WE THINK THAT IS CLEARLY COVERED BY OUR  
18                  ANTIDISCRIMINATION LAW AND POLICY. AGAIN, TO CERTIFY IS  
19                  TO FOLLOW THE STATE CERTIFICATION REQUIREMENTS AND TO --  
20                  WHICH ARE DIRECTED AT WHETHER OR NOT A FAMILY IS GOING  
21                  TO BE ABLE TO BE A NURTURING CARETAKER AND TO RENDER A  
22                  DECISION ON THAT BASIS.

23                         I ALSO HEARD A LOT OF CROSS EXAMINATION  
24                         THAT SEEM TO BE ATTEMPTING TO ESTABLISH SECULAR  
25                         EXEMPTIONS. I WOULD JUST LIKE TO SAY THAT THE ONLY

1 RELEVANT QUESTION UNDER THE EXEMPTION CASES IS WHETHER  
2 DHS RECOGNIZED SECULAR EXEMPTIONS THAT UNDERMINE THE  
3 SAME PURPOSES TO THE SAME DEGREE AS THE RELIGIOUS  
4 EXEMPTION THAT CATHOLIC SEEKS. AND THE ANSWER IS THAT  
5 THE ONES THAT CATHOLIC TRIED TO ESTABLISH ON CROSS DEALT  
6 WITH THINGS LIKE PROXIMITY OR LANGUAGE OR SPECIAL  
7 MEDICAL NEEDS. ACTUALLY, AS I SAID, DEPUTY COMMISSIONER  
8 ALI REJECTED ALL OF THESE AS BEING EVEN EXEMPTIONS AT  
9 ALL BECAUSE SHE SAID IT HAS TO BE THE APPLICANTS WHO  
10 CHOOSE. BUT ALL OF THOSE RELATE TO LOOKING OUT FOR THE  
11 BEST INTEREST OF CHILDREN. NONE OF THOSE REASONS  
12 UNDERMINE OUR ANTIDISCRIMINATION LAWS OR POLICIES. AND  
13 THUS CASES SUCH AS BLACKHAWK AND LIGHTHOUSE, WHICH WE  
14 ARE ASSUMING THEY ARE TRYING TO MAKE AN EXEMPTION  
15 ARGUMENT UNDER, DON'T APPLY.

16 BUT THE BIGGEST FAILURE ON THE MERITS  
17 THAT REALLY NEEDS TO BE DISCUSSED IS WE MAINTAIN THAT  
18 THE CITY -- THAT CSS WAS UNABLE TO DEMONSTRATE THE  
19 SUBSTANTIAL BURDEN ON RELIGIOUS PRACTICE WHICH THEY  
20 CLAIM OUR CONTRACT IMPOSES. JIM AMATO DID TESTIFY THAT  
21 SAME-SEX MARRIAGE IS AGAINST CATHOLIC DOCTRINE. BUT  
22 THAT TESTIMONY DOES NOT IN ITSELF ARTICULATE A CONFLICT  
23 BETWEEN THAT RELIGIOUS BELIEF AND THE CONTRACT  
24 OBLIGATION THAT WE BELIEVED THAT CATHOLIC WAS PERFORMING  
25 NOT TO DISCRIMINATE AND TO EVALUATE ALL APPLICANTS

1 EQUALLY. BECAUSE THE CONTRACT DOES NOT REQUIRE CATHOLIC  
2 OR THE CATHOLIC CHURCH TO RECOGNIZE ANY MARRIAGE IN  
3 ORDER TO CERTIFY FOSTER PARENTS. SO THE MERE FACT OF --  
4 THAT SAME-SEX MARRIAGE IS AGAINST CATHOLIC DOCTRINE DOES  
5 NOT MEAN THAT CSS CAN'T DO ITS JOB OF EVALUATING  
6 APPLICANTS FAIRLY UNDER THE STATE CRITERIA. THE COURT  
7 DOES NOT HAVE TO BLINDLY ACCEPT THAT THERE IS A  
8 CONFLICT. IT IS ENTITLED TO EXAMINE THE CONTRACT AND TO  
9 SEE IF THERE ACTUALLY IS A CONFLICT THAT WOULD REQUIRE  
10 CSS TO REQUIRE -- TO RECOGNIZE SAME-SEX MARRIAGES. WE  
11 SUBMIT YOU WON'T FIND THAT.

12 MR. AMATO ALSO TESTIFIED THAT CERTIFYING  
13 A SAME-SEX COUPLE'S HOME WOULD SOMEHOW BE WHAT HE CALLED  
14 I BELIEVE A VALIDATION OF THE COUPLE'S RELATIONSHIP.  
15 AGAIN, WE MAINTAIN THAT THE CONTRACT AND THE STATE  
16 REQUIREMENTS DON'T REQUIRE CSS TO VALIDATE OR AFFIRM ANY  
17 RELATIONSHIP. THE CRITERIA ARE DIRECTED TOWARD  
18 ASSESSING THE APPLICANT'S ABILITY TO NURTURE A CHILD.  
19 SO, FOR EXAMPLE, IF YOU HAVE A COUPLE AND THE  
20 RELATIONSHIP IS THAT THEY ARE AT EACH OTHER'S THROATS  
21 CONSTANTLY DURING THE HOME STUDY, YOU MIGHT SAY THIS IS  
22 NOT A RELATIONSHIP THAT BODES WELL FOR THEM BEING A  
23 CARETAKER OF A CHILD. BUT WHETHER THEY ARE MARRIED OR  
24 IN A SINGLE SEX RELATIONSHIP DOES NOT HAVE TO BE  
25 VALIDATED OR AFFIRMED.

1                                   AND AS A MATTER OF LAW, I DIRECT THE  
2                                   COURT TO CASES SUCH AS THE HARRIS FUNERAL HOME CASE IN  
3                                   THE 6TH CIRCUIT WHICH EXPRESSLY HELD THAT SIMPLY  
4                                   COMPLYING WITH AN ANTIDISCRIMINATION STATUTE DOES NOT AS  
5                                   A MATTER OF LAW REQUIRE -- IS NOT THE SAME THING AS A  
6                                   VALIDATION OR ENDORSEMENT. THAT CASE, BY THE WAY, ALSO  
7                                   SPEAKS TO ANOTHER OF MR. RIENZI'S POINTS WHICH IS  
8                                   WHETHER OR NOT WE ARE DEALING WITH A COMPELLING STATE  
9                                   INTEREST AND A NARROWLY-TAILORED MEANS OF ADDRESSING IT.  
10                                  OUR POSITION IS THAT WE NEVER GET TO THAT BECAUSE THE  
11                                  SUBSTANTIAL BURDEN IS NOT ESTABLISHED. BUT IF FOR ANY  
12                                  REASON WE EVER GET TO THE STRICT SCRUTINY ANALYSIS,  
13                                  THERE ARE MANY CASES. THE HARRIS FUNERAL HOME IS ONE.  
14                                  IN ANOTHER CONTEXT WE HAVE THE SUPREME COURT'S DECISION  
15                                  IN THE ROBERTS VERSUS THE JAYCEES. THEY ALL RECOGNIZE  
16                                  THAT ANTIDISCRIMINATION STATUTES DO FURTHER A COMPELLING  
17                                  GOVERNMENTAL INTEREST, AN EXTREMELY IMPORTANT COMPELLING  
18                                  GOVERNMENTAL INTEREST. AND I AM NOT SURE WHICH ONE OF  
19                                  THOSE CASES USES THIS LANGUAGE. THEY BOTH AGREE THAT  
20                                  ENFORCEMENT OF AN ANTIDISCRIMINATION STATUTE IS THE  
21                                  LEAST RESTRICTIVE MEANS OF FURTHERING THE INTEREST. ONE  
22                                  OF THE CASES SAYS THAT IT'S THE PRECISE WAY TO FURTHER  
23                                  THE GOVERNMENTAL INTEREST.

24                                  GOING BACK TO THE SUBSTANTIAL BURDEN FOR  
25                                  A SECOND, MR. AMATO ALSO STATED THAT CATHOLIC TEACHING

1 WAS -- THAT WHAT HE CALLED THE LIFESTYLE REPRESENTED BY  
2 A SAME-SEX COUPLE WAS UNACCEPTABLE IN PARENTING,  
3 PRESUMABLY MEANING CATHOLIC WOULD CONSIDER ALL SAME-SEX  
4 COUPLES TO BE UNFIT TO FOSTER PARENT. BUT THEY OFFERED  
5 NO EVIDENCE THAT A GAY MARRIED COUPLE COULD NOT BE  
6 EXCELLENT NURTURING CARETAKER. THAT'S WHY NOTHING LIKE  
7 THAT IS IN THE STATE CRITERIA AND THAT IS WHAT EMPIRICAL  
8 RESEARCH SHOWS IS THE CASE. THE DEPARTMENT OF HUMAN  
9 SERVICES IS ENTITLED TO RELY UPON SUCH RESEARCH WHEN IT  
10 SETS ITS CONTRACTUAL REQUIREMENTS FOR HOW IT WANTS THIS  
11 PART OF THE JOB DONE, AND THE CITY IS ENTITLED TO OUTLAW  
12 DISCRIMINATORY CONDUCT WHICH IS ROOTED IN DISAPPROVAL OF  
13 THE LIFESTYLE OF A PROTECTED GROUP.

14 SO WHILE CSS DID NOT ESTABLISH A  
15 SUBSTANTIAL BURDEN, MR. AMATO'S TESTIMONY DID CLEARLY  
16 SHOW THAT CATHOLIC WAS INSERTING PURELY RELIGIOUS  
17 CRITERIA INTO THE SECULAR CRITERIA ESTABLISHED BY THE  
18 STATE. HE TESTIFIED THAT CATHOLIC WOULD CERTIFY NEITHER  
19 SAME-SEX COUPLES NOR UNMARRIED HETEROSEXUAL COUPLES ON  
20 RELIGIOUS GROUNDS. BUT THEN, WHICH WAS -- AND I THINK  
21 YOU HEARD TESTIMONY FROM THE COMMISSIONER TODAY, NEW TO  
22 DHS AND THE CITY ON TUESDAY AFTERNOON HE DESCRIBED YET  
23 ANOTHER RELIGIOUS REQUIREMENT THAT CSS HAD INTERPOSED  
24 INTO THE CERTIFICATION PROCESS, THAT CATHOLIC WOULD NOT  
25 CERTIFY A FOSTER FAMILY UNLESS THE APPLICANTS COULD

1 PRODUCE A, QUOTE, PASTORAL LETTER, UNQUOTE, FROM A  
2 CLERGY MEMBER THAT ATTESTED THAT THE APPLICANTS ACTIVELY  
3 PARTICIPATED IN RELIGIOUS SERVICES. THIS FURTHER  
4 COMPLICATES CATHOLIC'S ABILITY TO COMPLY WITH THE CITY'S  
5 CONTRACT IN THAT, I THINK ARTICLE 15, THAT SAME SECTION  
6 THAT DEALS WITH THE FAIR PRACTICES ORDINANCE, THERE IS  
7 ACTUALLY AN EARLIER SENTENCE THAT COMPLETELY MAKES IT  
8 CLEAR THAT THERE CAN BE NO DISCRIMINATION ON THE BASIS  
9 OF RELIGION. BUT WE NOW HAVE A NEW PROBLEM IN ADDITION  
10 TO THE PROBLEM WHICH BROUGHT US HERE WHICH COMPLICATES  
11 THE ABILITY OF CATHOLIC SOCIAL SERVICES TO COMPLY WITH  
12 THE CITY'S CONTRACT. NEITHER THE CITY NOR ITS  
13 CONTRACTORS CAN IMPOSE A RELIGIOUS TEST OR DISCRIMINATE  
14 ON THE BASIS OF RELIGION AND DENY CERTIFICATION SOLELY  
15 BECAUSE AN APPLICANT CAN'T PRODUCE A LETTER ATTESTING  
16 THAT HE OR SHE IS A BELIEVER VERSUS A NONBELIEVER, OR IT  
17 SEEMED FROM THE TESTIMONY THEY COULD BE A BELIEVER BUT  
18 NOT AN ACTIVE CHURCH-GOER AND WOULD BE UNABLE TO GET  
19 THAT LETTER. THIS RAISES NEW CONSTITUTIONAL PROBLEMS  
20 FOR THE CITY AND FOR -- POTENTIALLY FOR CSS.

21 AND LASTLY I HEARD MR. RIENZI -- HE MADE  
22 AN ARGUMENT THAT BY -- THAT WE WERE COMPELLING SPEECH  
23 AND THEREBY VIOLATING FIRST AMENDMENT SPEECH RIGHTS OF  
24 CATHOLIC SOCIAL SERVICES IN ADDITION TO THE RELIGIOUS  
25 FREE EXERCISE AND RFRA CLAIMS. BUT THE KEY POINT WITH



1 REGARD TO COMPELLED SPEECH CASES IS THAT THE GOVERNMENT  
2 CAN'T RESTRICT SPEECH THAT IS OUTSIDE OF THE PROGRAM  
3 THAT HAS BEEN ENTERED INTO. WHEN THE RESTRICTION  
4 APPLIES TO THE PROGRAM ACTIVITIES THEMSELVES, WHICH THE  
5 PARTY HAS ENTERED INTO VOLUNTARILY, LIKE A CONTRACT,  
6 THAT SPEECH CAN BE REGULATED. WE THINK IT IS CLEAR HERE  
7 THAT THE CERTIFICATION PROCESS, THE RECRUITMENT PROCESS  
8 IS SQUARELY WITHIN THE CONTRACT BETWEEN THE CITY AND  
9 CATHOLIC, AND THAT THEREFORE THE COMPELLED SPEECH LINE  
10 OF CASES HAS NO APPLICABILITY.

11 FINALLY, I WANT TO TALK ABOUT THE  
12 REMAINING ISSUES WITH RESPECT TO THE ISSUANCE OF AN  
13 INJUNCTION, AND ALL OF THOSE MILITATE AGAINST ITS  
14 ISSUANCE WITH REGARD TO PUBLIC FACTORS AND THE -- WHAT  
15 THE EFFECT OF AN INJUNCTION WOULD BE. DHS IS OBLIGATED  
16 TO ACT IN THE BEST INTEREST OF 6,000 OR MORE CHILDREN,  
17 6,000 IN FOSTER CARE AND 10,000 TOTAL FOR WHOM IT HAS  
18 CUSTODIAL RESPONSIBILITY. AND AS THE COMMISSIONER AND  
19 DEPUTY COMMISSIONER ALI TESTIFIED, THAT REQUIRES THEM --  
20 THEY HAVE MADE THE DECISION THAT THEY NEED TO KEEP  
21 INTAKE CLOSED UNLESS OR UNTIL CATHOLIC SOCIAL SERVICES  
22 CAN SIGN A FULL CONTRACT, THAT IT CANNOT PERMIT FOSTER  
23 CARE AGENCY CONTRACTORS TO DISCRIMINATE IN WAYS THAT  
24 WILL DEPRESS BADLY-NEEDED DIVERSITY OF FOSTER CARE  
25 FAMILIES AND DHS'S RESULTING ABILITY TO DETERMINE THE

1 BEST FIT FOR EACH CHILD WHO COMES INTO PLACEMENT. AS  
2 THE TESTIMONY -- AS I HEARD THE TESTIMONY, I THINK THE  
3 COMMISSIONER TESTIFIED CHILDREN ARE NOT WIDGETS. YOU  
4 DON'T JUST ONE COMES IN AND YOU SAY, OH, THERE'S AN OPEN  
5 HOME, THEY GO IN. THEY HAVE PARTICULAR NEEDS AND THERE  
6 IS A PARTICULAR NEED WITHIN THE CITY AND IN DHS TO HAVE  
7 AS MANY DIFFERENT KINDS OF FOSTER CARE FAMILIES AND TO  
8 MAKE THEM FEEL WELCOME SO THAT THE BEST FIT FOR THE  
9 CHILDREN CAN BE MADE.

10 DHS CANNOT PERMIT ITS CONTRACTOR AGENCIES  
11 TO SEND MESSAGES THAT WOULD HARM POTENTIAL APPLICANTS  
12 WHO FEAR BEING STIGMATIZED AND HUMILIATED, AND THESE ARE  
13 PEOPLE WHO HAVE BEEN SUBJECT OFTEN TO SOME  
14 STIGMATIZATION AND HUMILIATION. THEY MAY WELL BE  
15 DETERRED AND NOT WANT TO GO THROUGH THAT AGAIN.

16 ALSO THERE IS A POTENTIAL THAT IT COULD  
17 HARM -- THE MESSAGE WOULD BE THAT, YOU KNOW, SOME  
18 APPLICANTS NEED NOT APPLY. AND THE CITY SHOULD BE ABLE  
19 TO ENFORCE ITS WELL-ESTABLISHED ANTIDISCRIMINATION LAWS  
20 AND POLICIES. THE CITY OF PHILADELPHIA AND THE FAIR  
21 PRACTICES ORDINANCE AND ASSOCIATED POLICIES HAVE BEEN IN  
22 EFFECT FOR DECADES. THIS IS NOT SOMETHING NEW.

23 SO FOR THIS COURT TO ORDER ANYTHING  
24 BEYOND WHAT DHS IS ALREADY DOING, WHICH IS MAKING  
25 PLACEMENTS WITH CATHOLIC WHEN CASE-SPECIFIC FACTORS SUCH

1 AS SIBLING PLACEMENTS ARE IN THE BEST INTEREST OF THOSE  
2 CHILDREN, WOULD ACT TO UNDERMINE DHS'S DETERMINATIONS  
3 AND TO HARM THE CITY'S DECADES-LONG EFFORTS TO BATTLE  
4 DISCRIMINATION. THIS WOULD IRREPARABLY HARM THE CITY  
5 AND IS NOT IN THE PUBLIC INTEREST. IN ADDITION, AN  
6 INJUNCTION HERE WOULD NOT RESTORE THE STATUS QUO. THE  
7 CURRENT CONTRACT, WHICH APPARENTLY CATHOLIC SOCIAL  
8 SERVICES WANTS TO EXTEND OVER THE EXPIRATION DATE, DOES  
9 ACTUALLY NOT REQUIRE US TO PROVIDE ANY INTAKE OR  
10 SPECIFIC NUMBERS OF CHILDREN TO ANY AGENCY, TO CSS. CSS  
11 IS ACTUALLY ASKING OR SEEKING TO FORCE THE CITY TO ENTER  
12 INTO -- TO EITHER EXTEND A CONTRACT WITH TERMS THAT ARE  
13 NOT IN THERE OR TO ENTER INTO A NEW CONTRACT ON TERMS  
14 WHICH THE CITY HAS REJECTED AS TO ANY OTHER CONTRACTOR  
15 AGENCY.

16 AND FINALLY, AN INJUNCTION WOULD PUT THE  
17 CITY IN THE POSITION OF KNOWINGLY PROVIDING FOSTER CARE  
18 SERVICES WITH RELIGIOUS CRITERIA, INCLUDING CATHOLIC  
19 SOCIAL SERVICES' ADMITTED NOW USE OF PASTORAL LETTERS  
20 WHICH RAISE ADDITIONAL CONSTITUTIONAL ISSUES, SO THAT  
21 EVEN IF THE CLAIMS WHICH UNDERLIE THEIR MOTION FOR  
22 PRELIMINARY INJUNCTION AND TRO WOULD BE RULED UPON BY  
23 THIS COURT, THERE ARE NEW ISSUES WHICH WOULD CAUSE US TO  
24 BE UNABLE TO CONTRACT WITH THEM.

25 GIVE ME A SECOND, YOUR HONOR.

1 JUST ONE MORE -- I NOTED DURING MR.  
2 RIENZI'S ARGUMENT THAT HE SEEMED TO BE ARGUING THAT  
3 THERE WAS NO PROBLEM IF THERE WERE NO COMPLAINTS. THE  
4 CONTRACT OBLIGATION NOT TO DISCRIMINATE, CATHOLIC SOCIAL  
5 SERVICES HAS TOLD US IT CANNOT COMPLY WITH THAT.  
6 DISCRIMINATION IS NOT OKAY BASED ON THE NUMBER OR LACK  
7 OF NUMBER OF COMPLAINTS.

8 BUT FOR ALL THESE REASONS, BECAUSE  
9 CATHOLIC SOCIAL SERVICES HAS NOT BEEN ABLE TO MEET ANY  
10 OF THE PRONGS OF THE INJUNCTION STANDARD, THE CITY  
11 RESPECTFULLY REQUESTS THAT ITS MOTION BE DENIED. BUT I  
12 HAVE ONE LAST REQUEST, WHICH IS THAT BECAUSE THE CITY  
13 JUST BECAME AWARE OF THAT PASTORAL LETTER REQUIREMENT ON  
14 TUESDAY, IT HAD NOT BEEN PART OF OUR PRIOR BRIEFING. IF  
15 THE COURT FEELS IT WOULD BE HELPFUL AS TO THE ADDITIONAL  
16 PROBLEMS WHICH WE BELIEVE THIS REQUIREMENT RAISES, WE  
17 HAVE PREPARED A VERY SHORT LETTER BRIEF WHICH WE WOULD  
18 BE HAPPY TO HAND TO THE COURT, IF THE COURT DESIRES.

19 THE COURT: OKAY. YOU CAN HAND IT UP.

20 MS. EWING: THANK YOU. THANK YOU, YOUR  
21 HONOR.

22 THE COURT: THANK YOU.

23 MR. RIENZI: YOUR HONOR, IS IT ME OR IS  
24 IT THE ACLU NEXT?

25 THE COURT: THE ACLU IS NEXT.

1 MR. RIENZI: THAT'S WHAT I THOUGHT.

2 MS. COOPER: GOOD AFTERNOON, YOUR HONOR.

3 THE COURT: GOOD AFTERNOON.

4 MS. COOPER: AND THANK YOU FOR THE

5 OPPORTUNITY TO BE HEARD.

6 PLAINTIFFS ARE ASKING THE COURT TO ISSUE  
7 AN EXTRAORDINARY RULING OF LAW. THEY ARE ASKING THE  
8 COURT TO HOLD THAT AN ORGANIZATION THAT ENTERS INTO A  
9 CONTRACT WITH THE GOVERNMENT TO PROVIDE A GOVERNMENT  
10 SERVICE HAS A RIGHT TO THEN ALTER THAT PROVISION OF --  
11 THE PROVISION OF THAT PUBLIC SERVICE TO CONFORM TO ITS  
12 RELIGIOUS BELIEFS. LIKE MANY PUBLIC CHILD WELFARE  
13 SYSTEMS AROUND THE COUNTRY, THE CITY HAS CHOSEN TO  
14 MAXIMIZE CHILDREN'S FAMILY PLACEMENT OPTIONS BY BARRING  
15 DISCRIMINATION BASED ON RACE, RELIGION, SEXUAL  
16 ORIENTATION AND OTHER CHARACTERISTICS THAT HAVE NO  
17 BEARING ON ONE'S ABILITY TO CARE FOR A CHILD.

18 CSS' RELIGIOUS BELIEFS DO NOT ENTITLE IT  
19 TO ACCEPT THE CITY CONTRACTS AND TAXPAYER DOLLARS TO  
20 PERFORM SOME CHILD WELFARE SERVICES ON BEHALF OF THE  
21 CITY AND THEN COMMANDEER THE SYSTEM TO IMPOSE ITS OWN  
22 STANDARDS. THE POTENTIAL CONSEQUENCES OF SUCH A RULING  
23 ARE PRETTY STAGGERING. JUST THINK, WHAT IF THERE WERE  
24 AN AGENCY THAT HELD A RELIGIOUS BELIEF THAT CHILDREN  
25 MUST BE SUBJECTED TO CORPORAL PUNISHMENT THAT VIOLATES

1 STATE CHILD ABUSE LAWS. THERE ARE PLENTY OF RELIGIOUS  
2 FAITHS WITH BELIEFS ABOUT THAT. WHAT IF THERE WERE A  
3 RELIGIOUS AGENCY THAT HAD A RELIGIOUS OBJECTION TO  
4 PROVIDING MEDICAL TREATMENT TO CHILDREN WHO ARE INJURED  
5 OR SICK. THE IMPLICATIONS OF THE LEGAL RULING THAT  
6 PLAINTIFFS ARE ASKING FOR CANNOT BE CONFINED TO  
7 RELIGIOUS-BASED OBJECTIONS TO SAME-SEX COUPLES, BECAUSE  
8 UNDER THE ESTABLISHMENT CLAUSE, THE GOVERNMENT AND THE  
9 COURTS CANNOT GIVE PREFERENCE TO SOME RELIGIOUS BELIEFS  
10 OTHER OTHERS. YOU CAN'T SAY, THIS RELIGIOUS BELIEF WE  
11 WILL DEFER TO AND APPROVE, THIS RELIGIOUS BELIEF WE ARE  
12 NOT GOING TO GIVE YOU THE SAME TREATMENT.

13 THE FACT THAT PLAINTIFFS ARE ASKING THE  
14 COURT TO ORDER THE CITY TO ALLOW THIS KIND OF FREE REIN  
15 BY RELIGIOUSLY-AFFILIATED CONTRACT AGENCIES DEMONSTRATES  
16 A PROFOUND MISUNDERSTANDING OF THE RIGHT TO FREE  
17 EXERCISE OF RELIGION. THE RIGHT TO FREE EXERCISE  
18 PROTECTS AGAINST GOVERNMENT INTERFERENCE WITH RELIGIOUS  
19 INSTITUTIONS; PURSUIT OF THEIR OWN INTERESTS. THE  
20 SUPREME COURT SAID THAT VERY CLEARLY IN THE KIRYAS JOEL  
21 CASE. THE RIGHT TO FREE EXERCISE DOES NOT ESTABLISH A  
22 RIGHT TO HAVE THE GOVERNMENT CREATE OPPORTUNITIES FOR  
23 YOU TO EXERCISE YOUR RELIGION AND THEN FUND THOSE  
24 OPPORTUNITIES. INDEED, FUNDING RELIGIOUS ACTIVITIES  
25 DIRECTLY VIOLATES THE ESTABLISHMENT CLAUSE, AS I WILL

1 DISCUSS IN A FEW MOMENTS.

2 IN THE BRIEFING, THE PLAINTIFFS RELY ON,  
3 I BELIEVE, TRINITY LUTHERAN, AND THAT'S A CASE THAT IS  
4 OFTEN MISCHARACTERIZED IN THIS KIND OF DISCOURSE AROUND  
5 THESE ISSUES. THIS CASE DOES NOT SUPPORT THE  
6 EXTRAORDINARY CLAIM PLAINTIFFS MAKE HERE. IT  
7 ESTABLISHES FOR SURE THAT THE GOVERNMENT COULD NOT  
8 DISQUALIFY RELIGIOUS ORGANIZATIONS FROM A PUBLIC BENEFIT  
9 BECAUSE OF THEIR RELIGIOUS IDENTITY. BUT EVEN IF A  
10 GOVERNMENT CONTRACT TO PERFORM A GOVERNMENT SERVICE  
11 COULD BE CONSIDERED A PUBLIC BENEFIT, WHICH OF COURSE IT  
12 IS NOT, AS SOME CASES IN OUR BRIEF MAKE CLEAR, BUT EVEN  
13 ASSUMING IT WERE, THE CITY HAS NOT DENIED CSS A CONTRACT  
14 OR REFERRALS OF CHILDREN BECAUSE IT IS CATHOLIC OR EVEN  
15 BECAUSE IT HOLDS RELIGIOUS BELIEFS. THE CITY SUSPENDED  
16 REFERRALS BECAUSE OF CSS' REFUSAL TO COMPLY WITH ITS  
17 NONDISCRIMINATION REQUIREMENT. TRINITY LUTHERAN IN NO  
18 WAY SUGGESTS THAT A CONTRACT AGENCY'S RELIGIOUS BELIEFS  
19 GIVE IT THE RIGHT TO DICTATE HOW IT PROVIDES  
20 GOVERNMENT-CONTRACTED SERVICES.

21 BUT ALSO I WANT TO ADDRESS VERY BRIEFLY  
22 THE SPEECH CLAIM, AND I JUST HAVE A VERY SMALL AMOUNT TO  
23 ADD TO WHAT THE CITY HAD TO SAY ABOUT THAT. BUT THE  
24 AGENCY FOR INTERNATIONAL DEVELOPMENT CASE IS VERY CLEAR  
25 IN DISTINGUISHING BETWEEN SPEECH THAT IS PART OF THE

1 SCOPE OF THE CONTRACT, AND WHEN THE GOVERNMENT LEVERAGES  
2 A CONTRACT TO TRY TO PROHIBIT SPEECH THAT AN ENTITY  
3 ENGAGES IN OUTSIDE THE SCOPE OF THE CONTRACT. JUST  
4 BECAUSE -- I THINK IF PHILADELPHIA WERE TO TELL CATHOLIC  
5 SOCIAL SERVICES THAT IT COULD NOT ENGAGE IN SPEECH IN  
6 OTHER DOMAINS, THAT WOULD BE A CONSTITUTIONAL PROBLEM  
7 AND WE WOULD BE STANDING WITH THEM ON THAT FOR SURE.  
8 BUT THE SPEECH THEY ARE TALKING ABOUT, PROVIDING HOME  
9 STUDIES AND CERTIFICATIONS OF FOSTER PARENTS, THAT IS  
10 PRECISELY WHAT THE CONTRACT IS ABOUT.

11 NOW, I DON'T THINK WE HEARD FROM THE  
12 PLAINTIFFS ABOUT REALLY THE OTHER MAJOR PROBLEM WITH  
13 THEIR THEORY, WHICH IS THE ESTABLISHMENT CLAUSE. THE  
14 FIRST AMENDMENT DOES HAVE TWO PARTS, AND THE OTHER -- OR  
15 AT LEAST ABOUT RELIGION, AND THE OTHER PART IS THE  
16 ESTABLISHMENT CLAUSE. AND SO NOT ONLY DOES THE CITY  
17 HAVE NO LEGAL OBLIGATION TO PERMIT ITS CONTRACT AGENCIES  
18 TO IMPOSE RELIGIOUS ELIGIBILITY CRITERIA ON PROSPECTIVE  
19 FOSTER PARENTS, IF IT DID SO, THE CITY ITSELF WOULD BE  
20 VIOLATING THE ESTABLISHMENT CLAUSE. THE ESTABLISHMENT  
21 CLAUSE PROHIBITS THE USE OF RELIGIOUS ELIGIBILITY  
22 CRITERIA IN THE PROVISION OF GOVERNMENT SERVICES,  
23 WHETHER THAT SERVICE IS PROVIDED BY GOVERNMENT EMPLOYEES  
24 THEMSELVES, DHS EMPLOYEES, OR ORGANIZATIONS CONTRACTED  
25 BY THE GOVERNMENT TO PERFORM THAT GOVERNMENT FUNCTION.



1 THE PHILADELPHIA DEPARTMENT OF HUMAN SERVICES COULD  
2 CERTAINLY NOT SCREEN OUT PROSPECTIVE FOSTER FAMILIES  
3 BASED ON FAILURE TO MEET A RELIGIOUS TEST. IT COULD NOT  
4 SAY ONLY CHRISTIANS OR ONLY JEWS, CANNOT SAY NO SAME-SEX  
5 COUPLES BECAUSE OF OUR RELIGIOUS OBJECTION. THEREFORE,  
6 THE AGENCY THAT HIRES AND PAYS WITH TAXPAYER DOLLARS TO  
7 PERFORM THIS VERY SERVICE THAT IS A GOVERNMENT FUNCTION  
8 CANNOT DO SO EITHER.

9 AND THE SUPREME COURT MADE CRYSTAL CLEAR  
10 IN THE LARKIN CASE AND THE KIRYAS JOEL THAT THE  
11 ESTABLISHMENT CLAUSE PROHIBITS THE GOVERNMENT FROM  
12 DELEGATING A GOVERNMENT FUNCTION TO A PRIVATE ENTITY AND  
13 THEN ALLOWING THAT GOVERNMENT FUNCTION TO BE PERFORMED  
14 USING RELIGIOUS CRITERIA.

15 IN ADDITION, THERE IS THE FUNDING ISSUE I  
16 TOUCHED ON EARLIER. THE SUPREME COURT HAS MADE  
17 ABSOLUTELY CLEAR IN CASE AFTER CASE THAT THE  
18 ESTABLISHMENT CLAUSE BARS THE GOVERNMENT FUNDING OF  
19 RELIGIOUS ACTIVITY. HERE, ALLOWING THE USE OF RELIGIOUS  
20 CRITERIA IN THE SCREENING OF PROSPECTIVE FOSTER PARENTS,  
21 WHICH IS A GOVERNMENT FUNCTION, AGAIN UNDER CONTRACT  
22 WITH THE STATE TO PERFORM THIS GOVERNMENT FUNCTION, THAT  
23 IS RELIGIOUS ACTIVITY. AND I WOULD JUST POINT TO THE  
24 BOWEN V. KENDRICK CASE WHERE THE SUPREME COURT  
25 RECOGNIZED THAT ALLOWING RELIGIOUS-BASED DISCRIMINATION

1 BY A GOVERNMENT-FUNDED SERVICE PROVIDER WOULD BE ONE  
2 FORM OF IMPERMISSIBLY ADVANCING RELIGION.

3 THERE IS A THIRD REASON WHY ALLOWING  
4 CONTRACT AGENCIES TO USE RELIGIOUS CRITERIA IN THE  
5 FOSTER LICENSING PROCESS WOULD VIOLATE THE ESTABLISHMENT  
6 CLAUSE, AND THAT THERE IS A LINE OF SUPREME COURT CASES  
7 THAT SAYS THAT WHEN THE GOVERNMENT PREFERENCES RELIGION  
8 TO THE DETRIMENT OF OTHERS, TO THE DETRIMENT OF THIRD  
9 PARTIES, THAT'S A VIOLATION OF THE ESTABLISHMENT CLAUSE,  
10 AND I WOULD POINT THE COURT TO THE ESTATE OF THORNTON AS  
11 A SEMINAL CASE ON THAT POINT. HERE, ACCEPTING  
12 PLAINTIFF'S POSITION WOULD CAUSE SIGNIFICANT HARM TO THE  
13 CHILDREN IN THE CHILD WELFARE SYSTEM BY DEPRIVING THEM  
14 OF GOOD FAMILIES AND CAUSE HARM TO THE WOULD-BE FAMILIES  
15 WHO SEEK TO CARE FOR THEM.

16 PLAINTIFFS WILL LIKELY SAY THIS IS A  
17 QUESTION OF RELIGIOUS ACCOMMODATION, IF THEY COME BACK  
18 UP AGAIN. AND, YOU KNOW, THERE ARE LOTS OF  
19 ACCOMMODATION CASES IN THE SUPREME COURT AND OTHER  
20 COURTS. BUT THIS IS NOT RELIGIOUS ACCOMMODATION. THE  
21 CASES LIKE AMIS AND HOSANNA TABOR, THOSE CASES INVOLVE  
22 ACCOMMODATING RELIGIOUS ORGANIZATIONS TO GET EXEMPTIONS  
23 FROM GENERALLY-APPLICABLE LAWS THAT APPLY TO EVERYBODY  
24 IN THEIR OWN PRIVATE ACTIVITIES.

25 THIS IS NOT ABOUT ACCOMMODATION. THIS IS

1 ABOUT A CASE -- THIS IS A CASE IN WHICH THEY ARE ASKING  
2 FOR THE GOVERNMENT TO DELEGATE THIS GOVERNMENT FUNCTION  
3 TO THIS ORGANIZATION, AND FOR THE GOVERNMENT TO THEN  
4 ALLOW THEM TO PROVIDE THOSE GOVERNMENT SERVICES USING  
5 RELIGIOUS CRITERIA, AND THAT IS ABSOLUTELY WHAT THE  
6 ESTABLISHMENT CLAUSE PROHIBITS.

7 TURNING BACK TO THE HARMS THAT WOULD  
8 RESULT, THOSE ALSO GO TO THE BALANCE OF EQUITIES, OF  
9 COURSE, AND A FURTHER REASON WHY THE REQUESTED TRO AND  
10 PI SHOULD BE DENIED. AND IN FACT, IT IS THESE VERY  
11 HARMS THAT CAUSED PROPOSED INTERVENORS OF MAKING TO --  
12 TO SEEK TO PARTICIPATE IN THIS CASE. ALLOWING  
13 DISCRIMINATION BY AGENCIES THAT HAVE RELIGIOUS  
14 OBJECTIONS TO SAME-SEX COUPLES WOULD HARM THE AT-RISK  
15 CHILDREN THAT THE FOSTER CARE SYSTEM IS MEANT TO PROTECT  
16 AS WELL AS THE FAMILIES WHO WOULD CARE FOR THEM, AND  
17 THESE HARMS ARE VERY MUCH INTERTWINED. STARTING WITH  
18 THE FAMILIES, JUST TO SORT OF UNPACK IT A LITTLE BIT.

19 THE FAMILIES CAN BE HARMED IN A VARIETY  
20 OF WAYS. STARTING WITH THOSE WHO MAYBE GO TO -- WOULD  
21 GO TO CATHOLIC SOCIAL SERVICES OR ANY LIKE-MINDED  
22 AGENCIES IF THE COURT WERE TO RULE IN THEIR FAVOR.  
23 THOSE PEOPLE COULD BE SUBJECT TO DISCRIMINATION, AND THE  
24 SUPREME COURT IN HEART OF ATLANTA AND OTHER CASES HAS  
25 RECOGNIZED THE DEGRADATION AND THE HUMILIATION AND

1 EMBARRASSMENT THAT CAN COME WITH DISCRIMINATION. THIS  
2 IS A SERIOUS HARM THAT THE SUPREME COURT HAS RECOGNIZED.  
3 AND THAT DEGRADATION, THE DEGRADATION OF THAT KIND OF  
4 EXPERIENCE IS NOT LESSENER BY THE FACT THAT THE  
5 DISCRIMINATION IS DONE POLITELY OR THAT IT IS CALLED A,  
6 QUOTE, REFERRAL. "WE WILL NOT SERVE YOUR KIND" IS A  
7 DEGRADING HUMILIATING EXPERIENCE THAT THE CITY CLEARLY  
8 HAS A COMPELLING INTEREST IN WANTING TO PREVENT.

9 IN ADDITION, ALL PROSPECTIVE FOSTER  
10 PARENTS HEADED BY A SAME-SEX COUPLE WOULD FACE THE  
11 UNCERTAINTY ABOUT WHETHER THEY WOULD FACE DISCRIMINATION  
12 IN THE PROCESS, MAKING IT MORE DIFFICULT, STRESSFUL. IF  
13 THE COURT WERE TO ACCEPT PLAINTIFFS' POSITION AND THE  
14 LGBT COMMUNITY WERE TO LEARN THAT IN PHILADELPHIA,  
15 PURSUING FOSTER PARENTING COMES WITH THE RISK OF  
16 EXPOSURE TO LAWFUL DISCRIMINATION AGAINST THEM. AND A  
17 RULE OF LAW WOULD SAY, AGENCIES ARE LAWFULLY ENTITLED TO  
18 DISCRIMINATE AGAINST LGBT OR PEOPLE OF SAME-SEX COUPLES,  
19 IT IS HARD TO FATHOM HOW MANY PEOPLE COULD BE DETERRED  
20 FROM SUBJECTING THEMSELVES TO THAT PROCESS, KNOWING THAT  
21 IT IS PERFECTLY LEGAL TO DISCRIMINATE AGAINST THEM IN  
22 THE PROCESS.

23 FINALLY ON THIS TOPIC, EVEN IF THERE WERE  
24 CLARITY ABOUT WHICH AGENCIES DISCRIMINATE AND SOME  
25 COUPLES WERE WELL-ENOUGH INFORMED TO AVOID THE AGENCIES

1 THAT WOULD NOT ACCEPT THEM, THAT MEANS THAT SAME-SEX  
2 COUPLE FAMILIES OR PROSPECTIVE FAMILIES HEADED BY  
3 SAME-SEX COUPLES GET A REDUCED CHOICE OF AGENCY OPTIONS.  
4 THE PLAINTIFFS TALK A LOT ABOUT 28 AGENCIES AVAILABLE,  
5 WHAT IS THE BIG DEAL. THERE ARE 28 OTHER AGENCIES  
6 AVAILABLE. IMAGINE A SCHEME IN WHICH YOU HAD A SYSTEM  
7 WHERE SAY CHRISTIANS GET THE CHOICE OF 30 AGENCIES AND  
8 EVERYBODY ELSE GETS 28, OR WHITE PEOPLE GET 30 AGENCIES,  
9 AFRICAN AMERICANS HAVE TO SETTLE FOR FEWER OPTIONS.  
10 THAT IS A STIGMATIZING SYSTEM FOR THE CITY TO IMPOSE ON  
11 ITS POPULATION.

12 ALSO, PUT ASIDE THE STIGMA, THE REDUCED  
13 OPTIONS WOULD MEAN THAT SOME FAMILIES WOULD NOT BE ABLE  
14 TO WORK WITH THE AGENCY AMONG THE EXISTING AGENCIES THAT  
15 MIGHT BE MOST APPROPRIATE FOR THEM. THE PLAINTIFFS  
16 EMPHASIZED THAT -- PARTICULARLY THE INDIVIDUAL  
17 PLAINTIFFS, THAT THE SERVICES OF CSS ARE SO OUTSTANDING  
18 THAT THEY ARE NOT SURE THAT THEY WOULD CONTINUE  
19 FOSTERING IF THEY COULD NOT WORK WITH CSS, EVEN IF THAT  
20 MEANT CEASING TO CARE FOR THE CHILDREN THEY OBVIOUSLY  
21 LOVE. YET PLAINTIFFS' POSITION IS THAT SAME-SEX COUPLES  
22 SHOULD NOT BE ABLE TO BENEFIT FROM THOSE SERVICES AND  
23 INSTEAD SHOULD HAVE TO ACCEPT AGENCIES THAT ARE  
24 COMPLETELY UNACCEPTABLE TO INDIVIDUAL PLAINTIFFS.

25 IN ADDITION, WE HEARD TESTIMONY ABOUT HOW

1 DIFFERENT AGENCIES HAVE DIFFERENT EXPERTISE IN TERMS OF  
2 THE CHILDREN THAT THEY CARE FOR. SO IF IT HAPPENED TO  
3 BE A FAITH-BASED AGENCY OBJECTING TO SAME-SEX COUPLES OR  
4 -- LET'S PUT IN ANY OTHER SUBSTITUTE GROUP, BECAUSE OF  
5 COURSE A RULING HERE WOULD REPLY TO ANY RELIGIOUS-BASED  
6 OBJECTION TO ANY GROUP, SO AN AGENCY THAT HAD A  
7 RELIGIOUS-BASED OBJECTION TO INTERRACIAL COUPLES OR TO  
8 X, Y, Z GROUPS, SAME-SEX COUPLES. IF THAT AGENCY  
9 HAPPENED TO BE ONE OF THE AGENCIES THAT SPECIALIZES IN  
10 MEDICALLY NEEDY CHILDREN, I FORGET THE PARTICULAR  
11 TERMINOLOGY, THAT WOULD MEAN THAT A FAMILY IN THAT  
12 GROUP, THE INTERRACIAL COUPLE OR THE SAME-SEX COUPLE WHO  
13 WANTED TO CARE FOR A MEDICALLY NEEDY CHILD, PERHAPS THEY  
14 ARE DOCTORS OR NURSES, WOULD NOT HAVE THE OPTION OF  
15 WORKING WITH THAT AGENCY. SO THERE WAS A LOT OF TALK OF  
16 THE CHILDREN NOT BEING WIDGETS AND FUNGIBLE, WHICH IS  
17 ABSOLUTELY -- I AGREE WITH THAT. ALSO THE AGENCIES ARE  
18 NOT NECESSARILY FUNGIBLE. SO GIVING A MENU OF OPTIONS  
19 FOR HETEROSEXUAL COUPLES AND A REDUCED SET OF OPTIONS  
20 FOR SAME-SEX COUPLES IS HARMFUL, AGAIN FOR THE STIGMA  
21 REASON AND FOR THE PRACTICAL REASON.

22 TURNING TO THE INTEREST OF THE CHILDREN,  
23 TURNING AWAY QUALIFIED FOSTER PARENTS BASED ON RELIGIOUS  
24 CRITERIA CONFLICTS WITH THE PROFESSIONAL AND ACCEPTED  
25 CHILD WELFARE PRACTICE STANDARDS THAT EXIST TO PROTECT

1 CHILDREN. AND I WOULD REFER THE COURT TO THE CHILD  
2 WELFARE LEAGUE OF AMERICA STANDARDS OF EXCELLENCE AND  
3 ADOPTION, I BELIEVE FOSTER CARE PRACTICE AS WELL.  
4 BECAUSE EACH CHILD'S NEEDS ARE UNIQUE, MEETING THE BEST  
5 INTEREST OF A PARTICULAR CHILD MEANS HAVING AS LARGE AND  
6 AS DIVERSE A POOL OF QUALIFIED LICENSED FAMILIES AS  
7 POSSIBLE TO OPTIMIZE THAT FIT THAT WE HAVE HEARD SOME  
8 DISCUSSION ABOUT BETWEEN CHILD AND FAMILY. ESPECIALLY  
9 GIVEN THE CURRENT NEED FOR MORE QUALIFIED FAMILIES FOR  
10 OLDER YOUTH AND LGBT YOUTH AND PERHAPS OTHER GROUPS, IT  
11 IS CONTRARY TO THE INTEREST OF PHILADELPHIA FOSTER  
12 CHILDREN FOR THE CITY'S CONTRACTING AGENCIES TO REFUSE  
13 TO ACCEPT QUALIFIED PARENTS FOR REASONS THAT ARE  
14 UNRELATED ON THE BEST INTEREST OF THE CHILDREN. AND TO  
15 REFUSE TO PLACE CHILDREN WITH A CLASS OF FAMILIES THAT  
16 MAY JUST INCLUDE THAT FAMILY THAT IS BEST SITUATED OR  
17 PERHAPS THE ONLY FAMILY THAT IS AVAILABLE, READY,  
18 WILLING AND ABLE TO MEET THE NEEDS OF A PARTICULAR  
19 CHILD. IF SAME-SEX COUPLES ARE TURNED AWAY BY CSS AND  
20 ANY OTHER LIKE-MINDED AGENCIES, OR DETERRED FROM  
21 PURSUING FOSTERING ALTOGETHER BECAUSE THEY KNOW THAT  
22 AGENCIES ARE PERMITTED TO DISCRIMINATE AGAINST THEM AND  
23 THEY PERHAPS DON'T WANT TO TAKE THAT RISK, CHILDREN LOSE  
24 OUT ON GOOD FAMILIES.

25 IT IS ALSO IMPORTANT TO RECOGNIZE THAT --

1 AND I TOUCHED ON THIS EARLIER, THAT IF CSS IS ENTITLED  
2 TO REFUSE TO ACCEPT SAME-SEX COUPLES BECAUSE OF ITS  
3 RELIGIOUS BELIEFS ABOUT MARRIAGE, THEN ALL FAITH-BASED  
4 AGENCIES WILL BE ABLE TO TURN AWAY PROSPECTIVE FAMILIES  
5 WHO FAIL TO CONFORM TO ANY OF THEIR RELIGIOUS BELIEFS.  
6 AGAIN, THE ESTABLISHMENT CLAUSE PROHIBITS PREFERENCING  
7 SOME RELIGIOUS BELIEFS OVER OTHERS. SO SOME  
8 DENOMINATIONS DON'T VIEW MARRIAGES BETWEEN PEOPLE OF  
9 DIFFERENT FAITHS AS A VALID UNION. SOME DON'T RECOGNIZE  
10 SECOND MARRIAGES AFTER DIVORCE. A RELIGIOUS-AFFILIATED  
11 AGENCY MIGHT OBJECT TO FOSTER PARENTS WHO WORK ON THE  
12 SABBATH AS DEFINED BY THE AGENCY, OR WHO EAT PORK OR WHO  
13 ALLOW THEIR CHILDREN TO ATTEND PUBLIC SCHOOLS. AND  
14 AGAIN, AS WE LEARNED IN THE HEARINGS THIS WEEK, THAT CSS  
15 ITSELF HAS OTHER RELIGIOUS-BASED OBJECTIONS. NO  
16 UNMARRIED COUPLES OF ANY SEXUAL ORIENTATION AND NO ONE  
17 WHO IS NOT A CHURCH-GOER ABLE TO SECURE A CLERGY LETTER.  
18 REQUIRING THE CITY TO ALLOW EACH FOSTER CARE AGENCY TO  
19 IMPLEMENT ITS OWN RELIGIOUS CRITERIA FOR FOSTER FAMILIES  
20 COULD RESULT IN A PATCHWORK OF SUCH EXCLUSIONS, CREATING  
21 EVEN MORE BARRIERS TO FINDING FAMILIES FOR CHILDREN WHO  
22 NEED THEM. SO THE CHILDREN'S INTEREST IN GETTING MORE  
23 FAMILIES WEIGHS DECIDEDLY AGAINST GRANTING THE REQUESTED  
24 RELIEF.

25 BUT IN ADDITION, AGAIN AS I TOUCHED ON



1 EARLIER, IT'S NOT AGENCY CERTIFIED. THE RISK OF A  
2 RULING FOR THE PLAINTIFFS NOT ONLY COMPROMISES THE  
3 CITY'S ABILITY TO MAXIMIZE FAMILY OPTIONS FOR CHILDREN,  
4 IT ALSO OPENS THE DOOR TO GIVING AGENCIES CARTE BLANCHE  
5 TO IMPOSE ON CHILDREN WHO ARE WARDS OF THE GOVERNMENT A  
6 DENIAL OF SERVICES, MEDICAL SERVICES, NO SCHOOL.  
7 WHATEVER THEIR RELIGIOUS BELIEF MIGHT MEAN. AGAIN  
8 CORPORAL PUNISHMENT THAT -- BASED ON A BIBLICAL VIEW  
9 THAT MAY VIOLATE STATE CHILD ABUSE LAWS, IT WOULD OPEN  
10 UP THE DOOR TO ALLOWING AN UNLIMITED NUMBER OF POTENTIAL  
11 HARMS TO CHILDREN.

12 I WANT TO TOUCH VERY BRIEFLY ON WHAT IS  
13 FELT TO BE PERHAPS A SUGGESTION BY PLAINTIFFS' COUNSEL  
14 THAT THE CITY'S KNOWLEDGE THAT CSS HAS RELIGIOUS BELIEFS  
15 ABOUT MARRIAGE MEANS THAT -- OR THIS IS HOW I UNDERSTOOD  
16 IT, ANYWAY -- MEANS THAT THE CITY WAS AWARE ALL ALONG  
17 THAT CSS PUT THOSE RELIGIOUS BELIEFS ABOVE THE  
18 PROFESSIONAL ESTABLISHED CHILD WELFARE STANDARDS OF  
19 ACCEPTING ALL QUALIFIED FAMILIES TO GIVE CHILDREN THE  
20 BEST ARRAY OF PLACEMENT OPTIONS. THERE IS NO BASIS FOR  
21 THIS ASSUMPTION. THERE ARE NUMEROUS FAITH-BASED  
22 AGENCIES THAT HOLD RELIGIOUS BELIEFS ABOUT MARRIAGE AND  
23 HOLD LOTS OF RELIGIOUS BELIEFS THAT MAY BE RELEVANT.  
24 BUT THEY KNOW THAT THEY PUT THE CHILD WELFARE  
25 PROFESSIONAL STANDARDS AND THE INTEREST OF CHILDREN

1 FIRST. INDEED, AS WE HEARD IN THIS CASE, BETHANY  
2 CHRISTIAN SERVICES, WHICH APPARENTLY HAS SIMILAR  
3 RELIGIOUS BELIEFS ABOUT MARRIAGE AS CSS, APPARENTLY IS  
4 WILLING TO COMPLY WITH THE TERMS OF THE  
5 NONDISCRIMINATION REQUIREMENT.

6 I DO WANT TO SAY JUST A FEW WORDS ABOUT  
7 PLAINTIFFS' RELIANCE ON THE MASTERPIECE CAKESHOP CASE.  
8 TO SUPPORT IT, THEY ARGUE THAT THAT SUPPORTS ITS  
9 CONTENTION THAT THE CITY'S ENFORCEMENT OF ITS  
10 NONDISCRIMINATION REQUIREMENT WAS BASED ON HOSTILITY  
11 TOWARDS CSS' RELIGIOUS BELIEFS. NONE OF THE EVIDENCE  
12 THE PLAINTIFFS CLAIM SUPPORT THIS ACCUSATION CREATES ANY  
13 INFERENCE THAT THE CITY'S ENFORCEMENT WAS BASED ON  
14 ANTIRELIGIOUS ANIMUS AS OPPOSED TO A DESIRE TO ENSURE  
15 THAT ALL PROSPECTIVE FAMILIES ARE WELCOMED. THEY  
16 DISTORT THE MASTERPIECE RULING BEYOND RECOGNITION. JUST  
17 TO GIVE SOME EXAMPLES, THERE IS SIMPLY NOTHING HOSTILE  
18 TO RELIGION ABOUT THE STATEMENT THAT QUOTE, WE CANNOT  
19 USE TAXPAYER DOLLARS TO FUND ORGANIZATIONS THAT  
20 DISCRIMINATE AGAINST PEOPLE BECAUSE OF THEIR SEXUAL  
21 ORIENTATION OR SAME-SEX MARRIAGE STATUS, IT'S NOT RIGHT.  
22 THAT WAS AN EXAMPLE OF A STATEMENT THAT THEY DEEMED  
23 HOSTILE TO RELIGION. IF MERE DISAGREEMENT WITH  
24 PERMITTING GOVERNMENT FUNDING OF DISCRIMINATION  
25 CONSTITUTES IMPERMISSIBLE HOSTILITY TOWARDS RELIGION,

1 THAT WOULD PRECLUDE ANY ENFORCEMENT OF NONDISCRIMINATION  
2 REQUIREMENTS AGAINST GOVERNMENT CONTRACTORS WHO REFUSE  
3 TO COMPLY BASED ON RELIGIOUS OBJECTIONS. MASTERPIECE  
4 DID NOT SAY THIS.

5 NOR DOES THE CITY'S STATEMENT THAT QUOTE,  
6 WE WOULD NOT ALLOW SUCH DISCRIMINATION AGAINST, FOR  
7 EXAMPLE, CATHOLIC COUPLES OR MIXED RACE COUPLES AND WE  
8 CANNOT ALLOW IT WITH RESPECT TO SAME-SEX COUPLES EITHER  
9 CONSTITUTE HOSTILITY TOWARDS RELIGION. MASTERPIECE DOES  
10 NOT MEAN THAT REFERENCING OTHER FORMS OF DISCRIMINATION  
11 IN THE CONTEXT OF A DISCUSSION ABOUT  
12 RELIGIOUSLY-MOTIVATED SEXUAL ORIENTATION DISCRIMINATION  
13 IMPERMISSIBLY SHOWS HOSTILITY TOWARDS RELIGION. INDEED,  
14 THE MASTERPIECE CASE ITSELF, IN THAT CASE ITSELF THE  
15 COURT CITED PIGGIE PARK, ONE OF THE MOST FAMOUS RACE  
16 DISCRIMINATION CASES IN THE COUNTRY, FOR THE PROPOSITION  
17 THAT RELIGIOUS OBJECTIONS GENERALLY, QUOTE, DO NOT ALLOW  
18 BUSINESS OWNERS AND OTHER ACTORS IN THE ECONOMY AND IN  
19 SOCIETY TO DENY PROTECTED PERSONS EQUAL ACCESS TO GOODS  
20 AND SERVICES UNDER A NEUTRAL AND GENERALLY-APPLICABLE  
21 PUBLIC ACCOMMODATION CLAUSE. SO UTTERING RACE  
22 DISCRIMINATION IN THE SAME BREATH AS SEXUAL ORIENTATION  
23 DISCRIMINATION OR OTHER FORMS OF DISCRIMINATION DOES NOT  
24 AMOUNT TO HOSTILITY TOWARDS RELIGION.

25 INTERESTINGLY, THOUGH, PLAINTIFFS'

1 PROTEST OF THIS STATEMENT FROM THE CITY AS, QUOTE,  
2 COMPARING CSS RELIGIOUS BELIEFS TO RACIST  
3 DISCRIMINATION, CLOSE QUOTE, SEEMS TO BE AN  
4 ACKNOWLEDGMENT, AS I READ IT, THAT IT WOULD BE IMPROPER  
5 TO ALLOW RELIGIOUSLY-AFFILIATED AGENCIES TO EXCLUDE  
6 PROSPECTIVE FAMILIES BASED ON A RELIGIOUS OBJECTION TO  
7 SAY INTERRACIAL COUPLES. YET THEY SEEM TO BE SUGGESTING  
8 THAT THEIR RELIGIOUS BELIEFS ABOUT WHO SHOULD BE FOSTER  
9 PARENTS DESERVES THE CITY'S APPROVAL AND DEFERENCE.  
10 BUT, OF COURSE, AGAIN, THE ESTABLISHMENT CLAUSE DOES NOT  
11 ALLOW THAT PICKING AND CHOOSING.

12 AND THE COMMENTS FROM THE MAYOR FROM  
13 SEVERAL YEARS AGO, YOU KNOW, THAT THAT SOMEHOW YOU CAN  
14 DOT THAT -- CONNECT THE DOTS TO SAY THAT THAT  
15 DEMONSTRATES THE CITY'S DECISION IN 2018 TO ENFORCE THIS  
16 CONTRACT DEMONSTRATES HOSTILITY TOWARDS CSS'S FAITH.  
17 MASTERPIECE DOES NOT SUPPORT THAT GIANT LEAP. IN THAT  
18 CASE THEY WERE TALKING ABOUT THE ADJUDICATIVE STATEMENT  
19 FROM A MEMBER OF THE ADJUDICATIVE BODY THAT WAS CHARGED  
20 WITH HEARING A DISCRIMINATION COMPLAINT. THE COURT IN  
21 NO WAY SUGGESTED THAT HAD COLORADO OFFICIALS EVER  
22 EXPRESSED DISAGREEMENT WITH THE LEADERSHIP OF THE  
23 BUSINESS OWNER'S FAITH COMMUNITY THAT ENFORCEMENT OF  
24 STATE LAWS AGAINST THE BUSINESS OWNER OR ANY  
25 ORGANIZATIONS AFFILIATED WITH HIS FAITH WOULD BE FOREVER

1 ASSUMED TO BE BASED ON HOSTILITY TOWARD FAITH.

2 I JUST HAVE A BIT MORE, IF THE COURT WILL  
3 INDULGE. I FEEL COMPELLED TO DISCUSS THE PLAINTIFFS'  
4 USE OF THE "REFERRALS" TERMINOLOGY. THEY SEEM TO BE  
5 ATTEMPTING TO SHOEHORN THIS CASE INTO LUKUMI TO CLAIM  
6 SELECTIVE ENFORCEMENT BY CITING THE FACT THAT AGENCIES  
7 MAY REFER FAMILIES TO OTHER AGENCIES THAT HAVE SPECIAL  
8 EXPERTISE. THESE ARE NOT EXEMPTIONS FROM THE CITY'S  
9 NONDISCRIMINATION REQUIREMENT. THEY ARE COMPARING  
10 APPLES TO ORANGES. USING THE NOMENCLATURE "REFERRAL"  
11 DOES NOT MAKE THE REFUSAL TO ACCEPT SAME-SEX COUPLES ANY  
12 LESS DISCRIMINATORY. THEY ARE USING SMOKE AND MIRRORS  
13 WITH THIS REFERRAL LANGUAGE TO MAKE DISCRIMINATION  
14 APPEAR BENEVOLENT TOWARDS THE FAMILIES DISCRIMINATED  
15 AGAINST UNDER THEIR POLICY.

16 CSS IS NOT SIMPLY ADVISING PROSPECTIVE  
17 PARENTS THAT OTHER AGENCIES MAY BE A BETTER FIT FOR THEM  
18 OR MAY, YOU KNOW, GIVE THEM A CHOICE OF OTHER AGENCIES.  
19 THEY ARE REFUSING SERVICE TO SAME-SEX COUPLES, PERIOD.  
20 I THINK IF AN AGENCY HAD A POLICY OF REFUSING TO ACCEPT  
21 INTERRACIAL COUPLES OR NONCHRISTIANS, I THINK EVEN  
22 PLAINTIFFS WOULD AGREE THAT THIS IS DISCRIMINATION EVEN  
23 IF THE AGENCY REFERRED THOSE FAMILIES TO OTHER AGENCIES  
24 POLITELY AND REFUSED TO SERVE THEM.

25 ONE LAST THING THAT WAS JUST MENTIONED IN

1 THE CROSS EXAMINATION. PLAINTIFFS SEEM TO BE IMPLYING  
2 THAT THE CITY'S REFUSAL TO ALLOW THE USE OF THE  
3 RELIGIOUS ELIGIBILITY CRITERIA IN ITS PUBLIC CHILD  
4 WELFARE SYSTEM TO EXCLUDE SAME-SEX COUPLES VIOLATES  
5 FEDERAL LAW. THAT WAS SORT OF HOW I WAS INTERPRETING  
6 THE LINE OF CROSS. AND I JUST WANT TO MAKE CLEAR THAT  
7 THERE IS NO FEDERAL LAW OR REGULATION THAT REQUIRES  
8 STATES TO PERMIT FAITH-BASED AGENCIES TO DICTATE THE  
9 TERMS OF GOVERNMENT SERVICES PROVIDED. INDEED, THE  
10 FEDERAL STATUTE THAT REQUIRES EQUAL TREATMENT OF  
11 FAITH-BASED SERVICE PROVIDERS THAT PARTICIPATE IN  
12 PROVIDING SERVICES AND GOVERNMENT PROGRAMS.  
13 SPECIFICALLY, I AM GOING TO READ THE LANGUAGE FROM THAT  
14 BECAUSE IT MAKES QUITE CLEAR THAT IT DOES NOT ALLOW THIS  
15 OR REQUIRE IT. IT SAYS HERE -- AND THIS IS 42 USC  
16 290KK-1. RELIGIOUS ORGANIZATIONS ARE ELIGIBLE TO BE  
17 PROGRAM PARTICIPANTS ON THE SAME BASIS AS ANY OTHER  
18 NONPROFIT PRIVATE ORGANIZATION AS LONG AS THE PROGRAMS  
19 ARE IMPLEMENTED CONSISTENT WITH THE ESTABLISHMENT CLAUSE  
20 AND THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT TO  
21 THE UNITED STATES CONSTITUTION.

22 AND THIS IS -- I WANT TO CALL THE COURT'S  
23 ATTENTION TO THE NEXT LINE. NOTHING IN THIS CHAPTER  
24 SHALL BE CONSTRUED TO RESTRICT THE ABILITY OF THE  
25 FEDERAL GOVERNMENT OR A STATE OR LOCAL GOVERNMENT IN

1 RECEIVING FUNDS UNDER SUCH PROGRAMS TO APPLY TO  
2 RELIGIOUS ORGANIZATIONS. THE SAME ELIGIBILITY  
3 CONDITIONS IN DESIGNATED PROGRAMS THAT ARE APPLIED TO  
4 ANY OTHER NONPROFIT PRIVATE ORGANIZATION. IN OTHER  
5 WORDS, WHEN RELIGIOUS ORGANIZATIONS ENTER INTO  
6 GOVERNMENT CONTRACTS, THE GOVERNMENT IS NOT REQUIRED TO  
7 TAILOR THEIR CONTRACT OR THEIR SERVICES TO MEET THE  
8 RELIGIOUS NEEDS OF THE AGENCY.

9 AGAIN, I JUST WANT TO -- ACTUALLY, YOU  
10 KNOW WHAT, I AM GOING TO STOP THERE BECAUSE I HAVE BEEN  
11 SPEAKING LONG ENOUGH AND JUST SEE IF THE COURT HAS ANY  
12 QUESTIONS FOR ME.

13 THE COURT: I HAVE NO QUESTIONS.

14 MS. COOPER: THANK YOU.

15 THE COURT: THANK YOU.

16 MR. RIENZI: LET ME START WHERE THE  
17 PARTIES AND THE AMICUS AGREE, KIDS ARE NOT WIDGETS.  
18 THAT'S GREAT, WE AGREE. KIDS SHOULD BE PLACED IN HOMES  
19 THAT SERVE THEIR BEST INTEREST. EVERYBODY AGREES. I  
20 THINK EVERYBODY ACTUALLY SAID A VERSION OF THIS ONE, AS  
21 MANY DIFFERENT KINDS OF FOSTER FAMILIES AS POSSIBLE IS  
22 GOOD FOR KIDS. WE AGREE. THE QUESTION IS, ARE YOU  
23 GOING TO GET THERE IF YOU HAVE A GOVERNMENT-IMPOSED  
24 LITMUS TEST THAT SAYS PEOPLE -- ORGANIZATIONS WITH  
25 CERTAIN RELIGIOUS BELIEFS CAN'T PARTICIPATE IN THE

1 SYSTEM, RIGHT. SO THE ALTERNATIVE -- I THOUGHT IT WAS  
2 FASCINATING, THE ACLU IS TALKING ABOUT WELL, CATHOLIC  
3 SEEMS LIKE A GOOD AGENCY. WE OUGHT TO MAKE THAT  
4 AVAILABLE FOR EVERYBODY.

5 THAT'S NOT SOMETHING THAT IS ON THE TABLE  
6 IN THE CASE. WHAT IS ON THE TABLE IN THE CASE IS, ARE  
7 THEY GOING TO GET SHUT DOWN OR NOT, RIGHT? SO THE  
8 ACLU'S REQUESTED RELIEF IS NOT EXPAND CATHOLIC, THAT'S  
9 NOT SOMETHING THE GOVERNMENT CAN DO. IT IS SHUT DOWN  
10 CATHOLIC BECAUSE CATHOLIC SHOULD NOT BE AVAILABLE TO  
11 ANYBODY, RIGHT. SO I THOUGHT COMMISSIONER FIGUEROA  
12 ACTUALLY SAID IT BEST, WHETHER CATHOLIC WINS THE CASE OR  
13 DOESN'T WIN THE CASE, THERE'S 28 AGENCIES AVAILABLE IN  
14 THIS CITY WHO WILL CERTIFY SAME-SEX FAMILIES.

15 COUNSEL FOR THE ACLU TALKED A LOT ABOUT  
16 ESTABLISHMENT CLAUSE CONCERNS, ABOUT WHAT HAPPENS WHEN  
17 THE GOVERNMENT DELEGATES ITS FUNCTIONS TO A RELIGIOUS  
18 ENTITY. HERE IS WHY THAT ARGUMENT MISSES THE MARK IN  
19 THIS CASE. CERTIFICATIONS OF FAMILIES FOR FOSTER CARE  
20 ARE NOT THE CITY'S FUNCTION TO DELEGATE. IT'S JUST NOT  
21 THE CITY'S FUNCTION. COMMISSIONER FIGUEROA SAID THAT,  
22 THEIR DOCUMENTS SAY THAT. THEIR DOCUMENTS ALSO MAKE  
23 CLEAR THAT IN NO WAY IS CATHOLIC THE AGENT OF THE CITY.  
24 THOSE ARE THE TERMS OF THE CONTRACT. SO IT'S NOT THE  
25 CITY'S FUNCTION TO DELEGATE.



1 AND THEY CAN'T BE VIOLATING THE  
2 ESTABLISHMENT CLAUSE SIMPLY BY ALLOWING CATHOLIC TO DO  
3 WHAT CATHOLIC HAS DONE LONG BEFORE THE CITY WAS INVOLVED  
4 IN THIS LINE OF WORK, WHICH IS CATHOLIC BRINGS IN  
5 FAMILIES THAT CATHOLIC BRINGS TO THE TABLE AND THINKS  
6 ARE GOOD TO BRING TO THE TABLE. IF WE WANT A WORLD  
7 WHERE WE HAVE AS MANY FOSTER FAMILIES AS POSSIBLE,  
8 ANOTHER THING I THINK EVERYBODY HAS SAID TODAY, WANT AS  
9 MANY FOSTER FAMILIES AS POSSIBLE, WELL, DIFFERENT GROUPS  
10 CAN REACH DIFFERENT COMMUNITIES BETTER. AND SAYING THAT  
11 WE ARE GOING TO SHUT THE DOOR AND WE ARE GOING TO SAY  
12 CATHOLIC CAN'T DO IT BECAUSE CATHOLIC DOESN'T SAY THEY  
13 ARE IN FAVOR OF EACH AND EVERY FAMILY MAKES NO SENSE.  
14 IT'S CONTRARY TO THE INTEREST THAT CITY SAYS IT IS  
15 PURSUING.

16 THERE WAS A REFERENCE TO THE ALLIANCE FOR  
17 AN OPEN SOCIETY CASE, AOC V. AID, WHICH TALKED ABOUT HOW  
18 THE GOVERNMENT IS NOT PERMITTED TO REQUIRE SPEECH  
19 OUTSIDE OF WHAT IT'S CONTRACTING FOR. WHEN IT'S PAYING  
20 FOR SOMETHING, THE GOVERNMENT IS ALLOWED TO SAY, HEY, I  
21 PAID YOU FOR THAT, SAY IT MY WAY. WHEN IT'S NOT PAYING  
22 FOR SOMETHING, THEY DON'T GET TO USE THE FACT THAT THEY  
23 ARE PAYING YOU OVER HERE TO MAKE YOU ENGAGE IN SPEECH  
24 OVER THERE.

25 THAT'S PRECISELY WHAT IS GOING ON HERE.

1       THEY DON'T PAY ANYBODY A PENNY FOR HOME STUDIES.    AND  
2       THEY CERTAINLY DON'T PAY ANYBODY A PENNY WHO STEPS ASIDE  
3       FROM HOME STUDIES.    YOU DON'T DRAW A CHECK FROM THE  
4       GOVERNMENT WHEN YOU SAY, ACTUALLY I CAN'T DO THAT ONE.  
5       SO THEY DON'T PAY A PENNY, IT'S OUTSIDE OF WHAT THEY ARE  
6       PAYING FOR.    AOC ACTUALLY QUITE CLEARLY DICTATES THAT  
7       THE PLAINTIFFS HAVE A VALID COMPELLED SPEECH CLAIM.

8                        THERE WERE ARGUMENTS ABOUT THIRD PARTY  
9       HARMS AND HOW THE CLAIM BASED ON THE THORNTON CASE THAT  
10      WHERE THERE ARE THIRD PARTY HARMS THE RELIGIOUS PARTY  
11      HAS TO LOSE BECAUSE THE ESTABLISHMENT CLAUSE SAYS SO.  
12      HERE IS THE EASY WAY TO KNOW THAT THAT'S NOT RIGHT.  
13      HOSANNA TABOR V. EEOC, A NINE-NOTHING DECISION FROM THE  
14      SUPREME COURT ON BOTH FREE EXERCISE AND ESTABLISHMENT  
15      CLAUSE GROUNDS SAYING THAT THE GOVERNMENT COULD NOT  
16      APPLY AN OTHERWISE VALID NONDISCRIMINATION LAW,  
17      DISCRIMINATION AGAINST THE DISABLED.    THE GOVERNMENT  
18      COULD NOT APPLY THAT OTHERWISE VALID NONDISCRIMINATION  
19      LAW AGAINST A CHURCH, A CHURCH SCHOOL.    HOBBY LOBBY ALSO  
20      REJECTS THE ARGUMENT THAT ANY BURDEN ON THIRD PARTIES  
21      CREATES AN ESTABLISHMENT CLAUSE PROBLEM.

22                        AND IF WE NEEDED ANYTHING FRESHER, WE  
23      COULD JUST GO BACK TO MASTERPIECE FROM FIVE MINUTES AGO,  
24      RIGHT, OR TWO WEEKS AGO.    HERE IS THE SUPREME COURT, THE  
25      SEVEN JUSTICES IN THE MAJORITY, AND THIS IS NOT WHEN

1       THEY ARE TALKING ABOUT -- NOT WHEN THEY ARE TALKING  
2       ABOUT THE COMMISSION, THEY ARE JUST TALKING GENERALLY.  
3       WHEN IT COMES TO WEDDINGS, IT CAN BE ASSUMED THAT A  
4       MEMBER OF THE CLERGY WHO OBJECTS TO GAY MARRIAGE ON  
5       MORAL AND RELIGIOUS GROUNDS COULD NOT BE COMPELLED TO  
6       PERFORM THE CEREMONY WITHOUT DENIAL OF HIS OR HER RIGHT  
7       TO THE FREE EXERCISE OF RELIGION. THAT WAS THE EASY  
8       CASE ACCORDING TO SEVEN JUSTICES EARLIER THIS MONTH.  
9       IT'S JUST LIKE THIS CASE. MARRIAGE IS BOTH A RELIGIOUS  
10      EVENT AND ALSO A CIVIL CONTRACT. YOU HAVE TO GET A  
11      GOVERNMENT LICENSE TO GET MARRIED. THE GOVERNMENT  
12      REGULATES MARRIAGE. IN SOME WAYS IT'S A GOVERNMENT  
13      FUNCTION.

14                   IF THE ARGUMENTS FROM THE ACLU AND THE  
15      CITY WERE CORRECT, THEN THE SUPREME COURT HAS TO BE  
16      WRONG, BECAUSE THEN YOU CAN'T HAVE THE GOVERNMENT  
17      ALLOWING RELIGIOUS GROUPS TO HAVE THEIR DIFFERENT  
18      RELIGIOUS BELIEFS ON SOMETHING LIKE SEX AND MARRIAGE  
19      WHILE STILL DOING STUFF THAT SOMEHOW INVOLVES THE  
20      GOVERNMENT. YET THE COURT SAID IT WAS EASY BECAUSE IT  
21      IS EASY. BECAUSE OUR LAWS DO NOT GIVE THE GOVERNMENT  
22      THE ABILITY TO DICTATE THE ONE AND ONLY CORRECT ANSWER  
23      TO COMPLICATED QUESTIONS LIKE SEX AND MARRIAGE. IT'S A  
24      FREE COUNTRY, PEOPLE HAVE LOTS OF DIFFERENT BELIEFS.  
25      THE SUPREME COURT REPEATEDLY -- THEY SAID IT IN

1 OBERGEFELL, THEY SAID IT AGAIN IN MASTERPIECE, HAS MADE  
2 CLEAR THAT WE NEED TO BE ABLE TO LIVE TOGETHER WITH A  
3 DIVERSITY OF DIFFERENT BELIEFS AND THAT THE GOVERNMENT  
4 CAN'T BE IN THE POSITION OF PUNISHING THE QUOTE UNQUOTE  
5 WRONG SET OF BELIEFS.

6 THERE WAS A LOT OF TALK ABOUT THE HARM  
7 THAT WOULD OCCUR, THE STIGMA, I THINK WAS MENTIONED A  
8 FEW TIMES, THE HARM AND THE STIGMA THAT WOULD OCCUR IF  
9 THE GOVERNMENT WERE TO ALLOW CATHOLIC TO CONTINUE  
10 OPERATING ACCORDING TO ITS RELIGIOUS BELIEFS. FIRST,  
11 AGAIN, THAT'S NOT A WINNING CONSTITUTIONAL ARGUMENT,  
12 SAYS MASTERPIECE, RIGHT. IF THAT WERE A WINNING  
13 CONSTITUTIONAL ARGUMENT, SEVEN JUSTICES COULD NOT SAY  
14 THAT THE CHURCH CAN SAY THEY WON'T DO GAY WEDDINGS,  
15 BECAUSE THEN THE GOVERNMENT WOULD BE ALLOWING A STIGMA  
16 IN A GOVERNMENT FUNCTION. THAT'S NOT WHAT THE LAW IS.  
17 IT'S NOT WHAT THE LAW IS.

18 BUT WE HEARD A LOT FROM THE CITY OVER THE  
19 PAST FEW DAYS ABOUT ALL OF THE EXCEPTIONS THEY HAVE  
20 GRANTED, ALL THE KIDS WHO THEY HAVE GONE AHEAD AND  
21 PLACED IN FAMILIES THROUGH CATHOLIC. AND I WOULD ASK,  
22 IF THEY HAVE SUCH A COMPELLING INTEREST, IF IT'S SUCH A  
23 COMPELLING IMPORTANT INTEREST TO NOT WORK WITH CATHOLIC,  
24 WELL THEN, WHY ARE THEY MAKING ALL OF THESE EXCEPTIONS?  
25 AND IF THE EXCEPTIONS ARE SO HARMFUL, IF IT'S SO

1 TERRIBLE FOR PEOPLE TO LIVE IN A WORLD WHERE WE DON'T  
2 ALL AGREE ABOUT RELIGION AND SEX AND MARRIAGE, THEN HOW  
3 COME PEOPLE HAVE NOT SUFFERED FROM THOSE EXCEPTIONS?

4 ANSWER, THEY HAVE NOT SUFFERED. THEY ARE  
5 ACTUALLY NOT HARMFUL. PEOPLE DISAGREE. I STRONGLY  
6 SUSPECT THAT A LOT OF THESE COUPLES HAVE DEEP  
7 DISAGREEMENTS WITH THE CATHOLIC CHURCH. AND IN AMERICA,  
8 THAT'S OKAY. IT'S OKAY FOR THE CATHOLICS TO SAY I  
9 DISAGREE WITH THE SAME-SEX COUPLE OVER THERE AND I THINK  
10 -- YOU KNOW, MY RELIGION SAYS YOU SHOULD DO IT  
11 DIFFERENTLY. IT'S OKAY FOR A LOT OF OTHER PEOPLE,  
12 INCLUDING COMMISSIONER FIGUEROA, TO HAVE DEEPLY-HELD  
13 BELIEFS THAT THE CATHOLIC CHURCH IS DEAD WRONG. IN A  
14 FREE COUNTRY THAT'S FINE. AND IN A FREE COUNTRY THAT  
15 SHOULD NOT BE DISQUALIFYING FOR EITHER GROUP AND FOR  
16 EITHER SIDE TO PARTICIPATE IN THE PUBLIC SPIRIT,  
17 PARTICULARLY TO DO SOMETHING THAT CATHOLIC IS PROVEN TO  
18 DO VERY WELL, WHICH IS HELP KIDS.

19 YOU HEARD ARGUMENT AGAIN ABOUT THE HARMS  
20 THAT WOULD OCCUR, AND I WOULD JUST REMIND THE COURT  
21 AGAIN, THERE IS NO EVIDENCE THAT ANYONE HAS EVEN ASKED  
22 FOR THE SERVICE. THERE IS NO EVIDENCE THAT ANYBODY HAS  
23 -- UNDER THE SUPREME COURT'S CASE BROWN V. ENTERTAINMENT  
24 MERCHANTS ASSOCIATION, THE GOVERNMENT IS NOT ALLOWED TO  
25 RELY ON AMBIGUOUS PROOF TO CARRY ITS COMPELLING INTEREST

1 BURDEN. IT ACTUALLY NEEDS TO HAVE REAL PROOF OF ACTUAL  
2 HARM.

3 AND I WAS DISAPPOINTED BEFORE WHEN WE  
4 SUDDENLY HAD A SURPRISE EXPERT WITNESS, BUT THE SURPRISE  
5 EXPERT WITNESS ENDED UP, TO HIS CREDIT, QUITE TRUTHFULLY  
6 SAYING, I DON'T KNOW, IT MIGHT BE HARMFUL. I THINK IT'S  
7 HARMFUL, BUT I DON'T REALLY KNOW. AND UNDER THE LAW,  
8 THE GOVERNMENT LOSES AT THAT POINT. UNDER THE LAW, THEY  
9 HAVE NOT CARRIED THEIR BURDEN WHEN THE ANSWER IS, I  
10 DON'T KNOW, I THINK SO BUT I CAN'T PROVE IT. THAT MEANS  
11 GOVERNMENT LOSES.

12 THERE WAS SOME DISCUSSION ABOUT THE  
13 CONTRACT AND THE PUBLIC ACCOMMODATIONS LANGUAGE IN THE  
14 CONTRACT. I WOULD POINT OUT AGAIN, THE GOVERNMENT  
15 SIMPLY DECLINED TO BRIEF THE QUESTION OF WHETHER THIS IS  
16 A PUBLIC ACCOMMODATION. THEY SEEM TO KEEP ASSUMING IT  
17 IS A PUBLIC ACCOMMODATION IN PART BECAUSE THE WORDS  
18 "PUBLIC ACCOMMODATION" APPEAR IN THE CONTRACT. I WOULD  
19 SIMPLY POINT OUT THAT THAT PARAGRAPH MAKES CLEAR THAT  
20 IT'S ABOUT A LOT OF DIFFERENT THINGS. IT TALKS ABOUT  
21 RESIDENTIAL AND REAL PROPERTY. THERE'S ANOTHER  
22 PARAGRAPH LATER IN SECTION 15 THAT TALKS ABOUT NOT  
23 GIVING THE GOVERNMENT GOODS THAT COME FROM NORTHERN  
24 IRELAND. THAT'S NOT BECAUSE THERE IS GOODS GOING ON IN  
25 THIS CONTRACT. THERE IS NO GOODS GOING ON IN THIS

1 CONTRACT. THAT'S BECAUSE THIS BOILERPLATE THAT APPEARS  
2 IN A MILLION CITY CONTRACTS, THAT'S WHY IT'S THIS THICK,  
3 IT DOES NOT PROVE THAT IT'S A PUBLIC ACCOMMODATION. AND  
4 AGAIN, I WOULD JUST SAY THE CITY'S OWN ACTIONS AND THE  
5 WAY FOSTER CARE IS DONE PROVE CONCLUSIVELY THAT IS NOT A  
6 PUBLIC ACCOMMODATION, IT WAS NEVER INTENDED TO BE ONE.  
7 THEY JUST NEEDED TO COME UP WITH AN ARGUMENT.

8 THE CITY SPOKE ABOUT CONTRACT RENEWAL AND  
9 SAID, WELL, THIS IS JUST A MATTER OF NOT RENEWING A  
10 CONTRACT. I WOULD SIMPLY POINT OUT THE GOVERNMENT DOES  
11 NOT GET TO STOP BEING THE GOVERNMENT BECAUSE THERE IS A  
12 CONTRACT INVOLVED. THE LAW IS ACTUALLY QUITE CLEAR THAT  
13 PEOPLE CONTRACTING WITH THE GOVERNMENT STILL HAVE THEIR  
14 FIRST AMENDMENT RIGHTS. THEY HAVE THE SAME FIRST  
15 AMENDMENT RIGHTS THAT AT-WILL EMPLOYEES OF THE  
16 GOVERNMENT HAVE. THAT'S CLEAR 3RD CIRCUIT LAW. SO THE  
17 GOVERNMENT DOES NOT JUST GET TO SAY, WELL, IT'S A  
18 CONTRACT, I DON'T HAVE TO WORRY ABOUT RESPECTING YOUR  
19 RELIGION OR I DON'T HAVE TO WORRY ABOUT NOT FORCING YOU  
20 TO SPEAK BECAUSE IT'S A CONTRACT. BECAUSE IT'S A  
21 CONTRACT IS NOT A FIRST AMENDMENT DEFENSE.

22 THE CITY, ACTUALLY, AS I UNDERSTOOD IT,  
23 WAS ALSO ARGUING THAT MAYBE CATHOLIC IS WRONG ABOUT ITS  
24 RELIGIOUS REQUIREMENTS. MAYBE THEY ARE WRONG WHEN THEY  
25 THINK THAT GOD DOES NOT WANT THEM TO FILL OUT THE

1 PAPERWORK AND CERTIFY THESE COUPLES. AND I WOULD SIMPLY  
2 SAY IT IS NOT FOR THE GOVERNMENT, NOR RESPECTFULLY FOR  
3 THE COURT, TO DECIDE WHAT CATHOLIC'S RELIGIOUS EXERCISE  
4 IS. THAT IS THEIR SINCERE RELIGIOUS EXERCISE. THERE IS  
5 NO SERIOUS CHALLENGE TO IT IN THE EVIDENCE. THAT'S  
6 THEIR RELIGIOUS EXERCISE. MAYBE THE CITY THINKS THEY  
7 ARE WRONG, BUT THE BOTTOM LINE IS THEIR SINCERE  
8 RELIGIOUS EXERCISE IS, I CAN'T SIGN THE FORM, I CAN'T DO  
9 THAT THING. IT IS NOT FOR THE CITY TO COME BACK AND TRY  
10 TO REDEFINE IT AND SAY, WE THINK YOU ARE WRONG. THAT IS  
11 JUST AS INAPPROPRIATE AS THE POPE FRANCIS DISCUSSION AT  
12 DHS. THAT'S FOR THE RELIGIOUS PEOPLE TO DECIDE, IT'S  
13 NOT FOR THE GOVERNMENT TO DECIDE.

14 LET ME END ON THE BALANCE OF HARMS ISSUE  
15 THAT HAS BEEN DISCUSSED. IT'S NOW REALLY CLEAR BECAUSE  
16 NOW WHEN -- I MEAN WE HAVE ACTUALLY HEARD FROM THE  
17 INTERVENOR ON THE WITNESS STAND, WE HAVE HEARD FROM  
18 INTERVENOR'S COUNSEL, WE'VE HEARD FROM THE CITY, THEY  
19 CAN'T FIND ANYBODY WHO WAS HARMED BY THE OLD SYSTEM,  
20 ZERO, THEY CAN'T FIND A SOUL. THAT OLD SYSTEM SO FAR AS  
21 WE ARE AWARE AND SO FAR AS THE EVIDENCE SHOWS, HURT NO  
22 ONE, NOT A SINGLE GAY COUPLE THAT COULDN'T GO BE A  
23 FOSTER PARENT IF THEY WANTED TO. NOT A SINGLE GAY  
24 COUPLE ACTUALLY TURNED AWAY BY CATHOLIC. THERE IS JUST  
25 NO EVIDENCE OF A SOUL WHO WAS HARMED. AND SO AS



1 COMMISSIONER FIGUEROA SAID, YOU HAVE GOT THE SAME NUMBER  
2 OF AGENCIES AVAILABLE EITHER WAY.

3 SO YOU HAVE GOT THIS HYPOTHETICAL CLAIM  
4 THAT SOMEBODY MIGHT BE INJURED, ALTHOUGH WE DON'T KNOW  
5 WHO AND WE HAVE GOT NO PROOF OF IT. BUT THAT'S THE  
6 GOVERNMENT'S ARGUMENT AGAINST THE STATUS QUO. BUT IN  
7 ORDER TO VINDICATE THAT ALLEGED INTEREST, THEY ARE  
8 WILLING TO DO REAL HARM TO REAL ACTUAL PEOPLE, BOTH THE  
9 AGENCY AND THE PARENTS AND THE KIDS. THEY ACKNOWLEDGE  
10 WE HAVE SOME OPEN CATHOLIC HOMES. WELL, THAT'S NOT JUST  
11 WORDS, RIGHT. SOME OPEN CATHOLIC HOMES IS BEDS AND  
12 FAMILIES WHERE FOSTER KIDS SHOULD BE SLEEPING RIGHT NOW.  
13 AND THE GOVERNMENT IS NOT LETTING THEM SLEEP THERE.

14 YOU HEARD FROM COMMISSIONER FIGUEROA THAT  
15 JUST LIKE THEY DID IN MARCH, THEY HAVE STILL HAVE GOT  
16 700 PLUS KIDS IN CONGREGATE CARE, AND AS SHE TOLD THAT  
17 REPORTER, ABOUT 250 OF THEM COULD BE LIVING IN FAMILIES.  
18 THAT NUMBER HAS NOT MOVED AN INCH IN THE PAST THREE  
19 MONTHS. DO YOU THINK THERE IS ANY SERIOUS WORLD IN  
20 WHICH THE OPENING UP OF THOSE 26 BEDS AT CATHOLIC HOMES  
21 DOESN'T MOVE SOME REAL LIVE KIDS TO GET INTO FOSTER  
22 HOMES? OF COURSE IT DOES.

23 THE GOVERNMENT TALKED ABOUT THEIR  
24 EXCEPTIONS POLICY. AND WE HEARD SOME TESTIMONY. NO ONE  
25 HAS CLOSED ON IT AND I WILL NOT EITHER, OTHER THAN TO

1 MAKE THIS OBSERVATION. WE HEARD SOME TESTIMONY ABOUT  
2 DOE CHILD NUMBER 1, AND IF ONE THING IS CLEAR, I AM  
3 SURE, YOUR HONOR, IS THAT IT WAS A COMPLICATED MESS.  
4 THERE'S A COMPLICATED MESS OVER THAT CHILD. BUT THAT'S  
5 INSTRUCTIVE, BECAUSE THAT SHOWS THAT WHEN YOU ARE IN A  
6 WORLD WHERE YOU CAN'T JUST PROCEED NORMALLY AND YOU HAVE  
7 TO GO GET SPECIAL EXCEPTIONS FROM THE TOP OF THE TOP,  
8 RIGHT, FROM THE TOP LEVELS OF CITY GOVERNMENT, I BELIEVE  
9 WAS THE PHRASE. YOU HAVE TO GO GET EXCEPTIONS AT THE  
10 TOP. AND WHEN YOU DON'T HAVE A WRITTEN POLICY AND YOU  
11 HAVE NOT TOLD EVERYBODY AT THE BOTTOM, IT'S RIDICULOUS  
12 TO ASSUME THAT YOU ARE FINDING OUT ABOUT ALL THE KIDS  
13 WHO NEED TO BE PLACED IN ALL THE RIGHT PLACES. THERE IS  
14 JUST NO REASON TO ASSUME THAT.

15 SO THE CURRENT SITUATION THAT IS GOING ON  
16 RIGHT NOW WITH THE ILLEGAL FREEZE OF INTAKES HURTS REAL  
17 PEOPLE, REAL KIDS, REAL FOSTER PARENTS, REAL AGENCIES.  
18 AND THAT'S HARM THAT SHOULD BE STOPPED. AND THE IDEA  
19 THAT OUT OF OUR DESIRE TO MAKE SURE THAT EVERYONE GETS  
20 TO USE THE AGENCY THEY WANT, WE ARE GOING TO GO TO  
21 PEOPLE WHO HAVE DELIBERATELY CHOSEN CATHOLIC, WHO LOVE  
22 CATHOLIC, WHO HAVE BEEN WITH CATHOLIC DECADES, AND WE  
23 ARE GOING TO SAY, SORRY, YOU CAN'T HAVE CATHOLIC ANY  
24 MORE. AND WE ARE GOING TO TAKE THAT AWAY FROM REAL  
25 ACTUAL PEOPLE IN ORDER TO VINDICATE THE HYPOTHETICAL

1 SITUATION THAT HAS NOT ACTUALLY ARISEN YET THAT SOMEBODY  
2 MIGHT SHOW UP TO CATHOLIC AND ASK FOR THE CATHOLIC  
3 CHURCH TO COME IN AND EVALUATE THEIR FAMILY LIFE IN THIS  
4 CIRCUMSTANCE SIMPLY DOES NOT MAKE ANY SENSE. AND I  
5 WOULD END BY POINTING THE COURT TO TWO CASES IN OUR  
6 BRIEF, MARKS V. JACKSON AND REILLY V. CITY OF  
7 HARRISBURG. WHAT THEY BOTH SAY IS THAT THE IRREPARABLE  
8 HARM AND BALANCE OF HARM SHOWINGS, THAT'S A SLIDING  
9 SCALES, I AM SURE YOUR HONOR IS AWARE FROM THE  
10 PRELIMINARY INJUNCTION FACTOR ANALYSIS, BUT THAT A  
11 STRONG SHOWING ON IRREPARABLE HARM AND BALANCE OF HARMS  
12 CAN EVEN LESSEN WHAT A PARTY NEEDS TO DO ON SUCCESS ON  
13 THE MERITS. FOR THE REASONS WE HAVE SAID, WE THINK  
14 ACTUALLY SUCCESS ON THE MERITS IS QUITE CLEAR. WE THINK  
15 WHAT THE GOVERNMENT IS DOING VIOLATES STATE AND FEDERAL  
16 LAW, FEDERAL LAW, BOTH FIRST AMENDMENT AND RELATED TO  
17 THEIR FUNDING. SO WE THINK THE MERITS ARE ACTUALLY  
18 QUITE STRAIGHTFORWARD, BUT IF YOU HAVE ANY DOUBT, THE  
19 HARM ALONE SHOULD BE ABLE TO CARRY THE DAY FOR THE  
20 INJUNCTION. SO WITH THAT, WE WOULD ASK YOUR HONOR TO  
21 ENTER THE INJUNCTION. THANK YOU.

22 THE COURT: OKAY, THANK YOU. THE COURT  
23 HOLDS THE MATTER UNDER ADVISEMENT. HOWEVER, I WOULD  
24 REQUEST OF THE PARTIES THAT THEY FILE FINDINGS OF FACTS  
25 AND CONCLUSIONS OF LAW BY THE 28TH OF JUNE. AND THE

1 COURT WILL ISSUE ITS RULING SHORTLY THEREAFTER.

2 IS THERE ANYTHING FURTHER?

3 MR. RIENZI: NO, YOUR HONOR.

4 MS. CORTES: NO, YOUR HONOR.

5 THE COURT: OKAY. HAVE A GOOD EVENING.

6 (ALL RISE.)

7

8

9 I CERTIFY THAT THE FOREGOING IS A CORRECT

10 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE

11 ABOVE-ENTITLED MATTER.

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15 DATE

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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

Hereinafter, the Base Contract and all prior amendments, if any, shall be referred to as the "Base Contract as Amended;" and

It is necessary to INCREASE the amount of compensation payable under the Base Contract as Amended by **Nineteen Million, Four Hundred Thirty Thousand, Nine Hundred Ninety-One Dollars and Twenty-Three Cents (\$19,430,991.23)**, in order for Provider to continue to render the Services and provide the Materials specified in the Base Contract as Amended and this Amendment Agreement; and

The City and Provider have agreed to amend certain terms and conditions of the Base Contract as Amended, as set forth herein; and

In consideration of the mutual obligations set forth herein, and each intending to be legally bound, the City and Provider covenant and agree as of the Effective Date as follows:

**ARTICLE I: AMENDMENTS TO THE CONTRACT**

With the exception of the following amendments set forth in this Amendment Agreement, and subject to councilmanic appropriation of funds, the terms and conditions of the Provider Agreement "as amended" shall be and remain in full force and effect:

**1.1 Incorporation of Background.**

The Background is incorporated by reference herein.

**1.2 Definitions.**

Capitalized terms not otherwise defined herein shall have the meanings set forth in the Base Contract as Amended.

**1.3 Term.**

The term of the Base Contract as Amended is extended for an Additional Term commencing **JULY 1, 2017** and expiring **JUNE 30, 2018**.

**1.4 Compensation.**

As compensation for the Services and Materials being provided under this Contract, the City covenants and agrees to set the amount of compensation payable to Provider for the current contract term at **Nineteen Million, Four Hundred Thirty Thousand, Nine**

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**Hundred Ninety-One Dollars and Twenty-Three Cents (\$19,430,991.23).** Notwithstanding anything in the Contract to the contrary, in no event shall the amount certified by the Finance Department for Services and Materials under the Contract, including this Amendment Agreement, exceed **Forty-Three Million, One Hundred Seventy-Eight Thousand, Seven Dollars and Twenty-Three Cents (\$43,178,007.23).**

**1.5 Services and Materials.**

Section 2.1 of the Provider Agreement, is amended in accordance with the attachments listed below, which are attached to this Amendment Agreement and incorporated herein by reference.

- (a) S.A.A.-1: **Service, Rate, Maximum Days/Units**
- (b) S.A.A.-2: **Scope of Services**

Section 2.1 of the Provider Agreement, is amended in accordance with the Exhibits listed below, which are available on the Provider Extranet and incorporated herein by reference.

- (c) S.A.A.- **3 :Community Umbrella Agency Practice Guidelines**
- (d) S.A.A.- **4 :Day Treatment Standards**
- (e) S.A.A.- **5 :Foster Family Care Standards**
- (f) S.A.A.- **6 :Group Home Standards**
- (g) S.A.A.- **7 :Institutional Care Standards**
- (h) S.A.A.- **8 :Re-Integration Standards**
- (i) S.A.A.- **9 :Specialized Behavioral Health Standards**
- (j) S.A.A.- **10 :Maternity Mother/Baby Standards**
- (k) S.A.A.- **11 :Medical Standards**
- (l) S.A.A.- **12 :Supervised Independent Living Standards**
- (m) S.A.A.- **13 :Streamlined Standards**
- (n) S.A.A.- **14 :CARES Limited License Agreement**
- (o) S.A.A.- **15 :Balanced and Restorative Justice Standards**

**1.6 Additional Provisions.**

Other provisions, including, without limitation, OEO participation commitments and any exceptions or modifications to the General Provisions of the Contract, are set forth in the following clause(s) and incorporated herein by reference:

(a) DHS is increasing its administrative efficiency through the use of electronic record keeping and data sharing technology. As these updates occur, the Department will continue to notify providers of these technology requirement changes through written notices. Failure to comply with any DHS technology requirements (including, but not limited to the use of P-Web and P-DRIVE) may result in a financial penalty and/or a finding that an Event of Default has occurred.

**1.7 Acknowledgment of General Provisions.**

Provider specifically acknowledges that Provider has read and understands the terms and conditions contained in the General Provisions and acknowledges that by executing this Amendment Agreement, Provider shall be legally bound by all of the terms of this Contract, including, but not limited to, those set forth in the General Provisions. **The revised General Provisions are attached to this document and are explicitly accepted by the Provider.**

**1.8 Acknowledgment of Standards.**

Provider specifically acknowledges that Provider has read and understands the terms and conditions contained in the applicable above referenced Performance and Service Standards ("Standards") formerly known as Service Description and Contract Requirements, Service Description, Performance Standards, Service Standards, Procedural Manuals and/or Guides which are available on the Provider Extranet at ([http://dhs.phila.gov/extranet/extrahome\\_pub.nsf/Content/ServiceStandards](http://dhs.phila.gov/extranet/extrahome_pub.nsf/Content/ServiceStandards)) which are incorporated to this Amendment Agreement by reference. Provider acknowledges that by executing this Amendment Agreement, Provider shall be legally bound by all of the terms of this Contract, including, but not limited to, those set forth in the Standards currently published on the Provider Extranet and any and all subsequent amendments.

(SIGNATURE PAGE TO FOLLOW)

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound by all of the Contract Documents, have caused the Contract to be executed by their respective duly authorized officers as of the date in the heading of this Standard Amendment Agreement.

APPROVED AS TO FORM THE CITY OF PHILADELPHIA  
SOZI PEDRO TULANTE, CITY SOLICITOR Through: The Department of Human Services

Per: DocuSigned by:  
Crystal T. Espanol  
7777B8C1F7E44C9...  
Name: Crystal T. Espanol  
Title: Assistant City Solicitor

By: DocuSigned by:  
Cynthia Figueroa  
A9C82E46A19349B...  
Name: Cynthia Figueroa  
Title: Commissioner

CATHOLIC SOCIAL SERVICES

By: DocuSigned by:  
James Amato  
6C6D462686844FD...  
Name: James Amato  
Title: Vice President

By: DocuSigned by:  
Franz Fruehwald  
D426312A44334D4...  
Name: Franz Fruehwald  
Chief Financial Officer  
Title: Assistant Treasurer



## City of Philadelphia Contract Routing Slip

### External Negotiation/Encumbrance & Budget Verification (Conformance Manager)

1. Review contract as signed by vendor and consult with supervisor.
  - Click the check box to attach additional documentation, if required.
2. Confirm Encumbrance; supervisor routes in ACIS to Budget Verification.
3. Confirm Budget Verification completed in ACIS.
  - Send to Law.



### Approve as to Form (Attorney)

Click the check box to attach additional documentation, if required.

- Route in ACIS to Finance

### Finance Certification

- Attach the Endorsement Sheet then route in ACIS to Finance Review.



### Finance Review

- Review then route in ACIS to Department Signs Contract.

### Departmental Review (Conformance Manager)

- Route in ACIS to Conformance.

### Conformance Review (Conformance Clerk)

- Conform Contract.

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**Exhibit SAA - 1  
Fiscal Year 2018**

**6606 - Catholic Social Services**

| Services  | Rate              | Service Code | Contract Units | Total  |
|---|-------------------|--------------|----------------|--------|
| <b><u>DEPENDENT SERVICES</u></b>  |                   |              |                |        |
| <b><u>Bouvier, McCarthy, Fairless, Morrell, Drexel and McGlade - CUA/Placement</u></b>        |                   |              |                |        |
| GH-Intensive (Non-RTF)  | \$212.16          | K1LG         | AS NEEDED      | \$0.00 |
| GH-Intensive (Non-RTF) (Child Specific)   | \$256.55          | K1LG         | AS NEEDED      | \$0.00 |
| GH-RTF (C/P)  | \$3.00            | K13M         | AS NEEDED      | \$0.00 |
| Initial Clothing Allowance  | Up to \$250/child | X1XX         | AS NEEDED      | \$0.00 |
| <b>Bouvier, McCarthy, Fairless, Morrell, Drexel and McGlade - CUA/Placement TOTAL: \$0.00</b> |                   |              |                |        |
| <b><u>CUA - 1/1/18 to 6/30/18</u></b>   |                   |              |                |        |
| FFC-College Rate  | \$32.13           | J1GW         | AS NEEDED      | \$0.00 |
| FFC-Emergency Shelter   | \$45.06           | E1GG         | AS NEEDED      | \$0.00 |
| FFC-Emergency Shelter 13+   | \$55.06           | E1GG         | AS NEEDED      | \$0.00 |
| FFC-General   | \$45.06           | J1GG         | AS NEEDED      | \$0.00 |
| FFC-General 13+   | \$55.06           | J1GG         | AS NEEDED      | \$0.00 |
| FFC-M/B-Baby  | \$0.00            | J1WC         | AS NEEDED      | \$0.00 |
| FFC-M/B-Mother  | \$57.06           | J1WP         | AS NEEDED      | \$0.00 |
| FFC-M/B-Mother (2B)   | \$65.56           | J1WP         | AS NEEDED      | \$0.00 |
| FFC-M/B-Mother (2B) 13+   | \$75.56           | J1WP         | AS NEEDED      | \$0.00 |
| FFC-M/B-Mother (3B)   | \$74.06           | J1WP         | AS NEEDED      | \$0.00 |
| FFC-M/B-Mother (3B) 13+   | \$84.06           | J1WP         | AS NEEDED      | \$0.00 |
| FFC-M/B-Mother 13+  | \$67.06           | J1WP         | AS NEEDED      | \$0.00 |
| FFC-Maternity   | \$45.06           | J1JG         | AS NEEDED      | \$0.00 |
| FFC-Maternity 13+   | \$55.06           | J1JG         | AS NEEDED      | \$0.00 |
| FFC-Medical   | \$45.06           | J1MR         | AS NEEDED      | \$0.00 |
| FFC-Medical 13+   | \$55.06           | J1MR         | AS NEEDED      | \$0.00 |
| FFC-Respite   | \$0.00            | J14G         | AS NEEDED      | \$0.00 |
| Initial Clothing Allowance  | Up to \$250/child | X1XX         | AS NEEDED      | \$0.00 |
| KIN-College Rate  | \$32.13           | Z1GW         | AS NEEDED      | \$0.00 |
| KIN-Emergency   | \$45.06           | Z1DG         | AS NEEDED      | \$0.00 |
| KIN-Emergency 13+   | \$55.06           | Z1DG         | AS NEEDED      | \$0.00 |
| KIN-Emergency-M/B-Baby  | \$0.00            | Z1DC         | AS NEEDED      | \$0.00 |
| KIN-Emergency-M/B-Mother  | \$57.06           | Z1DP         | AS NEEDED      | \$0.00 |
| KIN-Emergency-M/B-Mother (2B)   | \$65.56           | Z1DP         | AS NEEDED      | \$0.00 |
| KIN-Emergency-M/B-Mother (2B) 13+   | \$75.56           | Z1DP         | AS NEEDED      | \$0.00 |



**Exhibit SAA - 1  
Fiscal Year 2018**

**6606 - Catholic Social Services**

| Services                          | Rate    | Service Code | Contract Units | Total  |
|-----------------------------------|---------|--------------|----------------|--------|
| KIN-Emergency-M/B-Mother (3B)     | \$74.06 | Z1DP         | AS NEEDED      | \$0.00 |
| KIN-Emergency-M/B-Mother (3B) 13+ | \$84.06 | Z1DP         | AS NEEDED      | \$0.00 |
| KIN-Emergency-M/B-Mother 13+      | \$67.06 | Z1DP         | AS NEEDED      | \$0.00 |
| KIN-General                       | \$45.06 | Z1GG         | AS NEEDED      | \$0.00 |
| KIN-General 13+                   | \$55.06 | Z1GG         | AS NEEDED      | \$0.00 |
| KIN-M/B-Baby                      | \$0.00  | Z1WC         | AS NEEDED      | \$0.00 |
| KIN-M/B-Mother                    | \$57.06 | Z1WP         | AS NEEDED      | \$0.00 |
| KIN-M/B-Mother (2B)               | \$65.56 | Z1WP         | AS NEEDED      | \$0.00 |
| KIN-M/B-Mother (2B) 13+           | \$75.56 | Z1WP         | AS NEEDED      | \$0.00 |
| KIN-M/B-Mother (3B)               | \$74.06 | Z1WP         | AS NEEDED      | \$0.00 |
| KIN-M/B-Mother (3B) 13+           | \$84.06 | Z1WP         | AS NEEDED      | \$0.00 |
| KIN-M/B-Mother 13+                | \$67.06 | Z1WP         | AS NEEDED      | \$0.00 |
| KIN-Maternity                     | \$45.06 | Z1JG         | AS NEEDED      | \$0.00 |
| KIN-Maternity 13+                 | \$55.06 | Z1JG         | AS NEEDED      | \$0.00 |
| KIN-Medical                       | \$45.06 | Z1MR         | AS NEEDED      | \$0.00 |
| KIN-Medical 13+                   | \$55.06 | Z1MR         | AS NEEDED      | \$0.00 |

CUA - 1/1/18 to 6/30/18 TOTAL: \$0.00

**CUA - 7/1/17 to 12/31/17**

|                           |         |      |           |        |
|---------------------------|---------|------|-----------|--------|
| FFC-College Rate          | \$28.50 | J1GW | AS NEEDED | \$0.00 |
| FFC-Emergency Shelter     | \$41.43 | E1GG | AS NEEDED | \$0.00 |
| FFC-Emergency Shelter 13+ | \$51.43 | E1GG | AS NEEDED | \$0.00 |
| FFC-General               | \$41.43 | J1GG | AS NEEDED | \$0.00 |
| FFC-General 13+           | \$51.43 | J1GG | AS NEEDED | \$0.00 |
| FFC-M/B-Baby              | \$0.00  | J1WC | AS NEEDED | \$0.00 |
| FFC-M/B-Mother            | \$53.43 | J1WP | AS NEEDED | \$0.00 |
| FFC-M/B-Mother (2B)       | \$61.93 | J1WP | AS NEEDED | \$0.00 |
| FFC-M/B-Mother (2B) 13+   | \$71.93 | J1WP | AS NEEDED | \$0.00 |
| FFC-M/B-Mother (3B)       | \$70.43 | J1WP | AS NEEDED | \$0.00 |
| FFC-M/B-Mother (3B) 13+   | \$80.43 | J1WP | AS NEEDED | \$0.00 |
| FFC-M/B-Mother 13+        | \$63.43 | J1WP | AS NEEDED | \$0.00 |
| FFC-Maternity             | \$41.43 | J1JG | AS NEEDED | \$0.00 |
| FFC-Maternity 13+         | \$51.43 | J1JG | AS NEEDED | \$0.00 |
| FFC-Medical               | \$41.43 | J1MR | AS NEEDED | \$0.00 |
| FFC-Medical 13+           | \$51.43 | J1MR | AS NEEDED | \$0.00 |
| FFC-Respite               | \$0.00  | J14G | AS NEEDED | \$0.00 |

**Exhibit SAA - 1  
Fiscal Year 2018**

**6606 - Catholic Social Services**

| Services                          | Rate              | Service Code | Contract Units | Total  |
|-----------------------------------|-------------------|--------------|----------------|--------|
| Initial Clothing Allowance        | Up to \$250/child | X1XX         | AS NEEDED      | \$0.00 |
| KIN-College Rate                  | \$28.50           | Z1GW         | AS NEEDED      | \$0.00 |
| KIN-Emergency                     | \$41.43           | Z1DG         | AS NEEDED      | \$0.00 |
| KIN-Emergency 13+                 | \$51.43           | Z1DG         | AS NEEDED      | \$0.00 |
| KIN-Emergency-M/B-Baby            | \$0.00            | Z1DC         | AS NEEDED      | \$0.00 |
| KIN-Emergency-M/B-Mother          | \$53.43           | Z1DP         | AS NEEDED      | \$0.00 |
| KIN-Emergency-M/B-Mother (2B)     | \$61.93           | Z1DP         | AS NEEDED      | \$0.00 |
| KIN-Emergency-M/B-Mother (2B) 13+ | \$71.93           | Z1DP         | AS NEEDED      | \$0.00 |
| KIN-Emergency-M/B-Mother (3B)     | \$70.43           | Z1DP         | AS NEEDED      | \$0.00 |
| KIN-Emergency-M/B-Mother (3B) 13+ | \$80.43           | Z1DP         | AS NEEDED      | \$0.00 |
| KIN-Emergency-M/B-Mother 13+      | \$63.43           | Z1DP         | AS NEEDED      | \$0.00 |
| KIN-General                       | \$41.43           | Z1GG         | AS NEEDED      | \$0.00 |
| KIN-General 13+                   | \$51.43           | Z1GG         | AS NEEDED      | \$0.00 |
| KIN-M/B-Baby                      | \$0.00            | Z1WC         | AS NEEDED      | \$0.00 |
| KIN-M/B-Mother                    | \$53.43           | Z1WP         | AS NEEDED      | \$0.00 |
| KIN-M/B-Mother (2B)               | \$61.93           | Z1WP         | AS NEEDED      | \$0.00 |
| KIN-M/B-Mother (2B) 13+           | \$71.93           | Z1WP         | AS NEEDED      | \$0.00 |
| KIN-M/B-Mother (3B)               | \$70.43           | Z1WP         | AS NEEDED      | \$0.00 |
| KIN-M/B-Mother (3B) 13+           | \$80.43           | Z1WP         | AS NEEDED      | \$0.00 |
| KIN-M/B-Mother 13+                | \$63.43           | Z1WP         | AS NEEDED      | \$0.00 |
| KIN-Maternity                     | \$41.43           | Z1JG         | AS NEEDED      | \$0.00 |
| KIN-Maternity 13+                 | \$51.43           | Z1JG         | AS NEEDED      | \$0.00 |
| KIN-Medical                       | \$41.43           | Z1MR         | AS NEEDED      | \$0.00 |
| KIN-Medical 13+                   | \$51.43           | Z1MR         | AS NEEDED      | \$0.00 |
| CUA - 7/1/17 to 12/31/17 TOTAL:   |                   |              |                | \$0.00 |

**Placement - 1/1/18 to 6/30/18**

|                           |         |      |           |        |
|---------------------------|---------|------|-----------|--------|
| FFC-College Rate          | \$32.13 | J1GW | AS NEEDED | \$0.00 |
| FFC-Emergency Shelter     | \$58.12 | E11G | AS NEEDED | \$0.00 |
| FFC-Emergency Shelter 13+ | \$68.12 | E11G | AS NEEDED | \$0.00 |
| FFC-Level II              | \$58.12 | J12G | AS NEEDED | \$0.00 |
| FFC-Level II 13+          | \$68.12 | J12G | AS NEEDED | \$0.00 |
| FFC-M/B-Baby              | \$0.00  | J1WC | AS NEEDED | \$0.00 |
| FFC-M/B-Mother            | \$71.64 | J1WP | AS NEEDED | \$0.00 |
| FFC-M/B-Mother (2B)       | \$98.64 | J1WP | AS NEEDED | \$0.00 |

**Exhibit SAA - 1  
Fiscal Year 2018**

**6606 - Catholic Social Services**

| Services                                    | Rate              | Service Code | Contract Units | Total         |
|---|-------------------|--------------|----------------|---------------|
| FFC-M/B-Mother (2B) 13+                     | \$108.64          | J1WP         | AS NEEDED      | \$0.00        |
| FFC-M/B-Mother (3B)                         | \$125.64          | J1WP         | AS NEEDED      | \$0.00        |
| FFC-M/B-Mother (3B) 13+                     | \$135.64          | J1WP         | AS NEEDED      | \$0.00        |
| FFC-M/B-Mother 13+                          | \$81.64           | J1WP         | AS NEEDED      | \$0.00        |
| FFC-Maternity                               | \$46.12           | J1JG         | AS NEEDED      | \$0.00        |
| FFC-Maternity 13+                           | \$56.12           | J1JG         | AS NEEDED      | \$0.00        |
| FFC-Medical                                 | \$46.12           | J1MR         | AS NEEDED      | \$0.00        |
| FFC-Medical 13+                             | \$56.12           | J1MR         | AS NEEDED      | \$0.00        |
| FFC-Respite                                 | \$0.00            | J14G         | AS NEEDED      | \$0.00        |
| Initial Clothing Allowance                  | Up to \$250/child | X1XX         | AS NEEDED      | \$0.00        |
| KIN-College Rate                            | \$32.13           | Z1GW         | AS NEEDED      | \$0.00        |
| KIN-Level II                                | \$58.12           | Z12G         | AS NEEDED      | \$0.00        |
| KIN-Level II 13+                            | \$68.12           | Z12G         | AS NEEDED      | \$0.00        |
| KIN-M/B-Baby                                | \$0.00            | Z1WC         | AS NEEDED      | \$0.00        |
| KIN-M/B-Mother                              | \$71.64           | Z1WP         | AS NEEDED      | \$0.00        |
| KIN-M/B-Mother (2B)                         | \$98.64           | Z1WP         | AS NEEDED      | \$0.00        |
| KIN-M/B-Mother (2B) 13+                     | \$108.64          | Z1WP         | AS NEEDED      | \$0.00        |
| KIN-M/B-Mother (3B)                         | \$125.64          | Z1WP         | AS NEEDED      | \$0.00        |
| KIN-M/B-Mother (3B) 13+                     | \$135.64          | Z1WP         | AS NEEDED      | \$0.00        |
| KIN-M/B-Mother 13+                          | \$81.64           | Z1WP         | AS NEEDED      | \$0.00        |
| KIN-Maternity                               | \$46.12           | Z1JG         | AS NEEDED      | \$0.00        |
| KIN-Maternity 13+                           | \$56.12           | Z1JG         | AS NEEDED      | \$0.00        |
| KIN-Medical                                 | \$46.12           | Z1MR         | AS NEEDED      | \$0.00        |
| KIN-Medical 13+                             | \$56.12           | Z1MR         | AS NEEDED      | \$0.00        |
| SBH-Transition FFC                          | Up to \$87.77     | J1UG         | AS NEEDED      | \$0.00        |
| SBH-Transition FFC 13+                      | Up to \$97.77     | J1UG         | AS NEEDED      | \$0.00        |
| SBH-Transition KIN                          | Up to \$87.77     | Z1UG         | AS NEEDED      | \$0.00        |
| SBH-Transition KIN 13+                      | Up to \$97.77     | Z1UG         | AS NEEDED      | \$0.00        |
| <b>Placement - 1/1/18 to 6/30/18 TOTAL:</b> |                   |              |                | <b>\$0.00</b> |

**Placement - 7/1/17 to 12/31/17**

|                           |         |      |           |        |
|---------------------------|---------|------|-----------|--------|
| FFC-College Rate          | \$28.50 | J1GW | AS NEEDED | \$0.00 |
| FFC-Emergency Shelter     | \$54.59 | E11G | AS NEEDED | \$0.00 |
| FFC-Emergency Shelter 13+ | \$64.49 | E11G | AS NEEDED | \$0.00 |
| FFC-Level II              | \$54.49 | J12G | AS NEEDED | \$0.00 |
| FFC-Level II 13+          | \$64.49 | J12G | AS NEEDED | \$0.00 |
| FFC-M/B-Baby              | \$0.00  | J1WC | AS NEEDED | \$0.00 |
| FFC-M/B-Mother            | \$68.01 | J1WP | AS NEEDED | \$0.00 |

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**Exhibit SAA - 1  
Fiscal Year 2018**

**6606 - Catholic Social Services**

| Services                   | Rate              | Service Code | Contract Units | Total  |
|----------------------------|-------------------|--------------|----------------|--------|
| FFC-M/B-Mother (2B)        | \$95.01           | J1WP         | AS NEEDED      | \$0.00 |
| FFC-M/B-Mother (2B) 13+    | \$105.01          | J1WP         | AS NEEDED      | \$0.00 |
| FFC-M/B-Mother (3B)        | \$122.01          | J1WP         | AS NEEDED      | \$0.00 |
| FFC-M/B-Mother (3B) 13+    | \$132.01          | J1WP         | AS NEEDED      | \$0.00 |
| FFC-M/B-Mother 13+         | \$78.01           | J1WP         | AS NEEDED      | \$0.00 |
| FFC-Maternity              | \$42.49           | J1JG         | AS NEEDED      | \$0.00 |
| FFC-Maternity 13+          | \$52.49           | J1JG         | AS NEEDED      | \$0.00 |
| FFC-Medical                | \$42.49           | J1MR         | AS NEEDED      | \$0.00 |
| FFC-Medical 13+            | \$52.49           | J1MR         | AS NEEDED      | \$0.00 |
| FFC-Respite                | \$0.00            | J14G         | AS NEEDED      | \$0.00 |
| Initial Clothing Allowance | Up to \$250/child | X1XX         | AS NEEDED      | \$0.00 |
| KIN-College Rate           | \$28.50           | Z1GW         | AS NEEDED      | \$0.00 |
| KIN-Level II               | \$54.49           | Z12G         | AS NEEDED      | \$0.00 |
| KIN-Level II 13+           | \$64.49           | Z12G         | AS NEEDED      | \$0.00 |
| KIN-M/B-Baby               | \$0.00            | Z1WC         | AS NEEDED      | \$0.00 |
| KIN-M/B-Mother             | \$68.01           | Z1WP         | AS NEEDED      | \$0.00 |
| KIN-M/B-Mother (2B)        | \$95.01           | Z1WP         | AS NEEDED      | \$0.00 |
| KIN-M/B-Mother (2B) 13+    | \$105.01          | Z1WP         | AS NEEDED      | \$0.00 |
| KIN-M/B-Mother (3B)        | \$122.01          | Z1WP         | AS NEEDED      | \$0.00 |
| KIN-M/B-Mother (3B) 13+    | \$132.01          | Z1WP         | AS NEEDED      | \$0.00 |
| KIN-M/B-Mother 13+         | \$78.01           | Z1WP         | AS NEEDED      | \$0.00 |
| KIN-Maternity              | \$42.49           | Z1JG         | AS NEEDED      | \$0.00 |
| KIN-Maternity 13+          | \$52.49           | Z1JG         | AS NEEDED      | \$0.00 |
| KIN-Medical                | \$42.49           | Z1MR         | AS NEEDED      | \$0.00 |
| KIN-Medical 13+            | \$52.49           | Z1MR         | AS NEEDED      | \$0.00 |
| SBH-Transition FFC         | Up to \$84.14     | J1UG         | AS NEEDED      | \$0.00 |
| SBH-Transition FFC 13+     | Up to \$94.14     | J1UG         | AS NEEDED      | \$0.00 |
| SBH-Transition KIN         | Up to \$84.14     | Z1UG         | AS NEEDED      | \$0.00 |
| SBH-Transition KIN 13+     | Up to \$94.14     | Z1UG         | AS NEEDED      | \$0.00 |

**Placement - 7/1/17 to 12/31/17 TOTAL: \$0.00**

**St Francis/St Joseph for Boys – CUA/Placement**

|                              |                   |      |           |        |
|------------------------------|-------------------|------|-----------|--------|
| GH-Intensive (Non-RTF)       | \$212.16          | K1LG | AS NEEDED | \$0.00 |
| GH-Intensive (Non-RTF)       | \$256.55          | K1LG | AS NEEDED | \$0.00 |
| Initial Clothing Allowance   | Up to \$250/child | X1XX | AS NEEDED | \$0.00 |
| SIL (Requires Authorization) | \$114.52          | M1GG | AS NEEDED | \$0.00 |
| SIL-College Rate             | \$24.75           | M1GW | AS NEEDED | \$0.00 |

**St Francis/St Joseph for Boys - CUA/Placement TOTAL: \$0.00**

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**Exhibit SAA - 1  
Fiscal Year 2018**

**6606 - Catholic Social Services**

| Services  | Rate              | Service Code | Contract Units | Total  |
|---|-------------------|--------------|----------------|--------|
| <b><u>St Gabriel's (Requires Authorization) - CUA/Placement</u></b> |                   |              |                |        |
| Initial Clothing Allowance  | Up to \$250/child | X1XX         | AS NEEDED      | \$0.00 |
| INST-Intensive (Non-RTF)  | \$197.35          | L1LG         | AS NEEDED      | \$0.00 |
| INST-Intensive (Non-RTF)  | \$239.94          | L1LG         | AS NEEDED      | \$0.00 |
| INST-RTF D&A (R/B,C/P)  | \$84.61           | L1AR         | AS NEEDED      | \$0.00 |
| INST-RTF Mitchell (R/B,C/P)   | \$84.61           | L13R         | AS NEEDED      | \$0.00 |
| INST-RTF Module I (R/B,C/P)   | \$84.61           | L13R         | AS NEEDED      | \$0.00 |

St Gabriel's (Requires Authorization) - CUA/Placement TOTAL: \$0.00

**St Vincent's: Guardian Angel/St.Vincent's Maternity Home - CUA/Placement**

|                            |                   |      |           |        |
|----------------------------|-------------------|------|-----------|--------|
| GH-Intensive (Non-RTF)     | \$212.16          | K1LG | AS NEEDED | \$0.00 |
| GH-M/B-Baby                | \$0.00            | K1WC | AS NEEDED | \$0.00 |
| GH-M/B-Mother              | \$229.16          | K1WP | AS NEEDED | \$0.00 |
| GH-M/B-Mother (2B)         | \$246.16          | K1WP | AS NEEDED | \$0.00 |
| GH-M/B-Mother (3B)         | \$263.16          | K1WP | AS NEEDED | \$0.00 |
| GH-Maternity               | \$212.16          | K1JG | AS NEEDED | \$0.00 |
| Initial Clothing Allowance | Up to \$250/child | X1XX | AS NEEDED | \$0.00 |

St Vincent's: Guardian Angel/St.Vincent's Maternity Home - CUA/Placement TOTAL: \$0.00

**St. Vincent's Group Homes: Guardian Angel/St. Joachim/St. Joseph for Girls, M. Carol - CUA/Placement**

|                                     |                   |      |           |        |
|-------------------------------------|-------------------|------|-----------|--------|
| GH-Intensive (Non-RTF)              | \$212.16          | K1LG | AS NEEDED | \$0.00 |
| GH-Shelter (Requires Authorization) | \$180.44          | B12G | AS NEEDED | \$0.00 |
| Initial Clothing Allowance          | Up to \$250/child | X1XX | AS NEEDED | \$0.00 |

St. Vincent's Group Homes: Guardian Angel/St. Joachim/St. Joseph for Girls, M. Carol - CUA/Placement TOTAL: \$0.00

**DEPENDENT TOTAL: \$9,021,176.23**

**DELINQUENT SERVICES**

**Bouvier, McCarthy, Fairless, Morrell, Drexel and McGlade**

|                            |                   |      |           |        |
|----------------------------|-------------------|------|-----------|--------|
| GH-RTF (C/P)               | \$3.00            | K23M | AS NEEDED | \$0.00 |
| Initial Clothing Allowance | Up to \$250/child | X2XX | AS NEEDED | \$0.00 |

Bouvier, McCarthy, Fairless, Morrell, Drexel and McGlade TOTAL: \$0.00

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**Exhibit SAA - 1  
Fiscal Year 2018**

**6606 - Catholic Social Services**

| <b>Services</b>  | <b>Rate</b>       | <b>Service Code</b> | <b>Contract Units</b> | <b>Total</b>  |
|--|-------------------|---------------------|-----------------------|---|
| <b><u>Del Voc</u></b>  |                   |                     |                       |   |
| Day Treatment (5 Day)  | \$107.46          | G2GF                | AS NEEDED             | \$0.00  |
|  |                   |                     |                       | <b>Del Voc TOTAL: \$0.00</b>  |
| <b><u>St Francis/St. Joseph for Boys</u></b>   |                   |                     |                       |   |
| Initial Clothing Allowance   | Up to \$250/child | X2XX                | AS NEEDED             | \$0.00  |
| SIL  | \$114.52          | M2GG                | AS NEEDED             | \$0.00  |
|  |                   |                     |                       | <b>St Francis/St. Joseph for Boys TOTAL: \$0.00</b>   |
| <b><u>St Gabriel's</u></b>   |                   |                     |                       |   |
| Counseling   | \$25/5 Hr         | X2XX                | AS NEEDED             | \$0.00  |
| Initial Clothing Allowance   | Up to \$250/child | X2XX                | AS NEEDED             | \$0.00  |
| INST-Intensive (Non-RTF)   | \$197.35          | L2LG                | AS NEEDED             | \$0.00  |
| INST-Intensive (Non-RTF) Mitchell  | \$239.94          | L2LG                | AS NEEDED             | \$0.00  |
| INST-RTF D&A (R/B,C/P)   | \$84.61           | L2AR                | AS NEEDED             | \$0.00  |
| INST-RTF Mitchell (R/B,C/P)  | \$84.61           | L23R                | AS NEEDED             | \$0.00  |
| INST-RTF Module I (R/B,C/P)  | \$84.61           | L23R                | AS NEEDED             | \$0.00  |
|  |                   |                     |                       | <b>St Gabriel's TOTAL: \$0.00</b>   |
| <b><u>St Gabriel's - Reintegration Services</u></b>  |                   |                     |                       |   |
| Aftercare I  | \$25.58           | C2NG                | AS NEEDED             | \$0.00  |
|  |                   |                     |                       | <b>St Gabriel's - Reintegration Services TOTAL: \$0.00</b>  |
| <b><u>St Vincent's: Guardian Angel/St.Vincent's Maternity Home</u></b>                             |                   |                     |                       |   |
| GH-Intensive (Non-RTF)   | \$212.16          | K2LG                | AS NEEDED             | \$0.00  |
| GH-M/B-Baby  | \$0.00            | K2WC                | AS NEEDED             | \$0.00  |
| GH-M/B-Mother  | \$229.16          | K2WP                | AS NEEDED             | \$0.00  |
| GH-M/B-Mother (2B)   | \$246.16          | K2WP                | AS NEEDED             | \$0.00  |
| GH-M/B-Mother (3B)   | \$263.16          | K2WP                | AS NEEDED             | \$0.00  |
| GH-Maternity   | \$212.16          | K2JG                | AS NEEDED             | \$0.00  |
| Initial Clothing Allowance   | Up to \$250/child | X2XX                | AS NEEDED             | \$0.00  |
|  |                   |                     |                       | <b>St Vincent's: Guardian Angel/St.Vincent's Maternity Home TOTAL: \$0.00</b>                             |
| <b><u>St. Vincent's Group Homes: Guardian Angel/St. Joachim/St. Joseph for Girls, M. Carol</u></b> |                   |                     |                       |   |
| GH-Intensive (Non-RTF)   | \$212.16          | K2LG                | AS NEEDED             | \$0.00  |
| Initial Clothing Allowance   | Up to \$250/child | X2XX                | AS NEEDED             | \$0.00  |
|  |                   |                     |                       | <b>St. Vincent's Group Homes: Guardian Angel/St. Joachim/St. Joseph for Girls, M. Carol TOTAL: \$0.00</b> |

**DELINQUENT TOTAL: \$10,409,815.00**

**CONTRACT MAXIMUM LIMIT: \$19,430,991.23**

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**CITY OF PHILADELPHIA  
DEPARTMENT OF  
HUMAN SERVICES**

"We believe that a community-neighborhood approach with clearly defined roles between county and provider staff will positively impact safety, permanency, and well-being."

What are we working together to achieve?

- o More children and youth maintained safely in their own homes and communities.
- o More children and youth achieving timely reunification or other permanence.
- o A reduction in the use of congregate care.
- o Improved child, youth, and family functioning.

# **S.A.A.-2**

## **Scope of Service:**

**For General, Kinship, and Teen Parent/Baby  
Resource Home Care Providers**

**July 2017**

**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:

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



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 archived.
- 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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Parents provide general care and supervision for children and youth placed in their home. For CUA cases, the Provider focus is on supporting the Resource Parent while case management is provided by the CUA. For cases in which DHS also provides case management, the Provider delivers case management services and ongoing support to the parents and reunification resource. Whether providing services for a DHS case or a CUA case, the safety, stability, permanency, and well-being needs of the child or youth and legal family support includes developing a mentoring relationship with the legal family specifically in ways that foster positive family relationships and reunification. Resource caregivers are screened, trained, and certified by the Provider. In kinship care, the caregiver may also be an extended family member, friend, previous Resource Parent, or other professional who in the past has established a relationship with the child.

**General level resource care, including kinship:** Children and youth identified for this service category mostly demonstrate a moderate degree of behavioral, social, emotional, intellectual, and educational needs or issues. Service needs are compounded by normal placement adjustment issues. Routine care and supervision of the children and youth is manageable with some ongoing training and support from the Provider. Siblings are placed together whenever possible.

In addition:

- Youth may require access to special education, or developmental or vocational services. This will be specified in either the FSP or the SCP depending on who is primarily responsible for case management functions (DHS or CUA).
- The child's or youth's biological family requires support and to maintain their emotional bond with their children and to address identified safety issues and permanency goals.
- Children and youth may require therapy or other therapeutic services provided by external resources as specified in either the FSP or the SCP, depending on who is primarily responsible for case management functions (either DHS or CUA).
- Children and youth require routine health care or may have minor health or medical needs for which follow up care is to be provided.
- The Provider agency staff or Resource Parents, or both participate in teaming meetings and development of SCP (CUA cases).

**Teen Parent/Baby Foster or Kinship Placement Services:** Teenage parents and their child who are identified for this service category demonstrate difficulty in behavioral, social, emotional, or intellectual development. The adolescent is not prepared to assume their current parental role. The child's legal family is typically not equipped to adequately address the adolescent needs.

This service includes:

- General care of healthy infants or toddlers requiring routine care. The adolescent is physically healthy and requires routine care.
- Neither the teen nor the child requires specially trained Resource Parents.
- Parents or reunification resource, if different, requires support and to maintain their emotional bond with the teen and the teen's child and to address identified safety issues and permanency goals.

#### Services:

##### Referrals:

The DHS Central Referral Unit and the DHS On-going Worker, the DHS Investigating Worker (if a newly accepted case), or CUA Case Manager (CUA CM) must share with the Provider pertinent information as required by the five county standards which include: medical consent form, Medical and Immunization Records, Universal referral, service plan, placement history, court disposition, Court Orders, educational records, birth certificate, and the name of the child's or youth's attorney.

**Case Management:**

Case management will be provided either by the Provider (for DHS placements) or one of the CUA's (for CUA placements). The CUA Case Manager will visit the resource home at least once per month. For DHS placements, the Provider Case Manager will visit the home as required pursuant to DHS performance standards.

For CUA placements, the Provider offers support to the resource caregivers via a Provider Staff as defined earlier in this document. They may visit the resource caregiver as often as needed but at a minimum, once per quarter. They provide other supportive services to resource caregivers and act as a possible liaison to CUAs as needed.

For DHS placements, there is a Provider Case Manager assigned to the case.

Examples of relevant topics to be discussed with the DHS Worker or CUA Case Manager include:

- o Child's or youth's adjustment to the home.
- o Behavior management strategies.
- o Child's or youth's educational, medical, and behavioral health progress.
- o Resource Parent's ability to meet needs and assistance needed.
- o Relationship with parents and reunification resource, and quality of visits (if applicable).

Examples of relevant topics to be discussed with Case Manager (CUA or DHS) include:

- o Placement stability.
- o Relationship issues with the other children in the resource home.
- o Child's educational, medical, and behavioral health needs and proposed interventions.
- o Behavior management strategies utilized by the Resource Parents.
- o Relationship between Resource Parent and parents and reunification resource, if different and issues related to the resource caregiver as a mentor.
- o Clarification of the role of the CUA Case Manager.
- o Youth's interaction in the community and use of community resources.
- o Progress or lack of progression toward attainment of service plan goals.
- o Permanency planning.
- o Results of Like Skills Assessment and related planning to help youth develop life skills.
- o Provision of routine medical and dental care.
- o Supplemental services or needs.

All resource caregivers and the Provider must ensure that:

- o Three nourishing meals and additional snacks daily are provided and any special dietary needs or religious food restrictions are accommodated. Food is never to be withheld as a means of discipline.
- o Provide children and youth with new, age appropriate, and seasonal clothing. All clothing should be purchased new with the child or youth, when appropriate, having choice in the selection. Consignment shops may be used as long as all household members utilize this option. Foster children and youth are to be treated no differently. All clothing purchased is the property of the child or youth. Purchase of necessary clothing is never to be withheld as a means of discipline by Resource Parents.

All resource homes must and the Provider must ensure that:

- o The home is free of infestation, structural damage that poses an immediate threat to safety, lead (unless being treated), non-functioning utilities, fire or other health or safety hazards.
- o There must be a working land line phone within the residence.
- o The home meets all of the requirements of an approved adoptive placement. At the same time, Resource Parents must be willing to work with and mentor the reunification resource to ensure

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that children and youth can reunify in a timely way. If reunification is not feasible, Resource Parents must be willing to consider being a permanency resource for children and youth placed in their care.

More specifically resource homes must meet the following criteria:

- o All doors leading outside of the house are able to be locked or otherwise secured.
- o There are cribs for infants and beds for each child and youth.
- o There are working smoke detectors, fire extinguishers, and carbon monoxide detectors. Chemicals and drugs are stored properly away from children and youth.
- o Firearms are locked and ammunition is stored separately in a locked container.
- o Safe infant and toddler care, as applicable to the age of the children placed in the home including:
  - Safe bathing and the use of bath water thermometers.
  - Safe sleeping.
  - Car seats appropriate to the age and weight of the children if the resource family owns or will transport children in a vehicle.
  - Child proofing of the home and environment including stair gates, radiator covers, fireplace guards and other necessary safety devices including outlet covers.

The home must have and the Provider must ensure that there are the following resources:

- o Mobile Crisis number and contacting procedures.
- o Suicide Prevention Hotline number.
- o Poison Control number.
- o Smoke detectors and fire extinguishers.
- o Police Department number and contacting procedures.
- o Drug and Alcohol Intervention numbers and contacting procedures.
- o No smoking signs.

The Provider must complete an inspection of the above for all Resource Parents on a quarterly basis.

The Provider is responsible for offering training and related support to Resource Parents that includes the impact that trauma has on youth behaviors and functioning, ways to motivate positive behaviors of children and youth, and strategies on ways to manage child and youth behaviors and encourage positive behaviors in a manner that is not vindictive, abusive, or degrading. For children and youth placed by CUA's, this support is provided to resource caregivers by Provider Staff. The Provider recognizes that the interaction between a caring Resource Parent and the child or youth is an opportunity to help them recognize their inherent assets and strengths, and develop acceptable behaviors. Such support assists children and youth in developing skills that promote their successful integration into the community.

Provider and Resource Parents are prohibited by both PA Regulation and DHS policy from using corporal punishment, threats or derogatory remarks, the depriving of meals, and the depriving of visits with parents or others, verbal abuse or any punitive, unusual, or unnecessary consequences for behaviors.

In deciding on an effective means of intervening during conflict, Resource Parents assess and ensure the following:

- o The child's or youth's ability to problem solve and social or emotional maturity.
- o There is open communication with the child or youth to understand reactions and feelings.
- o Set clear limits and guidelines for positive behavior and ensure they have been communicated effectively.
- o That expectations for improved behaviors are defined or explained so that youth can develop new skills and receive incentives for pro social or positive behaviors.

If the Provider Staff (CUA cases) or Provider Case Manager (DHS cases) suspect that the disciplinary actions occurring in the foster home violate the Pennsylvania Child Protective Services Law, it is the mandated obligation of the Provider Staff to immediately report this incident to the Pennsylvania Child Abuse Hotline and to DHS. In some cases, the police and the District Attorney's Office may also be involved in investigating any alleged criminal actions. The State investigates these reports and determines if the incident is indicated or unfounded. State Foster Family Care Regulations mandate that the agency remove children and youth in situations where their safety is in question. Children and youth may require removal from the resource home while an investigation is taking place unless an acceptable plan of supervision can be put in place to ensure safety. This decision is made in conjunction with the Southeast Regional Office investigating the report, the CUA CM, if a CUA case and either the DHS Worker or the DHS Investigator assigned.

If the decision is made to allow the child or youth to remain in the home during or following an investigation, a written plan of supervision must be developed by the appropriate case management team. If the Resource Parent is placed on probation for this or any other reasons, no additional placements will be made in the Resource Parent's home during a probationary period or whenever the investigation is complete.

All placement moves must be legally approved by the Court or by agreement of all parties except in the case of emergencies. It is the case management's team responsibility to obtain Court authorization to move children or youth through the City of Philadelphia Law Department.

**Visitation:**

The frequency and duration of visits both with reunification resources, concurrent plan resources, and siblings must be as liberal as possible from the time of placement. Whenever possible, visitation should be weekly but parental and sibling visitation cannot be less than twice monthly unless otherwise prohibited or specified by Court. The visitation plan must be discussed and agreed upon. It must be accommodating to the schedules of the reunification resource, children, and youth and include weekends or evenings or both where needed.

For DHS placements, Provider Case Managers are responsible for visitation. For CUA placements, CUA's are responsible for visitation based on the SCP. Either Provider or CUA must ensure that children and youth have adequate resources and items provided by the Resource Parent to have successful visits. This may include a provision of transportation for the visitation, food, diapers, etc... to meet the child's needs.

Whenever children or youth are placed or re-placed, a visit must occur between the child or youth and the parent from whom they are removed as soon as possible and no later than two business days.

An introductory meeting between the Resource Parent or the Provider Staff and the parents must also occur within five business days of the placement or replacement. Resource Parents should communicate with the parents or other reunification resources regularly and at least monthly about the children or youth outside of regularly scheduled visits. Siblings are to be placed together whenever possible. When siblings are not able to be placed together, visits are to occur between the siblings bi-weekly, at a minimum, unless otherwise directed by Court Order.

Whenever possible visits must be:

- o In the home of the reunification resource unless there is a Court Order, clear documentation in the visitation plan, service plan or in a Structured Progress Note as to why this cannot occur. If other than the home of the reunification resource, visits must be in a family-like and family friendly visitation space that allows for normal parent-child interaction, ideally in the home of a relative or Resource Parent. If such home is not available, visits should occur at a community

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location familiar to the child, youth, or parent (such as a recreation center, playground, or church). The option of last resort is a family-friendly area of the Provider's as the case manager or subcontractor for a CUA. In order to move from the best option in the hierarchy to a lower option, the higher option must be ruled out and the reasons for ruling it out must be clearly documented. When visits are not in the home, a progression plan for visits in the home must be considered at the service plan meetings and court hearings.

- Supervised only if necessary, based on clear threats to the safety of children and youth or Court Order. Persons supervising visits must ensure safety, remain in line of sight and earshot, and provide unobtrusive constructive feedback and coaching on parenting.
- Accommodating to the schedules of the reunification resource, children, and youth.

**Transportation:** Will be coordinated between all parties. Visits between parents and children and youth are critical to support and enhance the process of reaching the goals of reunification.

**Teaming:** For DHS cases, the Provider's Case Manager participates in DHS Family Service Plan (FSP) meetings and develops the Individual Service Plan (ISP). For CUA cases, Resource Parents or an agency representative, such as Provider Staff as defined earlier, or both will participate in teaming as needed. Information critical for decision making and planning will be shared with the CUA Case Manager prior to all teaming meetings.

**Court:**

For CUA, Provider Staff may be called upon to testify to safety or any other matters as providers currently are called upon. The Law Department will notify the CUA CM, and, if necessary, subpoena the provider. For DHS cases, the Provider Case Manager appears in court and provides safety testimony as well as family progress information to the Court.

**Placement Disruption:**

Providers and Resource Parents must give 30 days notice to DHS CRU regarding the need to remove a child or youth.

Whenever there appears or it is reported by either the child or youth or the Resource Parent that the placement is in danger of disruption or the Resource Parent gives 30 days notice, the Provider must notify CRU immediately. An email must be sent to DHS\_CRU@phila.gov with the subject line to read: "30 Day Notice."

If a CUA case, the CUA CM is to be notified and a Placement Stability Conference must be requested. The Provider and Resource Parent must be invited and must participate in this conference. The focus of the conference is to determine whether there are additional supports that could be put into place to avoid the disruption.

If it is a DHS case, the Provider and DHS Worker and Supervisors must conference the case together to determine whether there are additional supports that could be put into place to avoid the disruption.

**Reporting:**

**High Profile Cases:**

In an effort to keep abreast of high profile cases, Child Welfare Operations Leadership is requiring that all Directors of all agencies report to the appropriate Operations Director (DHS Front End, DHS Permanency and Well-being Services, or DHS CUA) via telephone and email any high profile case that come to their attention. These high profile cases must be conferenced with the assigned chain of command, including the CUA Director, and then the Director determines if a CWO Management team meeting is needed. This is a collaborative effort between CWO Management and Support Centers to extend support and guidance to DHS Social Work Services and CUA staff in their decision-making.

**Criteria:**

- o Death of a child or youth involved with DHS or in a DHS involved household.
- o Any missing child 12 years of age or under and active with DHS (committed to DHS or receiving in-home services).
- o Any child or youth sexually abused while in care.
- o Media report involving DHS cases or families.
- o Any child or youth committed to DHS and hospitalized subsequent to injury (whether accidentally or intentionally injured).
- o The arrest of a kin, Resource Parent, or any household member of a resource home, including any child or youth committed to the Department.
- o Notification from any placement agency that a child or youth has been moved due to a report of abuse or neglect and the kin, Resource Parent, or household member is the alleged perpetrator.
- o Any other type of incident as may be subsequently designated by the Department as High Profile.

**Notification Procedure:**

- o The Provider must immediately notify the CUA Chain of Command until an in-person contact is made or through the CUA after hours mechanism.
- o The CUA staff who is informed must notify the chain of command (up to Director level).
- o Directors must immediately notify via telephone the Operations Director who has responsibility for their service and subsequently send an email notification within 24 hours to
  - Operations Director for Front End Services;
  - Operations Director for Permanency and Well-being Services;
  - Operations Director for Improving Outcomes for Children; and
  - Chief of Staff for the Deputy Commissioner.
- o The CWO Deputy Commissioner will be contacted as needed. The CWO Deputy Commissioner notifies the Commissioner and other Executive Staff members as appropriate and always if the media is involved.
  - After hours notifications must be given to the Hotline Staff and Hotline Staff must immediately alert the Operations Director.

The above does not relieve any agency required to report incidents through HCSIS.

**Information Sharing:**

Routine information that emerges during or between visits such as a change in school functioning, relevant communication with a family member, emerging wellness concerns, or new legal family information that potentially changes goals or objectives identified in the FSP or SCP, whichever is applicable, must be reported to the DHS Worker or Supervisor (DHS case), or the CUA Case Manager or Supervisor (CUA case), during the same business week that the information becomes known.

**Media Inquiries:**

In the event that the Provider receives a media inquiry, the Provider must notify the CUA Director and DHS Communications Director. Staff are not permitted to comment or even acknowledge a case, but should direct such inquiries to the Department's Communications Director.

**Megan's Law Requirements:**

When a sexually violent predator from the National Megan's Law database lives or moves within 1000 feet of any of a Provider's resource home, the Provider receives an electronic notification from the Department. Upon receipt of this notification, the Provider must do the following:

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- Make a telephone call (within 24 hours of the electronic notification) to the resource home notifying the Resource Parent that a sexually violent predator lives within 1000 feet of the home.
- Visit the resource home within 48 hours and:
  - Review the Megan's Law Safety Plan with the Resource Parent and any youth 14 and older.
  - Have all parties sign the Megan's Law Notification and Safety Plan.
  - Provide a picture of the predator.
- Mail a copy of the signed Megan's Law Notification/Safety Plan or Receipt of Megan's Law Notification and Safety Plan to the DHS Ombudsman in care of the DHS Commissioner's Office:  
1515 Arch Street, 8<sup>th</sup> Floor  
Philadelphia, PA 19102
- Email the signed Megan's Law Notification and Safety Plan to the CUA Director of Quality Assurance for any child or youth residing in the facility.

#### **Foster Parent Registry**

Providers promptly provide information to the PA Foster Parent Registry regarding Resource Parent Caregiver status and changes in status between annual certification and re-certification time frames.

Providers must ensure current and updated copies of each Resource Caregivers Certificate of Compliance are provided to the Department and the CUA. Providers must upload Resource Home certification information and documentation to the Provider Licensure module of DHSCoNECT whenever Resource Caregivers are certified and whenever their certification status changes.

#### **Mentoring:**

The Resource Parent must play a role in facilitating reunification as described in the service plans. Primarily this will be based on the Resource Parents' capabilities to serve as a mentor to the legal family and assist legal family in strengthening parental capabilities, assisting with planned activities, modeling and fostering positive parent-child interaction.

*See also*, the DHS Performance Standards, DHS policy, and as appropriate, the IOC Practice and Fiscal Guidelines for relevant policy.

#### **Hours and location of work:**

The Provider must have 24 hours a day, 7 days a week accessibility. For CUA cases, resource homes are located ideally in the CUA region.

#### **Emergency contact procedures are as follows:**

Departmental supervisory staff will provide emergency coverage on a rotational basis to ensure access to agency assistance and services outside of regular business hours for referrals from the Philadelphia Department of Human Services and Community Umbrella Agencies for the placement of children in appropriate foster homes and to respond to emergencies involving the children and families served by the program. The on call supervisor can be reached at 215-808-8656.

#### **The administrative office for the Provider is located at:**

Catholic Human Services  
222 N. 17<sup>th</sup> Street  
3<sup>rd</sup> floor  
Philadelphia, PA 19103



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Referrals are typically accepted during normal work hours although emergency placements are considered on a case by case basis.

**Staffing Structure:**

Attach Agency Organizational Chart and Program Organizational Chart.

**Technology requirements:**

Internet access to utilize DHSCconnect.

**Funding restrictions:**

(Insert N/A or describe restrictions)

**The program is overseen by:**

Robert Montoro, MSW, Administrator

Cover Page

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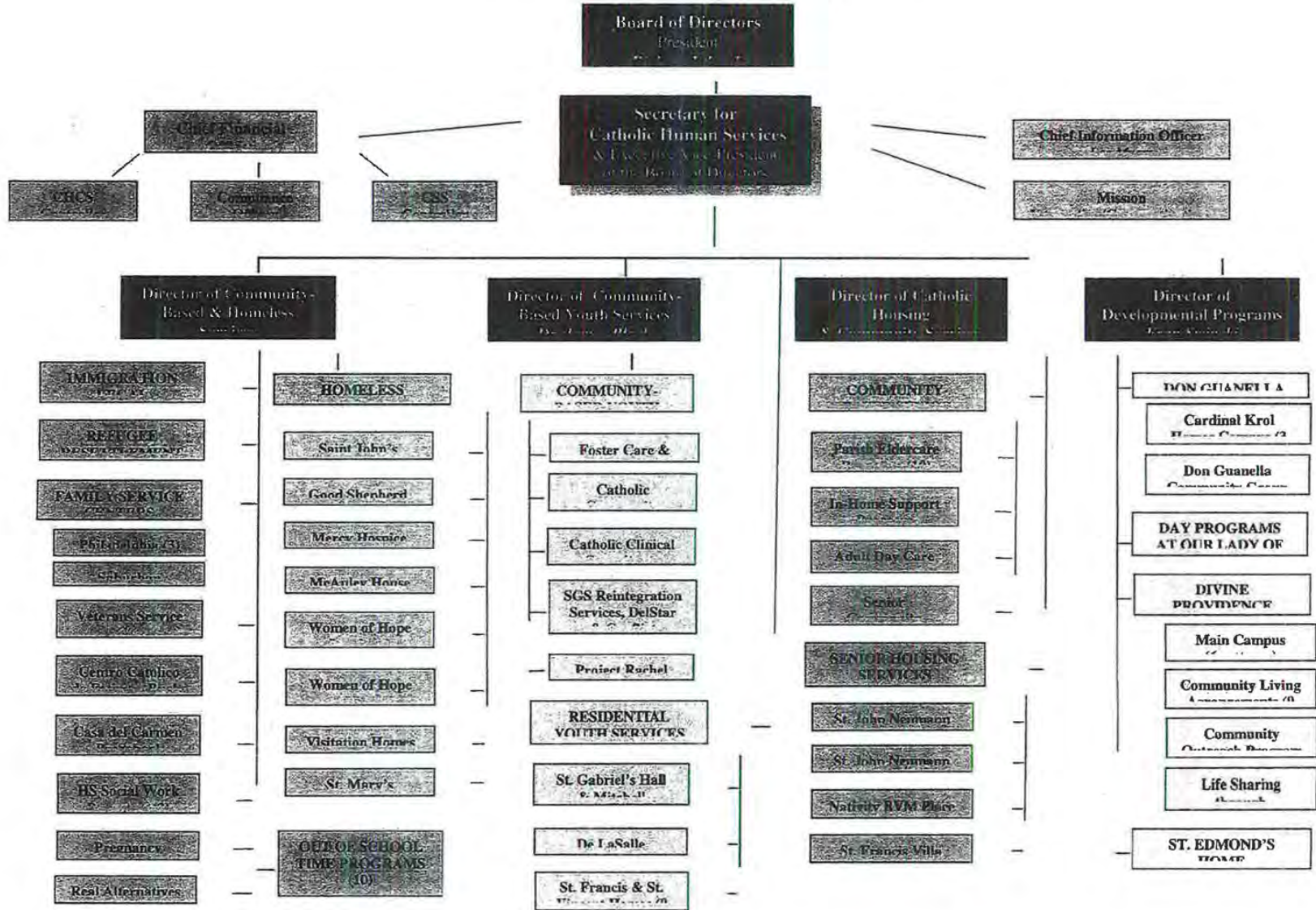
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# CATHOLIC SOCIAL SERVICES

## ARCHDIOCESE OF PHILADELPHIA

### Organizational Structure

Inlv 2017



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**THE CITY OF PHILADELPHIA**  
**PROFESSIONAL SERVICES CONTRACT**  
**GENERAL PROVISIONS**  
**FOR**  
**DEPARTMENT OF HUMAN SERVICES CONTRACTS**

Revision Date: June 2017

The City of Philadelphia  
Professional Services Contract  
Department of Human Services  
General Provisions

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The City of Philadelphia  
Professional Services Contract  
Department of Human Services  
General Provisions

## GENERAL PROVISIONS

### ARTICLE I: DEFINITIONS

- 1.1 **ADA.** “ADA” shall have the meaning set forth in Section 15.5 (Americans with Disabilities Act) below.
- 1.2 **Additional Services and Materials.** “Additional Services and Materials” shall have the meaning set forth in Section 3.3 (Additional Services and Materials; Change in Scope of Services) below.
- 1.3 **Additional Term, Additional Terms.** “Additional Term” and “Additional Terms” shall have the meanings set forth in Section 2.2 (Additional Terms) below.
- 1.4 **Agency.** “Agency” shall have the meaning set forth in Section 7.8 (Audits Pursuant to Section 6-400 of the Home Rule Charter) below.
- 1.5 **Aggregate Actual Cost.** “Aggregate Actual Cost” means the sum of all Total Actual Costs incurred by Provider in provision of the Services.
- 1.6 **Appropriated Fiscal Year.** “Appropriated Fiscal Year” shall have the meaning set forth in Section 6.4 (Crossing Fiscal Years) below.
- 1.7 **Amendment.** “Amendment” means (a) a written modification or change to any Contract Document signed by both Parties, and (b) a Modification Notice (see Section 6.9 Maximum Daily Rate, Days of Care or Units of Service (or combination thereof) below).
- 1.8 **Applicable Law.** “Applicable Law” means all applicable present and future federal, state or local laws, ordinances, executive orders, rules, regulations and all court orders, injunctions, decrees and other official interpretations thereof of any federal, state or local court, administrative agency or governmental body, including the City, the Commonwealth and the United States of America. Applicable Law includes, without limitation, the Philadelphia Home Rule Charter, the Philadelphia Code, the Pennsylvania Code, and the specific laws set forth in Article XV (Additional Covenants of Provider Relating to Certain Applicable Laws) below, each as amended from time to time.
- 1.9 **Applicant.** “Applicant” has the meaning as set forth in Subsection 17-1401(1) of The Philadelphia Code, as it may be amended from time to time. As of June 2012, that definition was “[a] Person who has filed an application to be awarded a Non-Competitively Bid Contract.”
- 1.10 **CBES.** “CBES” means Community Based Emergency Shelter, an emergency placement facility for delinquent or alleged delinquent youth.

- 1.11 **Certification of Restrictions on Lobbying.** “Certification of Restrictions on Lobbying,” if required in the Provider Agreement, means a certificate in the form attached to the Provider Agreement.
- 1.12 **City.** The “City” means The City of Philadelphia, a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania, and includes its various executive and administrative departments, agencies, boards and commissions, including the Department, and its legislature, City Council (defined below). The City is a City of the First Class under the laws of the Commonwealth of Pennsylvania.
- 1.13 **City Agency.** “City Agency” has the meaning as set forth in Subsection 17-1401(5) of The Philadelphia Code, as it may be amended from time to time. As of June 2012, that definition was “[a]ny office, department, board, commission or other agency of the City of Philadelphia.”
- 1.14 **City Council.** “City Council” means the Council of The City of Philadelphia, as described in Article II of the Philadelphia Home Rule Charter, as it may be amended from time to time. City Council is the legislature of the City.
- 1.15 **City-Related Agency.** “City-Related Agency” has the meaning set forth in Subsection 17-1401(9) of The Philadelphia Code, as it may be amended from time to time. As of June 2012, that definition was “[a]ll authorities and quasi-public corporations which either: receive appropriations from the City, have entered into continuing contractual or cooperative relationships with the City, or operate under legal authority granted to them by City ordinance.”
- 1.16 **Code.** The “Code” unless otherwise specified shall mean the Philadelphia Code, as it may be amended from time to time.
- 1.17 **Commissioner.** “Commissioner” means the Commissioner of the Department of Human Services of the City.
- 1.18 **Commonwealth.** “Commonwealth” means the Commonwealth of Pennsylvania.
- 1.19 **Community Behavioral Health.** “Community Behavioral Health” or “CBH” means Community Behavioral Health, a Pennsylvania nonprofit corporation incorporated for the purpose of helping to ensure that Philadelphians with mental health and substance abuse needs receive the most appropriate and effective treatment in the least restrictive and most cost effective setting.
- 1.20 **Consultant.** “Consultant” has the meaning as set forth in Subsection 17-1401(6) of The Philadelphia Code, as it may be amended from time to time. As of June 2012, that definition was “[a]ny Person used by Provider to assist in obtaining a Non-Competitively Bid Contract through direct or indirect communication by such Person with any City Agency or any City officer or employee, if the communication is undertaken by such Person in exchange for, or with the understanding of receiving, payment from Provider or any other Person; provided, however, that “Consultant” shall not include a full-time employee of Provider.”

- 1.21 **Contract.** The “Contract” means the agreement of the Parties evidenced by the Contract Documents. References to this “Contract” shall mean this Contract as the same may be in effect at the time such reference becomes operative.
- 1.22 **Contract Cost Principles.** The “Contract Cost Principles” means the “City of Philadelphia Contract Cost Principles and Guidelines,” as it may be amended from time to time, which specifies the Department’s guidelines for the qualitative and quantitative evaluation of contract services and materials, the determination of allowable costs, and the standards to determine the allowability of individual cost items. (Copies are available from the Department upon request.)
- 1.23 **Contract Documents.** The “Contract Documents” means these General Provisions, the Provider Agreement, the Limited License Agreement for the Cross Agency Response for Effective Services (CARES) (where applicable) and any and all other documents or exhibits incorporated by reference in either the General Provisions or the Provider Agreement, and any and all Amendments to any of these documents.
- 1.24 **Contributions.** “Contributions” shall have the meaning set forth in the Pennsylvania Election Code, 25 P.S. Section 3241.
- 1.25 **Community Umbrella Agency.** “Community Umbrella Agency” or “CUA” means an agency located in a defined geographic area that provides a continuum of services to children and youth at risk of abuse, neglect, or delinquency, as further described in the Scope of Services.
- 1.26 **CRU.** “CRU” means Central Referral Unit.
- 1.27 **CWO.** “CWO” means Child Welfare Operations of the Department. CWO was formerly known as the Children and Youth Division (“CYD”).
- 1.28 **CYD Policy Manual.** “CYD Policy Manual” (formerly the Operations Manual ) means the document and its revisions which contains all the policies of the Department’s Child Welfare Operations.
- 1.29 **Department.** The “Department” or “DHS” means the Department of Human Services of the City.
- 1.30 **Departmental and Administrative Policy Directives.** “Departmental and Administrative Policy Directives” means those policy or procedural directives regarding programs and operations of the various divisions of the Department that are issued to Providers by the Commissioner or the Commissioner’s designee which may include, but is not limited to, Deputy Commissioners, Policy and Planning, and Provider Relations and Evaluations of Programs (PREP).
- 1.31 **Discharge Plan.** “Discharge Plan” means the document submitted by Provider to the Department upon discharge of a child from Provider’s agency. The Discharge Plan outlines the Services Provider has provided to the child and the child’s family, the effectiveness of those Services, and any additional services recommended by Provider.

- 1.32 **Discharge Summary.** “Discharge Summary” means a description of the Services provided to a child and the child’s family by Provider, and a statement of the reasons for the child’s discharge.
- 1.33 **EPSDT.** “EPSDT” means Early and Periodic Screening, Diagnosis and Treatment, a Pennsylvania Medical Assistance program initiative providing medical services to children aged 0-21 years.
- 1.34 **Event of Default.** “Event of Default” means those events defined and identified in Section 12.1 (Events of Default) of these General Provisions.
- 1.35 **Event of Insolvency.** “Event of Insolvency” means (a) the filing of a voluntary petition by Provider under the Federal Bankruptcy Code or any similar state or federal law; or (b) the filing of an involuntary petition against Provider under the Federal Bankruptcy Code or any similar state or federal law which remains undismissed for a period of forty-five (45) days; or (c) Provider’s making of an assignment for the benefit of creditors; or (d) the appointment of a receiver for Provider or for the property or assets of Provider, if such appointment is not vacated within forty-five (45) days thereafter; or (e) any other proceeding under any bankruptcy or insolvency law or liquidation law, voluntary or otherwise; or (f) Provider’s inability to pay its obligations as they mature; or (g) Provider’s insolvency as otherwise defined under any Applicable Law.
- 1.36 **Exhaustion of Capacity.** “Exhaustion of capacity” means the utilization of all of the Service capacity (whether beds in the case of out-of-home placement, or units or slots of Service in the case of non-placement), of Provider.
- 1.37 **Family Court.** “Family Court” means that judicial division of the Court of Common Pleas for Philadelphia County with original jurisdiction over all matters pertaining to dependent and delinquent children.
- 1.38 **Financial Assistance.** “Financial Assistance” has the meaning set forth in Section 17-1401(16) of The Philadelphia Code, as it may be amended from time to time. As of June 2012, that definition was “[a]ny grant, loan, tax incentive, bond financing subsidy for land purchase or otherwise, or other form of assistance that is realized by or provided to a Person in the amount of fifty thousand dollars (\$50,000) or more through the authority or approval of the City, including, but not limited to, Tax Increment Financing (TIF) aid, industrial development bonds, use of the power of eminent domain, Community Development Block Grant (CDBG) aid or loans, airport revenue bonds, and Enterprise Zone or similar economic development zone designations (such as Keystone Opportunity Zones, Keystone Opportunity Expansion Zones, Keystone Opportunity Improvement Zones, and Economic Development District Zones), but not including any assistance to which a Person is entitled under a law enacted before the Person applied for or requested such assistance.”
- 1.39 **Fiscal Year.** “Fiscal Year” means the fiscal year of the City, which commences on July 1 of each calendar year and expires on June 30 of the next succeeding calendar year.

- 1.40 **Form Authorizations.** “Form Authorizations” means the “CRU Fax Cover Transmittal Sheet for Referral and Service Authorization” and “DHS After-Hours Fax Cover Transmittal Sheet for Referral and Service Authorization.” The authorization forms will provide the Provider with the required documentation of proof or authorization to provide services to a child prior to accepting the child for service. Once the Fax Sheet has been received, Provider cannot make further requests for this form or for a Form 85-29 printout.
- 1.41 **FSP.** “FSP” means Family Service Plan, the document prepared by the Department which outlines those Services required for the family of the child or children committed to, or under the supervision of, the Department.
- 1.42 **Functional Expenditure Report.** “Functional Expenditure Report” means a report required by Subrecipient Audit Guide.
- 1.43 **General Provisions.** “General Provisions” means these “The City of Philadelphia Professional Services Contract General Provisions for Department of Human Service Contracts,” which contains the standard provisions required by the City in its professional services contracts for the Department of Human Services, and any exhibits identified in these General Provisions.
- 1.44 **HealthChoices.** “HealthChoices” means the program operating under a waiver from the Centers for Medicare and Medicaid Services (formerly Health Care Financing Administration) pursuant to Section 1915(b) of the Social Security Act, 42 U.S.C. 1396(n), to provide mandatory managed health care to Medical Assistance recipients in Bucks, Chester, Delaware, Montgomery and Philadelphia Counties.
- 1.45 **Improving Outcomes for Children.** “Improving Outcomes for Children” or “IOC” means the City’s multi-year reform plan to create a single case management system with distinct and well-defined roles for both DHS and Provider agencies.
- 1.46 **Independent Audit Report.** “Independent Audit Report” means a report prepared by a Certified Public Accountant who, pursuant to AICPA Professional Standards, is not (a) a member of the board of Provider, (b) an officer or employee of Provider, or (c) a partner, director, officer or employee of a partnership, corporation or association who is a member of the board of Provider, or a director, officer or employee of Provider.
- 1.47 **Initial Term.** “Initial Term” shall have the meaning set forth in Section 2.1 (Initial Term) below.
- 1.48 **Intent to Adopt.** “Intent to Adopt” means that report which is required by the Adoption Act (23 Pa. C.S. § 2531), to be filed with the Court of Common Pleas by the person or persons intending to adopt a child, confirming said person or persons' intent to adopt.
- 1.49 **Interpretation; Number, Gender.** The words “herein” “hereof” and “hereunder” and other words of similar import refer to this Contract as a whole, including the all of the Contract Documents, and not to any particular article, section, subsection or clause contained in the Contract Documents. Whenever the



context requires, words used in the singular shall be construed to include the plural and vice versa, and pronouns of any gender shall be deemed to include the masculine, feminine and neutral genders.

- 1.50 **ISP.** “ISP” means the Individual Service Plan, that document prepared by Provider in accordance with the FSP, which identifies the specific Services Provider will render to the child and the child’s family.
- 1.51 **JPO.** “JPO” means the Juvenile Probation Officer.
- 1.52 **Materials.** “Materials” means any and all reports, records, documents, documentation, information, supplies, plans, original drawings, specifications, computations, sketches, renderings, arrangements, videos, pamphlets, advertisements, statistics, and other data, computer tapes, computer software, and other tangible work product or materials prepared or developed by Provider in connection with the Services, or for Provider by a Subcontractor in connection with the Services, and supplied to the City by Provider or its Subcontractor pursuant to this Contract.
- 1.53 **Medical Assistance.** “Medical Assistance” or “MA” means that program authorized under Article IV(f) of the Public Welfare Code, which is administered in accordance with Title XIX of the Social Security Act (42 U.S.C. §1396), and the regulations from time to time promulgated thereunder, to provide for specific medically necessary medical services and items furnished to eligible recipients by approved providers enrolled in the program.
- 1.54 **Mental Health Procedures Act.** “Mental Health Procedures Act” means the law, codified at 50 P.S. §§7101-7503, as it may be amended from time to time, which governs the procedures for voluntary and involuntary mental health treatment in the Commonwealth of Pennsylvania.
- 1.55 **Modification Notice.** “Modification Notice” means written notice from the City to Provider that informs Provider of the City’s intent to modify the maximum daily rate, number of days of care or units of Services under this Contract. The Modification Notice operates as an amendment to this Contract.
- 1.56 **Non-Competitively Bid Contract.** “Non-Competitively Bid Contract” has the meaning set forth in Section 17-1401(12) of The Philadelphia Code, as it may be amended from time to time. As of June 2012, that definition was “[a] contract for the purchase of goods or services to which the City or a City Agency is a party that is not subject to the lowest responsible bidder requirements of Section 8-200 of the Charter, including, but not limited to, a Professional Services Contract, and any renewal of such a contract (other than a renewal term pursuant to an option to renew contained in an executed contract).”
- 1.57 **Out-of-Home Placement.** “Out-of-Home Placement” means those Services that involve placement of a child outside of the child’s home, including, without limitation, placement in a foster care home, a group home, a residential treatment facility, or any similar placement setting.
- 1.58 **PA DHS.** “PA DHS” means the Commonwealth Department of Human Services.

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- 1.59 **Party; Parties.** A “Party” means either the City or Provider; the “Parties” means the City and Provider.
- 1.60 **PBC.** “PBC” or “Performance Based Contract” means a contract model that incentivizes performance and ties Provider’s payment and contract renewal to performance outcomes.
- 1.61 **Person.** “Person” means any individual, sole proprietorship, association, company, firm, partnership, limited partnership, joint venture, corporation, limited liability company or other form of entity or association recognized by law.
- 1.62 **Placement Amendment.** “Placement Amendment” means that document which is a part of the FSP, and which identifies those Services that are required for a child who is placed outside of his or her home.
- 1.63 **Policy Transmittals and Guides.** “Policy Transmittals and Guides” means those notifications to Providers of changes in Departmental policies or procedures in the of the Department that are issued on an interim or emergency basis.
- 1.64 **Professional Services Contract.** “Professional Services Contract” has the meaning set forth in Section 17-1401(15) of The Philadelphia Code, as it may be amended from time to time. As of June 2012, that definition was “[a] contract to which the City or a City Agency is a party that is not subject to the lowest competitive bidding requirements of Section 8-200 of the Charter because it involves the rendition of professional services, including any renewal of such a contract (other than a renewal term pursuant to an option to renew contained in an executed contract).”
- 1.65 **Provider.** “Provider” means the Person providing Services and Materials to the City as defined in the heading of the Provider Agreement.
- 1.66 **Provider Agreement.** The “Provider Agreement” means the instrument, part of the Contract Documents, which sets forth the terms, covenants and conditions specific to Provider's engagement by the City to provide the Services and Materials under this Contract.
- 1.67 **Provisional.** “Provisional” means conditional, pending confirmation or validation.
- 1.68 **Referring Agency.** “Referring Agency” means the Department.
- 1.69 **Responsible Official.** The “Responsible Official” means the director, commissioner or other head of the Department.
- 1.70 **Santiago Consent Decree.** “Santiago Consent Decree” means the Third Amended Stipulation and Order, dated January 21, 1988, amending Santiago, et al. v. City of Philadelphia et al. (C.A. No. 74-2589, E.D. Pa.), a consent decree, and requiring the Department to maintain the population at the Philadelphia Juvenile Justice Services Center at a maximum of one hundred five (105) youth.
- 1.71 **Scope of Services.** “Scope of Services” means the document(s) incorporated by reference and/or the document(s) attached as an exhibit (or as exhibits) to the

Provider Agreement, which set(s) forth the Services to be rendered and Materials to be provided under this Contract, the time frames within which the Services are to be rendered and the Materials are to be provided, and other certain requirements Provider must satisfy in rendering the Services and providing the Materials.

- 1.72 **Services.** “Services” means the work to be performed under this Contract as specified in the Provider Agreement.
- 1.73 **Single Case Plan.** “Single Case Plan” means a coordinated plan developed as set forth in the Scope of Services, as it may be modified and revised from time to time.
- 1.74 **Subcontract.** “Subcontract” means a contract made between Provider and a Subcontractor providing for the completion of some part or parts of the Services or Materials by a Subcontractor.
- 1.75 **Subcontractor.** “Subcontractor” means a Person performing under a contract with Provider some part of the Services or Materials. It includes a Person performing some part of the Services or Materials under contract with another Subcontractor at any tier.
- 1.76 **Subrecipient Audit Guide.** “Subrecipient Audit Guide” means the document entitled City of Philadelphia Subrecipient Audit Guide, which specifies the City’s audit requirements, as amended from time to time. (Copies are available in the Office of the Director of Finance of the City.)
- 1.77 **Suspension Notice.** “Suspension Notice” means a written notice from the City to Provider pursuant to Section 14.2 (Termination or Suspension) below suspending Provider’s performance under this Contract.
- 1.78 **Suspension Period.** “Suspension Period” means the period designated by the City in a Suspension Notice during which the City has suspended Provider’s performance under this Contract.
- 1.79 **SWAN.** “SWAN” means the State Wide Adoption Network, a state wide adoption system which is administered by the Pennsylvania Council of Childrens’ Services under contract with PA DHS.
- 1.80 **Term.** “Term” has the meaning set forth in Section 2.1 (Initial Term) of the Provider Agreement.
- 1.81 **Termination Notice.** “Termination Notice” means a written notice from the City to Provider terminating this Contract.
- 1.82 **Transition.** “Transition” means the planned progression and transfer of Services and Materials from Provider’s Contract to either another provider or another contract with the same Provider.
- 1.83 **Transition Notice.** “Transition Notice” means means a written notice from the City to Provider evidencing the City’s intent to transition the Services and Materials to be provided under this Contract to another.

- 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

maintenance and care of children in its custody, in which case the more stringent standard shall apply.

(a) **Title IV(e) of the Social Security Act (“Title IV(e)”) and Adoption and Safe Families Act (“ASFA”) Compliance.** In compliance with the requirements of Title IV(e), ASFA, and corresponding Commonwealth of Pennsylvania law, Provider agrees to do the following:

- (1) Assure and document the safety of each child for every face to face contact.
- (2) If unsafe conditions exist, notify the Department of Human Services, immediately, and document the steps taken to remedy the unsafe conditions.
- (3) Provide timely outreach and services to families in accordance with the Family Service Plan.
- (4) Utilize a concurrent planning process while other possible permanent alternatives, including a primary goal of reunification, are being explored.
- (5) Document reasonable efforts exercised by Provider to accomplish the Family Service Plan goals and objectives.
- (6) Document and notify the Department when the parent(s) fail(s) to maintain substantial and continuing contact with their children.
- (7) Document and notify the Department, when there exists, or Provider believes there exists, compelling reasons not to file a petition to terminate parental rights of a child who has been in placement fifteen (15) of the previous twenty-two (22) months.
- (8) Document and notify the Department, when there exists, or Provider believes there exists, aggravated circumstances (as defined by the the Juvenile Act, 42 Pa.C.S.A. 6301 et seq.).

(b) **Compliance with Title VI of the Civil Rights Act of 1964.** The Department, as a recipient of federal funding from the federal Department of Health and Human Services, is bound by Title VI of the 1964 Civil Rights Act and its implementing regulations to take reasonable steps to provide meaningful access to its programs and activities by its language minority populations. In keeping with this mandate, the Mayor of Philadelphia has issued Executive Order “Access to Federally Funded City Programs and Activities for Individuals with Limited English Proficiency” dated September 29, 2001 requiring that reasonable steps be taken to ensure that all citizens of the City of Philadelphia have access to programs and activities without regard to English proficiency.

Provider agrees to cooperate fully with the Department in its efforts to achieve full compliance with this mandate. Provider will assess the level of services provided to clients with limited English proficiency, report those findings to the Department within the timeframe and in the format requested; and, to take any additional actions that may be requested by the Department from time to time to ensure compliance with Title VI.

- (c) **Compliance with the Prison Rape Elimination Act of 2003 (PREA) PL 108-79, 42 U.S.C. Chapter 147 §§15601--15609.** Provider agrees that if it is providing services to delinquent children, children held pursuant to a delinquent petition, or services relating to the confinement of children in any way then the Provider shall be obligated to comply with the Prison Rape Elimination Act of 2003 and all related standards as they may be amended from time to time.
- (d) **Fostering Connections To Success and Increasing Adoption Act of 2008.** Provider shall collect and provide appropriate documentation at a minimum of every six (6) months that all youth turning eighteen (18) years old are notified of the right to remain in care or re-enter care until twenty-one (21) years old if they continue to meet the definition of "child" under the Juvenile Act and the court grants their request.
- (e) **Activities and Experiences for Children in Out-of-Home Placements Act of 2015.** Provider shall comply will all requirements of the Activities and Experiences for Children in Out-of-Home Placements Act, including, without limitation, the reasonable and prudent parent standard established by the Act and all policies and regulations established by PA-DHS related to the Act.
  - (1) If Provider operates an Out-of-Home placement setting other than a resource family home, such as: a group home, shelter, RTF, institutional care facility, or other similar placement setting, then Provider shall designate an individual to provide decision-making authority under the reasonable and prudent parent standard for children residing in Provider's care in accordance with staffing and supervision requirements applicable to the placement setting. The individual designated shall consult with all appropriate DHS, CUA, and Provider caseworkers or staff members who are most familiar with the child in applying and using the standard.
  - (2) If Provider operates resource family homes, such as: foster homes, kinship homes, or other similar placement settings, then Provider shall provide training and monitoring of the resource families

regarding the application and use of the reasonable and prudent parent standard.

- (3) Consistent with Section 3.5 of this contract below, Provider shall require these same provisions in each of its Subcontracts for Out-of-Home placement services, with appropriate substitution of party identities.

3.3 **Additional Services and Materials; Change in Scope of Services.** Except as set forth in Section 6.8 (Monitoring of Fund Utilization) below, at any time during the Term of this Contract, the City may, by written change order or request delivered by notice to Provider, make changes to the Scope of Services under this Contract, and the Parties will, if appropriate, negotiate an adjustment in compensation if necessary, subject to appropriation of funds by City Council. Provider shall not commence to perform or provide, and the City shall not pay for, any services or materials not included in this Contract (the "Additional Services and Materials") unless and until Provider receives written pre-authorization (by change order or other request) from the Commissioner that specifies the Additional Services and Materials to be provided. In no event shall the rates charged by Provider for said Additional Services and Materials exceed the lowest of (a) Provider's then current standard rates for such Services or Materials, (b) such rates as the City and Provider may have negotiated for this Contract, as set forth in the Provider Agreement, or (c) the lowest rate or rates that Provider may then be charging to other purchasers of like Services and Materials. If Provider requests changes to the Scope of Services, Provider must demonstrate to the satisfaction of the City, in its sole discretion, that the changes are necessary and not due to the acts or omissions of Provider. The City shall pay Provider additional compensation above the limit set forth in the Provider Agreement only if and when an Amendment to this Contract is duly executed by the Parties. The City shall have no responsibility or liability whatsoever for any fee, or for costs incurred by Provider for any services, materials or other costs or expenses, other than the Services and Materials and any duly approved Additional Services and Materials.

3.4 **Responsibility.**

- (a) Notwithstanding the acceptance and approval by the City of any Services performed or Materials provided, Provider shall continue to be responsible for the professional quality, technical accuracy and the coordination of all Materials and Services provided by Provider under this Contract. Provider shall, without additional compensation, promptly and diligently correct any errors, defects, deficiencies or omissions in Provider's Materials and Services.

(1) Plan of Correction. This section applies to Providers who have been or who may be requested to submit a Plan of Correction (POC) to DHS regarding performance concerns. Provider acknowledges that DHS, by requesting a POC, does not resolve or waive the issues raised by DHS under any other notices and other communications and that under the Contract (and as it may be amended from time to time) Provider remains under the duty to explain and rectify any matters that have been or may be raised by DHS or its designee.

Provider agrees that the final accepted POC (and if applicable, any DHS addendum to POC) is incorporated by reference to the contract. By signing contract, Provider agrees to be bound by the additional terms and conditions of the POC submitted by Provider and any addendum submitted by DHS. Failure to submit or comply with the terms of the POC shall constitute an Event of Default as prescribed in Section 12.1(a) and (c), permitting DHS to exercise the remedies available in Section 13.1, including but not limited to, termination of the Contract.

By entering into a contract with Provider while requesting a POC, DHS reserves and does not waive its rights to enact Section 3.1 Performance Requirements, to rely on Section 3.4(b) Responsibility and/or or to invoke Article XIV: Transition, Termination and Suspension of the General Provisions for any of the reasons provided nor does it waive any remedies available under Article XIII: Remedies.

- (b) Furthermore, by entering into a contract with DHS and/or continued performance under this contract while submitting a POC, Provider maintains its obligation to comply with all of the provisions of Article III: Provider's Duties and Covenants of the General Provisions. The City's review, approval or acceptance of, or payment for, any of the Materials and Services required under this Contract shall not constitute any representation, warranty or guaranty by the City as to the substance or quality of the matter reviewed, approved or accepted and shall not be construed to operate as a waiver or estoppel of any of the City's rights or privileges under this Contract or of any cause of action arising out of the performance of this Contract. No Person shall have any right to rely in any way on the City's review, approval or acceptance of Provider's Services or Materials. Provider shall be and remain liable in accordance with this Contract and Applicable Law for all damages to the City caused by Provider or the Services or Materials provided by Provider. Review, approval or acceptance by the City or the Commissioner under this Contract shall not constitute or be construed to constitute approval otherwise required by any City department, board, commission, or other regulatory agency in the exercise of such department's, board's, commission's or agency's independent regulatory authority or police powers under Applicable Law.



- (c) Without limiting Provider's responsibility as set forth above, if any act or omission of Provider or error or deficiency or omission in the Services or Materials provided by Provider requires any change in the Scope of Services or any portion thereof, Provider shall promptly complete such change at no additional cost to the City.
- (d) **CUA Case Management.** For a Provider whose Services include Out-of-Home Placement of any child, insomuch as case management services are provided by a CUA under contract with DHS or according to Applicable Law, the Provider must abide by the respective CUA's policies and procedures, and cooperate with, assist, and take direction from the respective CUA in the performance of Provider's Services under this Contract.

3.5 **Subcontracts.**

- (a) Provider shall not delegate or enter into any Subcontract for the performance of any of its obligations under this Contract, in whole or in part, without on each occasion first obtaining the written consent of the Commissioner or a designee.
- (b) Provider shall submit to the Commissioner or her designee copies of all proposed Subcontract(s) to be entered into by Provider, along with Provider's written request for the City's consent. All such Subcontracts must specify that:
  - (1) work performed by Subcontractor shall be in conformity with the terms of this Contract;
  - (2) nothing contained in such Subcontract shall be construed to impair the rights of the City under this Contract;
  - (3) the City's consent to or approval of any Subcontract shall not create any obligation of the City to any Subcontractor;
  - (4) nothing contained in such Subcontract, or under this Contract, shall create any obligation of the City to any Subcontractor;
  - (5) the City shall be expressly designated a third party beneficiary of the Subcontract;
  - (6) upon request by the City (at the City's sole option) and upon receipt of written notice from the City stating that this Contract between the City and Provider has been terminated, Subcontractor agrees that it will continue to perform its obligations under the Subcontract for the benefit of the City in conformity with the terms and conditions of this Contract, provided the City pays Subcontractor for the Services rendered and Materials provided by Subcontractor from and after the date of the termination of this Contract between the City and Provider at the same rate or in the same amount as set forth in the Subcontract for those Services and Materials provided by Subcontractor after such date of termination;

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- (7) Under each Subcontract, the Subcontractor, at any tier, shall be bound by the same terms, covenants and conditions as Provider under this Contract, including without limitation: Confidentiality, Availability and Retention of Records, Inspection, all audit requirements, Independent Audits, Compliance Audit Reports, audits and inspection by government representatives, Placement and Referral Process requirements, Insurance, Indemnification, and Litigation Cooperation requirements. Any item required to be submitted to the City under this section shall be submitted to the City directly, with a copy to the Provider, unless otherwise directed by the Commissioner or their designee in writing;
- (8) Under each Subcontract, the Subcontractor shall be subject to quality assurance, fiscal and performance reviews which include site evaluations and inspection of records, that will be directed at compliance of state and federal law and regulations, including but not limited to Title IV-E of the Social Security Act, Temporary Assistance for Needy Families (TANF), the Public Welfare Code (including Act 148), the Child Protective Services Law, and compliance of the requirements under this Contract;
- (9) Subcontractor shall, effective on the date of the Subcontract, presently, fully and unconditionally assign, transfer and set over to the City all of Subcontractor's right, title and interest in and to any sales and/or use tax which may be refunded as a result of a claim for refund for any materials purchased in connection with the Subcontract or this Contract, and Subcontractor shall covenant and agree that, (i) other than as directed by the City, it will not file a claim for refund for any sales or use tax which is the subject of this assignment; and (ii) the City, in its own name or in the name of Subcontractor, may file a claim for a refund of any sales or use tax covered by this assignment;
- (10) Subcontractor shall not be indebted to the City. To satisfy this requirement, Provider shall include the requirement of subsection 4.1(f) (No Indebtedness to the City) below, with appropriate adjustments for the identity of the parties, in all Subcontracts that are entered into for work to be performed pursuant to this Contract;
- (11) Subcontractor shall comply with Chapter 17-400 of The Philadelphia Code. To satisfy this requirement, Provider shall include the requirements of Subsection 15.2(a) (The Philadelphia Code, Chapter 17-400) below, with appropriate adjustments for the identity of the parties, in all Subcontracts that are entered into for work to be performed pursuant to this Contract);
- (12) Subcontractor shall comply with Section 17-104 of The Philadelphia Code. To satisfy this requirement, Provider shall include the requirements of Subsection 15.2(b) (The Philadelphia

Code, Section 17-104) below, with appropriate adjustments for the identity of the parties, in all Subcontracts that are entered into for work to be performed pursuant to this Contract; and

- (13) Subcontractor is not and shall not become suspended or debarred by the Commonwealth, any other state or the federal government throughout the term of the Subcontract.
  - (14) Subcontractor shall comply with Chapter 17-1300 of the Code to the extent it is applicable to a Subcontractor that is also a Service Contractor (as defined in Chapter 17-1300) providing Services under the Subcontract, and to Subcontractors at any tier that are also Service Contractors providing Services under this Contract. To satisfy these requirements, Provider shall notify its Subcontractors of these provisions; shall incorporate this paragraph and Section 15.10 below, with appropriate adjustments for the identity of the parties, in each Subcontract; and shall require its Subcontractors to include such terms in any lower-tier Subcontract that is, or may become, covered by Chapter 17-1300.
- (c) No permitted Subcontract shall relieve Provider of any obligation under this Contract. Provider shall be as fully responsible for the acts and omissions of its Subcontractors and Persons either directly or indirectly employed or retained by them as it is for the acts and omissions of Provider and Persons directly or indirectly employed or retained by Provider.
- (d) Any purported Subcontract made in violation of this Section or of any other Section in this Contract shall be null and voidable.
- (e) City-Related Agencies.
- (1) If Provider is a City-Related Agency, Provider shall abide by the provisions of Chapter 17-1400 of The Philadelphia Code in awarding any contract(s) pursuant to this Contract as though such contracts were directly subject to the provisions of Chapter 17-1400, except that the exception set forth at Section 17-1406(8) of The Philadelphia Code shall apply to Provider as if Provider were listed in that subsection.
  - (2) Unless approved by the City to the contrary, any approvals required by Philadelphia Code Chapter 17-1400 to be performed by the City Solicitor shall be performed on behalf of a City-Related Agency by its General Counsel; any approvals required to be performed by the Director of Finance shall be performed on behalf of a City-Related Agency by its Chief Financial Officer; and any approvals required to be performed by the Mayor shall be performed on behalf of a City-Related Agency by its Executive Director. Any notices required to be sent under Chapter 17-1400 to designated City officials, shall be sent in electronic form to

those designated City officials.

- (f) Provider shall submit to the Commissioner or her designee final copies of all executed Subcontracts entered into by Provider.

**3.6 Conflict of Interest; Related Party Transactions.**

- (a) Provider shall adhere to Department policy and to 55 Pa. Code §3680.63, as it may be amended from time to time, regarding conflicts of interest and related party transactions. Without limitation of the foregoing, related party transactions shall also include any transactions involving any direct or indirect financial interest of Provider's board members, executive personnel, or their immediate families.
- (b) Provider shall furnish the Department with copies of all documents submitted to PA DHS for the purpose of securing a prior written determination pursuant to §3680.63, including a copy of the written determination.
- (c) Provider shall disclose all related party transactions in its annual fiscal report to the City.

**3.7 Relationship with the City or Family Court.**

- (a) Neither Provider's personnel nor any Subcontractor personnel shall be employees of the City, employees of the Family Court, or any other governmental officer or employee whose salary is paid out of the City Treasury. Provider shall notify the City of any Provider personnel or any Subcontractor personnel who have any employment or other contractual relationship or agency relationship with the City or with the Family Court.
- (b) Pursuant to Section 20-607(c) of The Philadelphia Code, as it may be amended from time to time, neither Provider's personnel nor any Subcontractor personnel, nor any parent, spouse, child, brother, sister or like relative-in-law, nor any person, firm, partnership, corporation, business association, trustee or straw party owned or operated by any of them, shall be financially interested in any award, contract, lease, case, claim, decision, decree or judgment made by any such personnel while in the service of the City until at least two (2) years after the expiration of such person's service or employment with the City.
- (c) Provider must maintain documentation in its personnel files that provides verification that it has informed all of its personnel and Subcontractors of their obligation to report to Provider whether they are currently or subsequently become employed by DHS.

**3.8 Time Frame for Submissions.** Provider shall perform any and all Services and shall submit any and all Materials required by this Contract within the time frames set forth in the Scope of Services attached as an exhibit to the Provider Agreement or as mutually agreed upon in writing by the City and Provider. Absent any such written time frames, Provider shall perform its obligations under

this Contract diligently and promptly and in any and all events before the scheduled expiration of the Term.

- 3.9 **Prompt Payment by Provider.** Provider agrees to promptly pay all Persons which have furnished labor or supplies in connection with the Services, the Materials or this Contract, including, without limitation, Subcontractors and suppliers. Provider shall provide, upon request of the City, reasonable evidence that these Persons have been fully and timely paid.
- 3.10 **Sales and Use Tax.** The City is not subject to federal, state or local sales or use taxes or federal excise tax. Provider hereby assigns to the City all of its right, title and interest in any sales or use tax which may be refunded as a result of any materials, including any Materials, purchased or any services, including any Services, rendered in connection with this Contract and unless directed otherwise by the City, Provider shall not file a claim for any sales or use tax refund subject to this assignment. Provider authorizes the City, in its own name or the name of Provider, to file a claim for a refund of any sales or use tax subject to this assignment.
- 3.11 **Adherence to Departmental Policy.** Provider shall be bound by all current Departmental and Administrative Policy Directives, Policy Transmittals and Guides, the CYD Policy Manual, applicable Performance and Service Standards, applicable Practice Guidelines, and any applicable PA DHS and/or Office of Children, Youth, and Families transmittals and bulletins as these documents may be amended from time to time. The Department may provide access to these documents on the Provider Extranet website or by making copies of these documents available to the Provider upon request.
- 3.12 **Adoption License.**
- (a) If Provider's Services include foster family care, Provider agrees as follows:
    - (1) Provider shall, at Provider's option, (a) apply for and obtain, within sixty (60) days from the effective date of this Contract, a valid, current adoption license from the PA DHS; or, (b) immediately upon the effective date of this Contract, become affiliated with a child welfare agency that possesses a valid, current adoption license.
    - (2) Provider shall become affiliated with SWAN immediately upon the effective date of the Contract.
  - (b) Provider shall cooperate with the City in the City's efforts to facilitate the adoption of children in foster care, and Provider shall refer all children in its custody to SWAN when the child has a court sanctioned goal of adoption. If there is no known adoption resource, SWAN shall register such children with the appropriate adoption exchanges.

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- 3.13 **Routine Transportation Costs.** With the exception of those costs associated with a runaway, the specific provisions for which are set forth at Section 3.29 (Absence of a Child), Provider shall be responsible for all routine transportation costs incurred by Provider in fulfilling the terms of this Contract.
- 3.14 **Family Visit Food Costs.** Provider shall be responsible for the costs of food for the child while the child is visiting his or her family.
- 3.15 **Payments for Placement Services.** Provider shall use payments under this Contract to purchase only those Services that are reimbursable under Applicable Law and the Contract Cost Principles, unless Provider has received prior written approval from the Commissioner or the Commissioner's designee to purchase non-reimbursable Services. This requirement applies equally whether the Services are purchased directly by Provider or indirectly through Provider's Subcontractor, or Provider's referral to another agency.
- 3.16 **EPSDT; Managed Care.** Provider shall comply with the City's EPSDT initiative. Compliance shall include, without limitation, Provider's securing of all licenses and permits necessary for Provider to participate in the Medical Assistance program, HealthChoices or managed care organizations (where appropriate); Provider's timely submission of all forms and reports required by the Commonwealth Office of Medical Assistance, HealthChoices or managed care organizations; and Provider's timely pursuit of any and all appeals of the Commonwealth's denial or discontinuance of EPSDT funding to Provider, or denial, discontinuance or reduction of medical services by HealthChoices or managed care organizations.

Provider shall comply with the City's initiative to integrate behavioral health services with other health and social services provided to children and families. Compliance shall include, without limitation, the following:

- (a) Provider shall use **1-888-545-2600**, the central contact number of Community Behavioral Health (CBH), for the purpose of securing mental health and substance abuse services for children and their caregivers;
- (b) Provider shall document fully in the case file the results of each referral to CBH; and
- (c) Upon request by DHS and/or CBH and with proper authorization, Provider shall release to CBH any documents and/or reports regarding behavioral health services provided to children and families. Provider must maintain centrally located documentation regarding whether a child/youth has received a full EPDST screening within sixty (60) days of entering placement, unless the child has had a screening and the results are available, and whether the subsequent treatment indicated has been initiated/scheduled within ninety (90) days upon entering placement. Youth transferring from one foster care agency to another and youth transferring from a facility licensed under Chapter 3800 regulations to a foster care agency may be exceptions.

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

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



the child's current status, and shall include a statement of Provider's treatment goals. If the City purchases residential treatment Services under the Contract, Provider shall submit a diagnostic study and treatment plan to the City within thirty (30) days after the child's initial placement.

- (b) **Placement Objectives; Adjustment Reports.** When the Services purchased under the Contract include residential Services, Provider shall, within ninety (90) days after the child's initial placement, submit a report to the City which evaluates the child's adjustment to placement and the child's prognosis. Within one hundred eighty (180) days after the initial placement, Provider shall submit a report to the City which examines whether a less restrictive placement is appropriate for the child. The City generally expects that Provider will move children to a less restrictive placement, and that children have the capacity to make use of a less intensive Service within one hundred eighty (180) days after their initial placement in a residential facility. With the exception of those children committed to the Juvenile Justice System as the result of the commission of delinquent acts, when Provider recommends that a child receive more than one hundred eighty (180) days of residential services, Provider shall present written justification for the recommendation to the Department, and shall participate in a case review within one hundred eighty (180) days after the child's placement. Provider shall allow visits by authorized City employees, upon oral or written request, for discussion or review of information pertinent to the child, or for interviews with the child and the child's natural family. If the child is placed in foster family residential treatment, and is supervised by Provider, Provider shall arrange for all contacts by the City with the child and foster family through the staff of Provider. The use of conference calls between the City, the natural family, and the residential treatment facility or the foster family will be regularly scheduled by Provider when distance prevents regular contact.

With regard to children with special medical needs, Provider shall provide all training necessary to the individual(s) with whom the child will reside in order to accommodate those needs. Individuals to be trained may include, without limitation, the child's legal guardian(s) or the child's biological, kinship, foster or adoptive parent(s).

- (c) **Notice of Child's Location.** Providers shall promptly notify the City of the exact placement location and address of each child placed in accordance with the terms of the Contract. A child shall not be moved from one location to another even within a Provider's own system without PRIOR written notice to the Department and applicable approval of court, except in emergency situations that place the child in imminent risk of harm. In non-emergency situations, Provider must furnish the City, in writing, with information regarding any proposed move of a child including, but not limited to, the exact new address of the child as soon as that address is known, plans for education, and plans for transfer of

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applicable medical and therapeutic services but in no event less than seventy-two (72) hours prior to the move. In emergency situations, Provider shall notify the City of the new address orally and in writing with information regarding any proposed move of a child including, but not limited to, the exact new address of the child as soon as that address is known, plans for education, and plans for transfer of applicable medical and therapeutic services immediately after ensuring the safety of the child or children involved.

**A failure to comply with this provision constitutes an Event of Default pursuant to Section 12.1(a). If Provider fails to comply with this provision, the City may exercise any of the Remedies available to it pursuant to Section 13.1.**

- (d) **Copies of ISPs, Other Reports.** Provider shall promptly provide the City with copies of each ISP, periodic reviews of ISPs, and in-home and day care services reports. Provider's ISP form for children and youth, as well as quarterly reports on each child and family shall be consistent with the FSP and Applicable Law. In addition, Provider shall promptly submit all requisite reports to Family Court and to Community Behavioral Health or its successor or assigns.
- (e) **In Home Services and Foster Care Outcomes Requirements.** All providers are required to implement and utilize all forms and procedures in home services and Foster Care Services. Provider shall comply with all current, newly enacted and subsequent outcome requirements enacted during the term of the Contract, including any and all amendments thereto.
- (f) **Compliance with Temporary Assistance for Needy Families ("TANF") Reporting Requirements.** Provider shall comply with all requirements needed to document and claim under TANF the eligible services delivered by the Provider. Compliance shall include, without limitation, submitting the following:
  - (1) Once a month, the list of clients receiving services that month on the form prescribed by the City;
  - (2) Once a month, the standard summary invoice on the form prescribed by the City;
  - (3) Once a year, a properly completed Means Test Worksheet (MTW) for each child receiving services. A MTW must be completed when a child first comes into service, so each month the Provider must provide a properly completed MTW for every child who came into care that month. That MTW is valid for twelve (12) months from the date the MTW was completed. If the client continues to receive services beyond twelve (12) months, a new MTW must be completed.

- (g) **Unusual Incident, Safety Alert and HCSIS Reports.** Provider shall notify DHS, orally and in writing of any fatality or incident, as required by state regulations, including but not limited to 55 Pa. Code 3680.21, and state and DHS directives, including but not limited to, the Policy and Procedure Guide dated February 23, 2010, "Using and Responding to the Safety Alert Tool for Families Receiving In Home Services and the Home and Community Services Information System (HCSIS) Reports for Children in PA Placements."
- (h) **Documentation of arrests of children/youth.** Providers must maintain centrally located documentation regarding all arrests by law enforcement of children and youth being served by the Provider. The Provider must maintain the following information: the date of the report, the DHS division (CWO or JJS) that placed the child with the Provider agency or program; the name, age and race of the child; the date and time the arrest occurred; and reason for the arrest by the law enforcement agency.
- (i) **Documentation of restraints of children/youth.** Providers must maintain centrally located documentation regarding all restraints of children/youth served. Provider must maintain the following information: the date of the report; the DHS division (CWO or JJS) that placed the child with the Provider agency or program; the name, age and race of the child; reason for restraint; date and time the restraint occurred; type of restraint used; name of employee(s) who performed the restraint; duration of the restraint; name of employee(s) who observed the child; and the result of restraint (i.e., injuries incurred, hospitalization, etc.). Provider shall abide by all applicable law and directives in regards to restraints of pregnant females.
- (j) **Documentation of Truancy.** Provider must maintain centrally located documentation regarding whether a child/youth has been truant (three (3) unexcused absences within the school year) during the time the child/youth was placed with Provider.

**If the Provider fails to comply with these requirements, the City may withhold payments to the Provider until such time that the Provider complies with these requirements.**

- 3.28 **Transitional and Discharge Planning.** Provider shall comply with any Departmental and Administrative Policy Directives, and all applicable laws, regulations, and directives regarding transition and discharge planning and development.

(a) **Upon Agreement of the Parties.**

- (1) Provider shall submit to the City a Case Closing Summary and close the case pursuant to Departmental Policy following child's discharge from Provider's care, along with important documents including, without limitation, birth certificate, Social Security card, court order, and copies of any other documents requested by the City that relate to the child.
- (2) Provider shall administer and distribute money acquired or received by the child in accordance with Applicable Law and any applicable Discharge Plan. Provider acknowledges that such funds are the property of the child.

(b) **Upon Request of Provider.** In cases where the child's discharge from Provider's care is requested by Provider, and is not made pursuant to a mutually agreed upon service plan or court-ordered removal, Provider shall submit to Commissioner a written explanation detailing the basis for the requested discharge. If the request is approved by the Commissioner or Commissioner's designee, Provider shall give the City thirty (30) days formal written notice of its intent to discharge; if the child is a special needs child (as that term is defined by the Department and Applicable Law), Provider shall give the City ninety (90) days formal written notice. If a discharge on an emergency basis proves necessary, the City may, in its sole discretion, permit a shorter notice period. Provider may not unilaterally discharge a child or case.

- (1) **Unplanned discharges.** In accordance with the requirements of Section 3.28(b) and subject to Provider's full compliance therewith, Provider is authorized to discharge a child from its care and custody **only after** Provider has confirmed with the Department's Central Referral Unit that an alternative placement has been identified and Provider has contacted the Department's Social Worker regarding the date, time and place of discharge. The discharge documents must include a statement of the reason for the discharge. Provided further, that in compliance with the thirty (30) or ninety (90) day notice requirement set forth in Section 3.28(b), Provider will forward such notice both to the Department Social Worker and to the Central Referral Unit. Provider further agrees to include with the notice a current evaluation addressing the child's treatment needs.

(c) **Delinquent Children.**

- (1) When a delinquent child is recommended for discharge, Provider shall submit to the Probation Department of the Court of Common Pleas, the Juvenile Justice Services Administrator of the

Department, and the District Attorney, a complete summary of all information pertaining to the child's adjustment and progress, and any recommendations of Provider, one (1) month prior to the anticipated discharge date.

- (2) If a delinquent youth or an alleged delinquent youth is placed in a CBES or, in the case of a delinquent youth, in a delinquent facility, and while residing at such facility is arrested on new charges; and if at the time of the arrest the youth was not a runaway youth; then Provider shall accept and transport the youth back to the facility pending court disposition of the new charges. Provider may obtain an exception to this provision if Provider's facility has exhausted its capacity, or if the youth is committable pursuant to the Mental Health Procedures Act, is eligible for detention at the Philadelphia Juvenile Justice Services Center pursuant to the Santiago Consent Decree, or is eligible for admission to an acute care facility for medical purposes. If Provider determines that the youth, because of the new charges, is not suitable for its program, Provider may, after accepting the youth back to its facility, request that the referring agency of the City grant an exception to this provision by following the procedures outlined in Section 5.2(b)(3).
- (d) **Documentation of discharges of children/youth.** Providers must maintain centrally located documentation regarding each child that is discharged from Provider's agency. Provider must maintain the following information: the date of the discharge from the Provider's agency or program; the DHS division (CWO or JJS) that placed the child; the name, age and race of the child; and the reason that the child was discharged (including successful progress of original presenting problem; AWOL; negative discharge; etc.).

### 3.29 **Absence of Child.**

- (a) When a child voluntarily absents himself or herself from the supervision of Provider or Provider's designee for a period of twenty-four (24) hours, the child is to be considered a runaway and Provider shall:
  - (1) Notify all appropriate parties, including the Department, police, the National Center for Missing and Exploited Children, and, if appropriate, the Philadelphia Juvenile Probation Department of the Court of Common Pleas. Immediate oral notice shall be given to the Department and the Philadelphia Juvenile Probation Department (if appropriate), as soon as Provider determines that the child is determined to be a runaway, but in no event later than

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twenty-four (24) hours after departure. Provider shall give written notice not later than the next working day. Provider shall also give oral and written notice, in the manner set forth above, as soon as the child is found or returned to Provider's physical custody. Provider shall notify the Philadelphia Juvenile Probation Department of any runaway at the following numbers:

Weekends, Evenings and Holidays  
686-4818 or 4999 Intake Unit

When the child is alleged or adjudicated delinquent, Provider shall notify the District Attorney at 686-4000.

- (2) Reserve the child's placement for seven (7) days from the time of knowledge of the child's departure, unless the City notifies Provider to the contrary. Upon such notice, the City or CUA shall be obligated to compensate Provider for maintaining availability of the placement. If the child is located within the seven (7) day period, Provider shall accept the child back into placement in accordance with the exception and appeal procedure described at Section 5.2(b)(3)
  - (b) Upon mutual agreement of Provider and the Commissioner's designee, the seven (7) day period may be extended.
  - (c) When a child who is still in the care of Provider is found within the county of placement or a contiguous county, Provider shall be responsible for transportation costs for returning the child. In all other situations, the City shall be responsible for the cost of transportation. If Provider makes arrangements for the use of public transportation in returning a child who has run away, the City shall be responsible for transportation costs only when it has given prior approval. With the exception of delinquent children, this subsection (c) shall apply only to children placed in the legal custody of the Department.
- 3.30 **Provider's Publications.** Provider 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.
- 3.31 **Certifications.** Provider shall obtain Certifications as required by law and by DHS policy. Herein, "Certifications" shall be understood to mean: (i.) a report of Federal criminal history record information dated no more than one (1) year-to-the-day prior to the individual's start date and obtained by submitting a full set of fingerprints in a manner described by PA DHS to the Federal Bureau of Investigation (FBI), (ii.) a Pennsylvania Criminal History Record Report dated no more than one (1) year-to-the-day prior to the individual's start date, (iii.) a certification from PA DHS dated no more than one (1) year-to-the-day prior to the

individual's start date certifying whether the applicant is named in the PA DHS maintained central register as an alleged perpetrator in a pending child abuse investigation, the perpetrator in a founded report of child abuse, the perpetrator in an indicated report of child abuse, the perpetrator in a founded report for a school employee or the perpetrator in an indicated report for a school employee, (iv.) criminal history and child abuse record certifications from any other current or previous state of residence within the past five (5) year period and dated no more than one (1) year-to-the-day prior to the individual's start date, and (v.) any other record or certification requested by the Department.

- (a) Prior to commencing employment or service with the Provider or Subcontractor, any individual for whom Certifications are required must swear or affirm in writing that the individual has not been disqualified from employment or service under the Child Protective Services Law, 23 Pa.C.S. § 6344(c), and has not been convicted of an offense similar in nature to a crime listed in 23 Pa.C.S. § 6344(c) under the laws or former laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation, or under a former law of the Commonwealth of Pennsylvania.
- (b) Certifications shall be obtained prior to the approval and/or hiring of any applicant. Provider shall obtain Certifications for all applicants for employment including without limitation: employees, agents, independent contractors, volunteers having contact with children, all prospective foster parent applicants, all prospective adoptive parent applicants, all prospective PLC custodians, all prospective foster home Household Members, all prospective adoptive parent Household Members, and all prospective PLC custodian Household Members. A "Household Member" shall herein be defined as: any individual 18 years of age or older spending thirty (30) days or more in a home during a calendar year.
- (c) This section shall be applicable to all staff including without limitation executive, administrative, and operational staff.
- (d) Provider shall obtain the required Certifications for all current employees, agents, independent contractors, volunteers having contact with children, foster parents, adoptive and prospective adoptive parents, PLC custodians and prospective PLC custodians, and all of their respective Household members for whom this information has not already been obtained.
- (e) Providers have a continuing obligation to obtain updated Certifications every sixty (60) months.

- (f) The PA DHS is utilizing Cogent Systems to process FBI record checks. Provider shall be responsible for entering into an agency agreement with Cogent Systems so that Provider may pay for the fees for all prospective foster and adoptive parent applicants and their respective Household Members applying through the Provider or establish an agency policy to require that applicants pay the fees themselves. These records must be included, when applicable, in the documentation forwarded to the DHS Licensure Unit when foster homes are certified or recertified.
- (g) According to the Child Protective Services Law (“CPSL”), 23 Pa. C.S. § 6301 et seq.), an individual may not be hired or approved for employment or participation in a program, activity, or service, including but not limited to employment as either a foster parent or an adoptive parent, if that individual has been convicted of any of the following offenses or if the individual has been convicted of the attempt, solicitation, or conspiracy to commit any of the following offenses:
- Criminal Homicide
  - Aggravated Assault
  - Stalking
  - Kidnapping
  - Unlawful Restraint
  - Rape
  - Statutory Sexual Assault
  - Involuntary Deviate Sexual Intercourse
  - Sexual Assault
  - Aggravated Indecent Assault
  - Indecent Assault
  - Indecent Exposure
  - Incest
  - Concealing Death of a Child
  - Endangering the Welfare of Children
  - Dealing in Infant Children
  - Felony Prostitution and Related Offenses
  - Obscene and Other Sexual Materials and Performances
  - Corruption of Minors
  - Sexual Abuse of Children
  - Felony Offense Under the Controlled Drug, Device and Cosmetic Act, committed within the five (5) year period immediately preceding individual’s application
- (h) Other than the last criminal offense listed – Felony Drug Offense – there is no time limitation on the enumerated criminal convictions. For example, an aggravated assault from thirty-five (35) years ago shall have the same effect as an aggravated assault conviction this year: namely,



the individual shall be precluded from employment or participation in a program, activity, or service.

- (i) Provider shall not approve an applicant as a foster parent, prospective adoptive parent, or PLC custodian if they or any Household Member are named as the perpetrator in a founded report of Child Abuse or a report equivalent to a founded report of Child Abuse in another state.
- (j) Provider shall not approve an applicant as a foster parent, prospective adoptive parent, or PLC custodian if they or any Household Member are named as the perpetrator in an indicated report, or a report equivalent to an indicated report in another state, within the previous 5 years. A perpetrator and those with a Household Member named as a perpetrator in an indicated report or the equivalent of an indicated report from another state more than five years ago may be approved as a foster parent, prospective adoptive parent, or PLC custodian, but only with the written approval of the Commissioner or his/her designee at the director level or higher.
- (k) Provider shall not approve an employee, agent, independent contractor, or volunteer having contact with children for service if they are named as the perpetrator in a founded report of Child Abuse or a report equivalent to a founded report of Child Abuse in another state, within the previous 5 years. A perpetrator named in a founded report, or the equivalent of a founded report from another state, more than 5 years ago may only be approved as an employee, agent, independent contractor, or volunteer having contact with children for service upon the written approval of the Provider's Executive Director, President, or similar Chief Executive Officer. Such written approval shall be determined on a case by case basis and record of such written approval shall be maintained in accordance with section 7.4 of these General Provisions.
- (l) Provider shall not approve an employee, agent, independent contractor, or volunteer having contact with children for service if they are named as the perpetrator in an indicated report, or a report equivalent to an indicated report in another state, within the previous 5 years. A perpetrator named in an indicated report, or the equivalent of an indicated report from another state, more than 5 years ago may only be approved as an employee, agent, independent contractor, or volunteer having contact with children for service upon the written approval of the Provider's Executive Director, President, or similar Chief Executive Officer. Such written approval shall be determined on a case by case basis and record of such written approval shall be maintained in accordance with section 7.4 of these General Provisions.

- (m) Provider shall immediately require any of its employees, agents, independent contractors, volunteers having contact with children, foster parents, prospective adoptive parents, or Household members of either a foster home or prospective adoptive home to submit new Certifications to Provider in the manner required in this section for a new applicant should Provider have or ever develop a reasonable belief that such Certifications would disqualify the individual or home they reside in from approval under this section or Applicable Law. Costs for these certifications shall be borne by the Provider.
- (n) Provider shall require all employees, agents, independent contractors, all adoptive, foster and kinship parents, and all of Provider's volunteers having contact with children to notify Provider in writing if they are arrested for or convicted of an offense that would constitute grounds for denying employment or participation in a program, activity or service, or if they are named as a perpetrator in a founded or indicated report. Such written notice shall be provided not later than 72 hours after the arrest, conviction or notification that the person has been listed as a perpetrator.
- (o) Provider shall immediately notify the Department of any disqualifying Certification.
- (p) Waiver: Waiver of any of the provisions of this section may be requested only for those provisions not required by Applicable Law. Such waivers shall only be valid with the express written approval of the Commissioner or his/her designee at the director level or higher and only to the extent permitted by Applicable Law.

3.32 **Child Death Review.** Provider shall conduct an internal review when a child placed with Provider, whether or not placed by the City, dies as the result of suspected child abuse or neglect. The review shall include cases that are currently active and also those that were known to Provider within the past sixteen (16) months. Provider shall conduct said review simultaneously with the Child Protective Service (CPS) investigation. Provider's review shall assess compliance with statutory, regulatory, and county requirements; and compliance with Provider's policies and procedures, including examination of supervisory and training requirements, for the purpose of determining whether the appropriate level of service was provided to the child, the child's family and/or foster family. A written report detailing the findings and conclusions of the death review shall be submitted to DHS within thirty (30) days following receipt of the report of suspected abuse if applicable. In addition, Provider shall participate in Act 33 meetings.

3.33 **Foster Parent Agreements.** Provider shall include in its agreements with foster parents the requirement that foster parents shall not maintain in their households,

at the same time, other children committed to the Department of Human Services who are placed with other Philadelphia County foster family care agencies.

- 3.34 **Group Home Provision.** Provider must obtain the prior written approval of the City of Philadelphia, through the Commissioner or the Commissioner's designee, prior to acquiring, whether through purchase or lease, a group home or institution situated in the City of Philadelphia for the purpose of providing services to Philadelphia County dependent or delinquent youth. Provider further agrees that it must obtain written approval of the Commissioner or the Commissioner's designee before making any change in the type of dependent or delinquent youth for whom services will be provided on these properties.
- 3.35 **Adoption and Permanent Legal Custodianship.** Provider shall complete and/or ensure the completion of a family profile according to the Department, City and State specifications for caretakers the City identifies as appropriate for adoption and permanent legal custodianship. The fee payable for the work to complete the family profile will be determined by the revised Statewide Adoption Network ("SWAN") state bulletin by reference.

#### ARTICLE IV: PROVIDER'S REPRESENTATIONS AND COVENANTS

- 4.1 **Provider's Representations and Covenants.** Provider makes the following representations, warranties and covenants upon which the City has relied as a material consideration for the execution and delivery by the City of this Contract. The representations, warranties, and covenants stated below shall continue throughout the Term of this Contract. 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.
  - (a) **Good Standing.** If Provider is not an individual, Provider is a business corporation, limited liability company, partnership, limited partnership or other business entity duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization. Provider is duly licensed, qualified and in good standing in the Commonwealth of Pennsylvania and in all jurisdictions in which it conducts business activities relating in any way to the performance of the Services and delivery of the Materials under this Contract, including, but not limited to, the jurisdiction in which Provider is organized. If Provider is a not-for-profit corporation or otherwise an entity determined to be tax exempt pursuant to Section 501(c) of the Internal Revenue Code by the Internal Revenue Service, then Provider has procured, and shall maintain in full force and effect, all consents and approvals necessary in connection with such tax-exempt and non-profit status.
  - (b) **Authority to Act.** Provider has full legal power and authority to execute and deliver this Contract, and provide the Services and Materials as set

forth herein. Provider has duly authorized by all necessary actions the execution and delivery of this Contract on behalf of Provider by the individual or individuals signing the Provider Agreement. This Contract is the legal, valid and binding obligation of Provider, enforceable against Provider in accordance with the terms set forth herein. The execution and delivery of this Contract by Provider will not result in a default under or a breach or violation of (1) Provider's certificate or articles of incorporation or bylaws, partnership agreement, limited liability company operating agreement or other pertinent organizational documents, as applicable; (2) any Applicable Law or any judgment, decree order, license, permit or other instrument or obligation to which Provider is now a party or by which Provider may be bound or affected; and (3) Provider's tax exempt status, if applicable. No consent, approval or authorization is required of any regulatory authority or governmental agency, or of any shareholder, partner, member, manager or other party related to Provider.

- (c) **Legal Obligation.** This Contract has been duly authorized, executed and delivered by Provider, by and through individuals duly authorized to execute this Contract on behalf of Provider, and constitutes the legal, valid and binding obligation of Provider, enforceable against Provider in accordance with its terms.
- (d) **No Litigation Preventing Performance.** There is no litigation, claim, consent order, settlement agreement, arbitration, agency proceeding, investigation, challenge or other proceeding pending or threatened against Provider, its properties or business or any individuals acting on Provider's behalf, including, without limitation, Subcontractors, in which any Person seeks to enjoin or prohibit Provider from entering into or performing its obligations under this Contract.
- (e) **Requisite Licensure and Qualifications.** Provider and all of the Persons acting on Provider's behalf, including, without limitation, Subcontractors and their Subcontractors at any tier, in connection with the Services and Materials provided under this Contract, possess and, at all times during the Term of this Contract, shall possess all approvals, licenses, board certifications or eligibilities, training, certifications, qualifications and other credentials, including, without limitation, all licenses required for eligibility to receive Medical Assistance or other third party reimbursements, required in accordance with Applicable Law and the terms of this Contract, to perform the Services and provide the Materials. Provider shall provide the City with copies of all approvals, licenses, credentials and certifications required under this Section upon request by the City.

Provider and all foster family homes, whether relative or non-relative, shall have current, full Certificates of Approval and/or licensure

throughout the Term of this Contract. Temporary or provisional approval and/or licenses do not satisfy this requirement.

Provider shall notify the Commissioner or Commissioner's designee, orally, electronically, and in writing, of any violations of the requirements of this section within twenty-four (24) hours of Provider's receipt of notice or other knowledge thereof, including changes which place Provider, Subcontractors, or a foster home in a provisional license status, or any other approval and/or license violation. Electronic notices of violation of this section shall be sent via email to [DHSLicensure@phila.gov](mailto:DHSLicensure@phila.gov). **DHS will not reimburse foster care agencies for services provided to homes without documentation of full licenses.**

- (f) **No Adverse Interests.** Except as disclosed in writing and approved in advance by the Responsible Official, neither Provider nor any of its directors, officers, members, partners or employees, has any interest, or will acquire any interest, directly or indirectly, that would or may conflict in any manner or degree with the performance or rendering of the Services and Materials.
  
- (g) **No Indebtedness to the City.** Provider and any and all entities controlling Provider, under common control with Provider or controlled by Provider are not currently indebted to the City, and will not at any time during the Term of this Contract (including any Additional Term(s)) be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), water bills, sewer bills, liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. Provider shall remain current during the Term of this Contract under all such agreements and payment plans, and shall inform the Responsible Official in writing of Provider's receipt of any notices of delinquent payments under any such agreement or payment plan within five (5) days after receipt. In addition to any other rights or remedies available to the City at law or in equity, Provider acknowledges that any breach or failure to conform to this representation, warranty and covenant may, at the option of the City, result in the withholding of payments otherwise due to Provider under this Contract or any other agreement with the City under which the City may then owe payment of any kind, and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments or the termination of this Contract for default (in which case Provider shall be liable for all excess costs and other damages resulting from the termination), or both. In addition, Provider understands that false certification, representation or warranty by it is subject to prosecution under Title 18 Pa.C.S.A. § 4904.

- (h) **Commercial Activity License.** If Provider is a "business" as defined in Section 19-2601 of the Code, Provider has and shall maintain during the Term of this Contract, a valid, current Commercial Activity License, issued by the City's Department of Licenses and Inspections, to do business in the City.
- (i) **Subcontractor Licensure; No Indebtedness to the City.** Each Subcontractor, if any, holds and shall maintain during the term of the Subcontract, a valid, current Commercial Activity License to do business in the City, if required by Applicable Law. To the best of Provider's knowledge, information and belief, the representations made in any Subcontract that Subcontractor is not indebted to the City are true and correct.
- (j) **Non-Suspension; Debarment.** Provider and all of the individuals acting on Provider's behalf including, without limitation, Subcontractors, are not under suspension or debarment from doing business with the Commonwealth of Pennsylvania, any other state, or the federal government, or any department, agency or political subdivision of any of the foregoing. If Provider cannot so warrant, then Provider shall submit to the Responsible Official a full, complete written explanation as to why Provider cannot so warrant. Provider shall reimburse the City for the reasonable cost of investigation incurred by the City or the Commonwealth of Pennsylvania Office of Inspector General for investigation of Provider's compliance with the terms of this or any other contract between Provider and the City which results in the suspension or debarment of Provider. Such costs shall include, but are not limited to, salaries of investigators, including overtime, travel and lodging expenses, expert witness and documentary fees and attorney fees and expenses. Provider shall not be responsible for costs of investigations which do not result in Provider's suspension or debarment.
- (k) **Prohibiting Religious Activities.** Provider shall not provide religious instruction, conduct religious worship or services, or in any way proselytize any individual in connection with the Services provided, either directly or indirectly, under this Contract.

Provider 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 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 a religious practice."

The above representations, warranties and covenants shall continue throughout the Term of this Contract. 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.

- (l) **Non-Lobbying Certification.** No federally appropriated funds have been paid, by or on behalf of Provider, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Contract, Provider shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

If this Contract or any Subcontract is funded with federal funds, Provider shall require that this language be included in the award documents for all subawards at all tiers (including Subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and Subcontractors shall certify and disclose accordingly.

Provider understands that this is a material representation of fact upon which reliance was placed when this Contract was entered into. Submission of this certification is a prerequisite for making or entering into this Contract imposed under Section 1352, Title 31, U.S. Code, and Provider agrees that the execution of this Contract shall constitute the requisite submission.

The above representations, warranties and covenants shall continue throughout the Term of this Contract. 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.

- 4.2 **Notice of Change.** If there is a material change in the foregoing representations made by Provider for itself or on behalf of any of its Subcontractors, or a

circumstance occurs adversely affecting Provider's business integrity, Provider shall promptly notify Responsible Official of such changed circumstances.

#### ARTICLE V: SERVICE REQUIREMENTS

5.1 **Scope of Services.** Services provided include the Services described in the Provider Agreement and all the obligations under this Contract. The Services encompass the following general categories:

- (a) Services to dependent, delinquent, and non-adjudicated children and their families; and
- (b) Other professional services, including consulting and training services.

5.2 **Placement and Referral Process.**

(a) **Eligibility for Services.** With the exception of children adjudicated delinquent, the City will be responsible for the determination of eligibility for public care and Services, and for the assumption of legal custody, if required, for all children provided Services under the Contract.

(b) **Referral Process.**

- (1) With the exception of children adjudicated delinquent, the City shall, prior to Provider's acceptance of a child, furnish Provider with a social summary, including a family summary and a medical history. To the extent such information is available to the City, the City shall also provide related school information, a signed psychological evaluation, and a signed psychiatric evaluation.
- (2) When Provider receives a referral from the City for placement, with the exception of state approved residential treatment facility placements, the City will cooperate with Provider in arranging a pre-placement visit or conference. The participants may include, but are not limited to, the child, parent or guardian, and County caseworker or probation officer. Provider will not be obligated to pay transportation costs for participants who attend the visit or conference.
- (3) Provider may reject a child and family only if it has exhausted its capacity under this Contract. If Provider determines that a child or family is not acceptable for reasons other than exhaustion of capacity, it must notify the Commissioner in writing within twenty-four (24) hours of the rejection detailing the basis of the intended rejection and request an exception to this provision. The Commissioner or Commissioner's designee's decision to grant or reject the request shall be final.



- (c) **Residential Treatment Facility Placement.** In the event that a child requires services that can only be provided in a residential treatment facility (RTF), Providers are to obtain approval from Community Behavioral Health (CBH) PRIOR to the RTF placement.
- (d) **Emergency Shelter Placement.** In the case of Out-of-Home Placement in an emergency shelter, Provider will accept all referrals as stated in the Performance Standards. Provider may only reject a referral if:
- Provider has exhausted its capacity under the Contract;
  - the youth is committable pursuant to the Mental Health Procedures Act 50 P.S. § 7101 et seq.;
  - the youth is eligible for detention at the Philadelphia Juvenile Justice Services Center pursuant to the Santiago Consent Decree; or
  - the youth is eligible for admission to an acute care facility for medical purposes.

If Provider determines that a child placed in an emergency shelter is not suitable for its program for reasons other than those identified in this Section 5.2, Provider may, after accepting the child into emergency shelter, request an exception to this provision by following the procedures outlined in Section 5.2(b)(3). Emergency shelter services must be accessible to the City for the placement of children twenty-four (24) hours per day, seven (7) days per week.

- (e) **Availability of Placement Providers.** All Providers of Out-of-Home Placement services to children shall be prepared to receive referrals and to accept children into placement at all times, twenty-four (24) hours per day, seven (7) days per week. Out-of-Home Placement Providers shall respond to placement referrals within one hour of their being contacted and will work immediately to secure placement for each child referred.
- (f) **Information Sharing Following Acceptance for Placement.** Except in emergency situations, when the City receives official notice of acceptance by Provider for Out-of-Home Placement of a referred child, the City shall send to Provider available and pertinent information and documentation within five (5) business days after receipt of notice, or as soon as possible thereafter.
- (g) **Information Sharing in Emergency Out-of-Home Placement Cases.** In the event of an emergency Out-of-Home Placement, the City shall make every effort to supply Provider with all available records, reports,

summaries, and any other pertinent information as soon as possible after the date of acceptance.

- (h) **Collaborative Planning.** Provider, with the participation of all other necessary participants, shall develop an ISP, which shall be consistent with the FSP and Applicable Law. If DHS is responsible for case management, then DHS, with the participation of the Provider and all other necessary participants, shall develop an FSP, including a Placement Amendment. If a CUA is responsible for case management, then CUA, with the participation of the Provider and all other necessary participants, shall develop a Single Case Plan, which incorporates the ISP and shall be consistent with Applicable Law.
- (i) **Clothing.** The City shall ensure that each child entering Out-of-Home Placement with Provider shall have at least minimally adequate clothing. If the City determines that the child's clothing is inadequate, it may authorize Provider to purchase the necessary clothing as outlined in the Departmental and Administrative Policy Directives.
- (j) **Life skills training for children in placement.** Provider shall comply with Departmental and Administrative Policy Directives regarding the provision of life skill services for all youth in placement who have attained the age of twelve (12) years or above, regardless of their permanency goals. Concurrent with the ongoing reasonable efforts toward permanency, Provider will address the child's need to acquire the life skills needed for adult self-sufficiency. The Individual Service Plan will identify self-sufficiency goals and specific courses of action that the child will take to prepare for the pursuit of these goals. Provider's agency case worker will provide direct social work and other services to help the child prepare for self-sufficiency as an adult, including:
- Provision of life skills training
  - High school retention and support
  - Career clarification and decision-making
  - Preparation for post-secondary education or vocational training
  - Planning for acquisition of permanent housing upon discharge
  - Support in identifying and coping with feelings of separation and loss that will be encountered upon emancipation

Provider shall identify and facilitate access to the resources needed for youth to acquire the skills necessary for self-sufficiency, including resources to support educational and employment goals and the acquisition of housing upon discharge.

**Failure to comply with these requirements constitutes an Event of Default pursuant to Section 12.1(a). If Provider fails to comply with the requirements under Section 5.2, the City may exercise any of the remedies available pursuant to Section 13.1 including withholding of payment.**

5.3 **Medical and Dental Costs.**

- (a) **Responsibility for Payment.** The maximum fee(s) set forth in the Provider Agreement and Article VI of these General Provisions do not include payment of medical expenses. The City shall provide the necessary means of payment for medical expenses for the child only in the absence of a third party payor. The City shall apply for public benefits on behalf of the children and youth, including Public Assistance, Medical Assistance, Social Security or SSI, and the City shall furnish Provider with Medical Assistance card(s) or such information as is necessary to secure third party payments.
- (b) **Medical Assistance.** For delinquent children and children placed in the legal custody of the City, the City shall provide financial coverage for medical expenses through the MA program. The City shall not provide financial reimbursement for medical expenses which are not covered by the MA eligibility guidelines, or for services provided by vendors who are not MA-approved. Reimbursement shall be paid directly to the MA-approved vendor, not to Provider.
- (c) **Limits of the City's Responsibility.**

The City shall not be responsible for the following medical expenses:

- (1) those expenses incurred prior to the effective date of this Contract;
- (2) those expenses that are in excess of the applicable MA rate, unless Provider obtained prior written approval from the City;
- (3) those expenses for services not covered by the applicable MA category for which the child or youth is eligible, unless Provider has obtained prior written approval from the City;
- (4) those expenses for which the vendor refuses to bill MA; and
- (5) those expenses for services for which prior authorization from a managed care organization, including CBH, is required and has not been obtained, and for which Provider is seeking payment from the City. Provider shall be responsible for obtaining treatment authorization prior to securing the services; failure to do so shall result in Provider bearing sole liability for payment for such services.

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(d) **Elective Services.** The City shall not assume responsibility for elective services (including medical or dental) unless Provider obtains prior written approval from the City.

5.4 **Change in Laws.** If, during the Contract Term, there are changes in PA DHS regulations regarding MA reimbursement, the City and Provider agree to negotiate an Amendment, to set forth revisions to Section 0 (Medical and Dental Costs) hereof, to conform to such changes. The City and Provider further agree that the remaining provisions of this Contract shall remain in full force and effect and binding on the Parties.

5.5 **Right of Review and Rejection.** The City reserves the right to inquire into the background and qualifications of Persons retained by Provider to provide Services, and to reject the use of any persons, families, or households which, in the City's sole judgment, are determined not to be in the best interests of the child or families for whom the Services are required.

#### ARTICLE VI: COMPENSATION

6.1 **Requisite Documents.** Prior to the City's payment for placement Services furnished by Provider to delinquent or alleged delinquent youth, Provider must possess the following completed and current documents:

- (1) Form Authorizations;
- (2) FSP;
- (3) Placement Amendment, if any;
- (4) CY-61 (Application for Initial Determination for Title IV-E Placement Maintenance and Medicaid); and
- (5) Court Order

6.2 **Certification of Available Funds.** Provider acknowledges that payments under this Contract shall not exceed the amount certified by or on behalf of the City's Director of Finance as available for this Contract. A copy of the form signed by the Office of the Director of Finance showing the amount of currently available funds will be attached to the fully executed Contract returned to Provider. During the Initial Term and any Additional Term(s) of this Contract, the City reserves the right to fund any remaining balance of this Contract amount in varying amounts from time to time as funds become available, not to exceed in total the maximum amount stated in this Contract. Provider agrees that the City shall not be obligated to fund this Contract except out of funds certified by or on behalf of the City's Director of Finance as currently available, even if those funds are less than the maximum amount stated in this Contract. If sufficient funds are not certified as available at any time, the City may exercise its options described in Section 6.3 (Unavailability of Funds) below.

6.3 **Unavailability of Funds.** If funding for this Contract from any source is not obtained and continued at an aggregate level sufficient to allow for payment for

the Services performed and Materials delivered under this Contract, the City may exercise one of the following options without liability or penalty to the City:

- (a) Terminate this Contract effective upon a date specified in a Termination Notice; or
- (b) Continue this Contract by reducing, through written notice to Provider, the amount of this Contract and Services and Materials, consistent with the nature, amount and circumstances of available funding.

The City's exercise of either option under this Section shall not affect any obligations or liabilities of either Party accruing prior to such termination or reduction of Services or Materials. Provider shall be compensated in accordance with the terms of this Contract for Services and Materials satisfactorily performed and delivered prior to such termination or modification of this Contract under this Section.

6.4 **Crossing Fiscal Years.** If any portion of the compensation set forth in this Contract is to be paid in any City fiscal year following the fiscal year in which the Initial Term or any Additional Term of this Contract commences (in either case, "Appropriated Fiscal Year"), Provider understands and agrees that the portion of the compensation under this Contract payable with City funds for any period following the Appropriated Fiscal Year is subject to the discretion of City Council as to future appropriations. If, for any reason, funds for any such portion of the compensation are not appropriated by City Council in any Fiscal Year following the Appropriated Fiscal Year, this Contract and the City's liability under this Contract shall automatically terminate at the end of the then current Appropriated Fiscal Year; provided, however, that Provider shall be compensated in accordance with the terms of this Contract for Services and Materials satisfactorily performed and delivered prior to the end of the then current Appropriated Fiscal Year.

6.5 **Allowability of Cost Items.** All payments by the City to Provider under this Contract shall be subject to the limitations on the allowability of cost items imposed by the City of Philadelphia Contract Cost Principles and Guidelines.

6.6 **Advances.** The City may, in the City's sole discretion, offer providers of per diem placement services (including Provider, if applicable) a one twelfth (1/12) advance payment, based on the maximum amount of this Contract, if Provider meets the following criteria:

- (1) Contract and/or encumbrance is \$50,000.00 or over;
- (2) Agency is not-for-profit;
- (3) Service is to be provided for at least 5 DHS placement clients;
- (4) Agency has submitted audited financial statements by required date;
- (5) Audit review does not indicate possible financial difficulties;
- (6) Provider performance reviews have been satisfactory;
- (7) Provider has been contracting with DHS for at least 3 years; and

- (8) A decrease in payments and/or placements, as determined by DHS, is not expected.

The advance to Provider shall be repaid by Provider to the City by reducing a proportionate amount of the advance from subsequent monthly payments by the City to Provider. The entire advance amount must be repaid no later than the April 30<sup>th</sup> invoice unless otherwise approved by the DHS Commissioner, not to exceed the end of the fiscal year for which the advance is provided. The City, in its sole discretion, may waive any or all of the criteria enumerated in (1)-(8) above.

- 6.7 **Income From Contract Funds.** Provider shall provide a written report to the City accounting for all income derived either directly or indirectly by Provider from the use of funds paid to Provider under this Contract or with respect to any activities of Provider in connection with this Contract, including, but not limited to, sale, publication, registration fees, interest, program service fees, and service charges on fees. If required by the City, at the City's sole discretion, Provider shall use all such income to set off against and reduce payments to Provider otherwise due under this Contract.
- 6.8 **Monitoring of Fund Utilization.** Provider and the City shall monitor utilization of funds encumbered under this Contract. Provider shall furnish the City with current utilization reports on a monthly basis. In the event of mutually agreed upon overutilization, the City will, proceeding under Section 3.3 (Additional Services and Materials; Change in Scope of Services) above, authorize an Amendment to this Contract to compensate Provider for such overutilization.
- 6.9 **Maximum Daily Rate, Days of Care or Units of Service (or combination thereof).** The City shall not compensate Provider for any increases in the maximum daily rate, number of days of care or units of service set forth in the Provider Agreement without the prior written approval of the Commissioner. By execution of this Contract, Provider agrees that the City may modify, upon issuance of a Modification Notice to Provider, the maximum daily rate, number of days of care or units of service that the City agrees to purchase under this Contract. In the event the maximum daily rate, number of days of care or units of service are increased, the date of such increase shall be the date stated in the Modification Notice. Any decrease in the maximum daily rate, number of days of care or units of services shall be made upon issuance of a Modification Notice not less than thirty (30) days prior to the effective date of such decrease.
- 6.10 **Total Actual Cost.** The maximum fee(s) set forth Section 4.1 in the Provider Agreement represents the maximum daily rate multiplied by the anticipated units of Services. The City shall pay Provider only for Provider's Total Actual Cost for Services set forth in the Provider Agreement, not to exceed the maximum amount set forth in Section 4.1 of the Provider Agreement. Total Actual Cost shall be limited to those expenditures permitted by Applicable Law, the City's Functional Expenditure Report, and the City of Philadelphia Contract Cost Principles and

Guidelines, as each may be amended from time to time. Actual cost shall be measured as of the end of the current fiscal year (unless a different date is approved in writing by the Commissioner or Commissioner's designee), and shall be documented on the Independent Functional Expenditure Report prepared and certified by a Certified Public Accountant. The Functional Expenditure Report shall be submitted to the City not more than one hundred twenty (120) days after the expiration or earlier termination date of this Contract.

- 6.11 **Excess Compensation.** If, as documented on the Independent Functional Expenditure Report prepared and certified by a Certified Public Accountant, compensation exceeds Provider's Total Actual Cost for Services, the City shall recover such excess compensation over Total Actual Cost by deduction from subsequent Provider billings to the Department or by accepting a refund from the Provider. The City may recover excess compensation at any time after it is documented. Total recovery of excess compensation by deductions from subsequent Provider billings shall be accomplished over a nine (9) month maximum duration, unless a longer period is authorized in writing by the Commissioner or Commissioner's designee. Any extension of the recovery period, requested by the Provider or otherwise, beyond nine (9) months shall not create a bar to recovery by the City. If Provider ceases to contract with the City before the City has recovered all or any portion of the excess compensation, Provider shall promptly pay such excess amount to the City. The amounts of any deductions from Provider billings to the City in recovery of prior excess compensation over Total Actual Cost shall not be a part of actual costs for Department funded programs for the fiscal period during which it was deducted.
- 6.12 **Unpaid Amounts.** Provider must notify Department in writing at the address set forth in the Provider Agreement of any payments it claims are due to it under this Contract and which remain unpaid by the City, not more than sixty (60) days after the expiration of the then current Term of this Contract. Failure to adhere to the time limitation set forth in this Section may result in Provider's forfeiture of any unpaid balances or, in the sole discretion of the City, the requirement that Provider pay any and all additional administrative costs incurred by the City to process the invoices.
- 6.13 **Invoices.** To meet the City's requirements of a complete and accurate invoice a Provider must have a validly conformed contract with the City for the time period in which the Provider's duties were performed and a Provider must be in compliance with all of the terms of that contract, including, but not limited to, the Scope of Services, DHS Provider Standards, and all applicable Article VII audit requirements. A Provider shall submit their invoices to the City on a monthly basis. The City must receive invoices not more than ten (10) business days following expiration of the month for which the invoice is submitted.

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- 6.14 **Golden Parachute Agreements.** Provider shall not utilize funds under this Contract to fund in whole or in part the payment of Golden Parachute agreements or any similar agreements negotiated with its employees or agents.
- 6.15 **Indirect Rate Requests.** The budget-based, cost reimbursement contract Provider may request an indirect rate for indirect expenses. In order to be eligible for indirect rate approval, Provider must ensure that the request conforms to the requirements outlined in the Contract Cost Principles.
- (a) For cost reimbursement contracts over \$500,000.00, Provider must submit a detailed justification including line item indirect expense cost calculations, regardless of the percentage of the indirect rate that is being requested.
  - (b) For cost reimbursement contracts under \$500,000.00 with a request of an indirect rate of greater than 10% of the total budget, Provider must submit a detailed justification including line item indirect expense cost calculations.
  - (c) For cost reimbursement contracts under \$500,000.00 with a request of an indirect rate of equal to or less than 10% of the total budget, Provider is not required to submit a detailed justification including line item indirect expense cost calculations, unless specifically requested by DHS.
  - (d) The value of any applicable Subcontracts shall not be part of Provider's indirect percentage calculations.
  - (e) All indirect rate approvals are at the sole discretion of DHS.
  - (f) DHS may require a detailed justification including line item indirect expense cost calculations for all indirect rate requests at any time; all provisions to the contrary notwithstanding.
- 6.16 **Timely Payment From Pennsylvania State Funds.** Complete and accurate invoices submitted to the City, for which the City receives State reimbursement and for which the State funds have already been appropriated by the State for reimbursement to the City, shall be paid within thirty (30) days of receipt of the invoice.

#### **ARTICLE VII: AUDITS; INSPECTION RIGHTS; RECORDS**

- 7.1 **City Audit.** From time to time during the Initial Term and any Additional Term(s) of this Contract, and for a period of five (5) years after the expiration or termination of this Contract, the City may audit any and all aspects of Provider's performance under this Contract, including but not limited to its billings and invoices. Audits may be conducted by representatives, agents or contractors of the City, including the Department, or other authorized City representatives including, without limitation, the City Controller. If requested by the City, Provider shall submit to the City all vouchers or invoices presented for payment



pursuant to this Contract, all cancelled checks, work papers, books, records and accounts upon which the vouchers or invoices are based, and any and all documentation and justification in support of expenditures or fees incurred pursuant to this Contract. All books, invoices, vouchers, records, reports, cancelled checks and other materials shall be subject to periodic review or audit by the City.

- 7.2 **Inspection.** All Services and Materials shall be subject to inspection and review by City, federal and state representatives, as may be applicable, or their designees, at the offices of Provider in the City, or in another location with the City's consent. Provider shall cooperate with all City, state and federal inspections and reviews conducted in accordance with the provisions of this Contract. Such inspection and review of Provider's Services and Materials, including, without limitation, programs and facilities, shall be in the sole discretion of the inspecting or reviewing entity. Such inspection or review may include, without limitation, meetings with consumers, review of staffing ratios and job descriptions, and meetings with any of Provider's staff members who are either directly or indirectly involved in providing Services or Materials.
- 7.3 **Availability of Records.** Provider shall make available to the City at reasonable times during the Term of this Contract and for the period set forth in Section 7.4 (Retention of Records) below, all records pertaining to this Contract for the purpose of inspection, audit or reproduction by any authorized representative (including any agent or contractor and the City Controller) of the City, the Commonwealth Secretary of PA DHS or Auditor General, and any other federal and/or state auditors, as may be applicable.
- 7.4 **Retention of Records.** Provider shall retain all records, books of account and documentation pertaining to this Contract for a period of five (5) years following expiration or termination of this Contract; if, however, any litigation, claim or audit is commenced prior to expiration of said five (5) year period, then the records shall be retained until all litigation, claims or audit findings have been completely terminated or resolved, without right of further appeal, or if Applicable Law requires a longer period, then the records shall be retained for such longer period.
- 7.5 **Independent Audit.**
- (a) *Combined City contracts that total less than \$300,000 in a fiscal year.* If requested by the City, Provider shall submit to the City an Independent Audit Report that is acceptable to the City and prepared and certified by a Certified Public Accountant (CPA) acceptable to the City. The Independent Audit Report shall be prepared in accordance with the following audit requirements:
    - (1) Provider shall submit a separate audit for each individual entity that contracts with the City. An individual entity includes each

entity with a distinct taxpayer identification number or social security number, or employer identification number. It is intended that this requirement be followed in addition to any other requirements of: the law, other regulatory bodies, or other financial statement presentations.

- (2) The basic financial statements to be filed will include: the Statement of Financial Position, the Statement of Activities, the Statement of Cash Flows and the Statement of Functional Revenue and Expenses by Contract number and Program name.
  - (3) Provider shall ensure that a final audit of the financial transactions relating to each City contract shall be performed in compliance with all requirements of the Subrecipient Audit Guide, which is incorporated in this Contract by reference. This audit shall verify that all invoiced costs are actual, authorized and eligible for reimbursement in accordance with each City contract's requirements.
  - (4) Provider agrees to make full and prompt refund to the City of amounts of money which result from audit exceptions due to Provider's performance hereunder, or result from non-compliance with Applicable Law and this contract, including, without limitation, the Contract Cost Principles.
  - (5) The City reserves the right to disallow fees paid by Provider for audit services under this contract if the final audit report is not submitted in the manner and within the time frame prescribed in this Section or if subsequent review of audit work papers discloses deficiencies in required performance.
  - (6) Provider shall submit all audit documentation, as described above, pertaining to this Contract no later than one hundred twenty (120) days after the end of the Term of this Contract, unless a different time is approved, in writing, in accordance with City's audit policies, which are incorporated in this contract by reference. Provider's failure to submit the audit documentation in the time required shall be a basis for withholding processing of invoices for payment, and other remedies the City has at its discretion in accordance with this contract and the City's audit policies.
- (b) *Combined City contracts that total \$300,000 or more in a fiscal year.* Provider shall submit to the City an Independent Audit Report that is acceptable to the City and prepared and certified by a Certified Public Accountant (CPA) acceptable to the City. The Independent Audit Report shall be prepared in accordance with the following audit requirements:

- (1) Provider shall submit a separate audit for each individual entity that contracts with the City. An individual entity includes each entity with a distinct taxpayer identification number or social security number, or employer identification number. It is intended that this requirement be followed in addition to any other requirements of: the law, other regulatory bodies, or other financial statement presentations.
- (2) The basic financial statements to be filed will include: the Statement of Financial Position, the Statement of Activities, the Statement of Cash Flows and the Statement of Functional Revenue and Expenses by Contract number and Program name.
- (3) Provider shall ensure that an audit of the financial transactions relating to each City contract shall be performed.
  - a) As applicable, the audit shall be in compliance with all requirements of the Subrecipient Audit Guide, which is incorporated in this contract by reference. This includes Department specific required disclosures and schedules. This audit shall verify that all invoiced costs are actual, authorized and eligible for reimbursement in accordance with this contract's requirements.
    - 1) When the combined total of all City contracts with the Provider is greater than \$300,000 but the combination of all federal and state funds received by the Provider, from all sources, is less than \$500,000, the Provider must provide a financial audit in accordance with generally accepted auditing standards. Specifically, the report shall contain a Balance Sheet, Statement Of Activities And Changes In Net Assets, and A Statement Of Cash Flows.
    - 2) When the combined total of all funds received by the Provider from the federal and state governments, from all sources, are equal to or greater than \$500,000, the Provider must provide a financial audit in accordance with generally accepted government auditing standards (Yellow Book Audit), regardless of the combined total of all City contracts. Specifically, the report shall contain a Balance Sheet, Statement Of Activities And Changes In Net Assets, and A Statement Of Cash Flows. In addition, there must be an opinion given on Internal Control Over Financial Reporting.

- 3) When the combined total of all funds received by the Provider from the federal government, from all sources, is equal to or greater than \$750,000, the Provider must provide a Single Audit in accordance with the United States Code of Federal Regulations Title 2 (2 CFR).
    - b) Providers shall adhere to all other auditing requirements imposed by state and/or federal legislation and regulation, including but not limited to audit submission timelines, on funding source(s) that provider receives through this contract, if the funding source(s) are comprised of state and/or federal funds.
  - (4) Provider agrees to make full and prompt refund to the City of amounts of money which result from audit exceptions due to Provider's performance hereunder, or result from non-compliance with Applicable Law and this contract, including, without limitation, the Contract Cost Principles.
  - (5) The City reserves the right to disallow fees paid by Provider for audit services under this contract if the final audit report is not submitted in the manner and time frame prescribed in this Section or if subsequent review of audit work papers discloses deficiencies in required performance.
  - (6) Provider shall submit all audit documentation, as described above, pertaining to this Contract no later than one hundred twenty (120) days after the end of the Term of this Contract, unless a different time is approved, in writing, in accordance with City audit policies, which are incorporated in this contract by reference. Provider's failure to submit the audit documentation in the time required shall be a basis for withholding processing of invoices for payment, and other remedies the City has at its discretion in accordance with this contract and the City's audit policies.
- 7.6 **Compliance Audit Reports.** If this Contract is funded in whole or in part with Commonwealth or federal funds, Provider must prepare and submit compliance audit reports to the Department as required under Applicable Law and any contracts pertinent to the Department's receipt of such funds.
- 7.7 **Program Records; Reporting Costs.**
- (a) **Reports Concerning Provider's Costs.** In addition to the financial and compliance audits, Provider shall (1) identify that part of its per diem rate or unit cost that is attributable to Services rendered; and (2) identify any

unallowable costs, as defined by Applicable Law, this Contract, and the Contract Cost Principles.

- (1) Providers of Title IV-E eligible services, regardless of their physical location, are required to provide complete, timely and accurate Title IV-E submissions.
  - a) Providers must secure approved Title IV-E rates for all eligible services as a condition of receiving full funding for Title IV-E services from DHS. If, after a reasonable timeframe (as determined by DHS), Provider has failed to secure approved Title IV-E rates, DHS may retroactively decrease payable per diems to the prior year's city portion of such per diems. If no prior year Title IV-E per diem rate was established, DHS reserves the right to establish a temporary city share rate until the Provider's Title IV-E package has been approved.
  - b) Title IV-E rate packages must include rates for all Out-of-Home Placement services provided to DHS. If DHS's contracted rates are greater than the projected per diem included in the Title IV-E rate packages, DHS's contracted rates shall be reduced to the Title IV-E rates.
- (b) **Purchase Category.** In reporting financial, program or Service information, Provider shall reflect costs by purchase category for each Service rendered under this Contract.
- (c) **Unallowable Costs; Third Party Funds.**
  - (1) In the calculation of unallowable costs under Title IV-E, this Contract, or the City of Philadelphia Contract Cost Principles and Guidelines, contributed Services are to be used to offset unallowable costs before computing the unreimbursed amount which Provider will report to the City.
  - (2) Unless otherwise required by the Department to obtain maximum reimbursement from any third party source, Provider agrees that third party funds received from a government funding source (which may be used to pay for costs incurred in providing a child welfare Service provided under this Contract) or third party donor restricted funds (which may be held for a specific child welfare Service provided under this Contract), shall be credited in the following manner:
    - a) first against unallowable costs; then,

- b) against the difference between the Actual Allowable Costs incurred by Provider and the per diem cost paid by the City for the Service; then,
- c) to reduce the payments otherwise required to be made by the City under this Contract, by applying the remaining funds to such costs on a percentage basis, calculated by dividing the cost for each Service under this Contract by the total cost of all Services provided under this Contract.

7.8 **Audits Pursuant to Section 6-400 of the Home Rule Charter.** Any Provider that is an Agency, as defined in Section 6-400 of the Philadelphia Home Rule Charter, shall permit the City Controller to audit its affairs as authorized in Section 6-400 during the Initial Term or any Additional Term. Under Section 6-400, an Agency is any entity that receives funds from the City, and either a) is created by, or whose board of directors is in whole or part appointed by, one or more City officials or bodies; or b) is organized pursuant to legal authority granted to it by City ordinance.

#### ARTICLE VIII: ASSIGNMENT

8.1 **Assignment By Provider.** Provider shall not assign this Contract, or any part of this Contract, or delegate performance of this Contract (other than to its own work forces), without obtaining the prior written consent of the Commissioner or designee. The decision whether to consent to an assignment, the timing of consent (if any), and conditions to such consent, if any, shall each be at the City's sole discretion. Any consent to the assignment of any monies to be paid under this Contract shall not relieve Provider from the faithful performance of any of its obligations under this Contract or change any of the Terms and Conditions of this Contract. Any purported assignment in violation of this provision shall be void and of no effect. The City's consent to an assignment shall not release the assignor from any liability accrued or thereafter accruing under this Contract. Any assignment or purported assignment shall be in writing and shall contain an express assumption by the assignee of all liability accrued or thereafter accruing under this Contract. Consent by the City to any assignment shall not be deemed a course of conduct, dealing or performance with respect to any other assignment or proposed assignment. For purposes of this Section 8.1 (Assignment by Provider), an assignment includes the acquisition of the Provider, or a controlling interest therein, through a sale of stock, assets, or otherwise; a corporate or other merger; and the appointment of a receiver or bankruptcy trustee; and the transfer of this Contract or of control of Provider in any bankruptcy or other insolvency proceeding.

8.2 **Applicability in Case of Bankruptcy or Insolvency.** A receiver or trustee of or for Provider in any federal or state bankruptcy, insolvency or other proceeding concerning Provider shall comply with the requirements set forth in Section 8.1 (Assignment by Provider) above.

- 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.

**ARTICLE X: INSURANCE**

10.1 **Insurance.** Unless otherwise approved by the City’s Risk Manager in writing, Provider shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained, in full force and effect, the types and minimum limits of insurance specified below, covering Provider’s performance of the Services and the delivery of the Materials. Provider shall procure, or cause to be procured, all insurance from reputable insurers admitted to do business on a direct basis in the Commonwealth of Pennsylvania or otherwise acceptable to the City. All insurance herein, except Professional Liability insurance, shall be written on an “occurrence” basis and not a “claims-made” basis. In no event shall Provider perform any Services or other work until Provider has delivered or caused to be delivered to the Responsible Official and the City’s Risk Management Division the required evidence of insurance coverages. All insurance coverages shall provide for at least thirty (30) days prior written notice to be given to the City in the event coverage is materially changed, cancelled, or non-renewed. The City, its officers, employees, and agents, shall be named as additional insureds on the General Liability Insurance policy. Coverage shall also include sexual abuse/molestation coverage. As outlined in Section 10.3, Provider shall also deliver or cause to be delivered to the City an endorsement stating that the coverage afforded the City and its officers, employees and agents, as additional insureds, will be primary to any other coverage available to them and that no act or omission of the City, its officers, employees or agents shall invalidate the coverage.

(a) **Workers' Compensation and Employers' Liability.**

- (1) Workers' Compensation: Statutory Limits
- (2) Employers' Liability: \$100,000 Each Accident - Bodily Injury by Accident; \$100,000 Each Employee - Bodily Injury by Disease; and \$500,000 Policy Limit - Bodily Injury by Disease.
- (3) Other states insurance including Pennsylvania.

(b) **General Liability Insurance.**

Limits of Liability:

- (1) For all Out-of-Home service categories, including, but not limited to, day treatment and day care centers: Two million dollars (\$2,000,000.00) per occurrence;
- (2) For all in-home service categories: One million dollars (\$1,000,000.00) per occurrence;



Coverage:

- (1) Premises operations;
- (2) Blanket contractual liability;
- (3) Personal injury liability;
- (4) Products and completed operations;
- (5) Independent contractors;
- (6) Employees and volunteers as additional insureds;
- (7) Cross liability;
- (8) Broad form property damage (including completed operations); and
- (9) Sexual abuse/molestation.

(c) **Automobile Liability Insurance.**

- (1) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
- (2) Coverage: Owned, non-owned, and hired vehicles.

(d) **Professional Liability Insurance.**

- (1) Health Care Providers subject to the Medical Care Availability and Reduction of Error (MCARE) Act, as amended:
  - a) Hospital and Nursing Homes including officers and employees: \$1,000,000 each occurrence, \$4,000,000 annual aggregate.
  - b) Individuals and Professional Corporations: \$1,000,000 each occurrence; \$3,000,000 annual aggregate.
- (2) All Health Care and Human Services Providers not subject to the MCARE Act, as amended: \$1,000,000 each occurrence; \$3,000,000 annual aggregate.
- (3) Professional Liability Insurance may be written on a claims-made basis provided that coverage for occurrences happening during the performance of the Services required under this Agreement shall be maintained in full force and effect under the policy or "tail" coverage for a period of at least two (2) years after completion of the Services.

10.2 **Self-Insurance.** Provider may not self-insure any of the coverages required under this Contract without the prior written approval of the Commissioner and the City's Risk Manager. In the event that Provider wants to self-insure any of the coverages listed above, it shall submit to the Commissioner and the City's Risk

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Manager, prior to Provider's commencement of Services or delivery of any Materials hereunder, a certified copy of Provider's most recent audited financial statement, and such other evidence of its qualifications to act as self-insurer (e.g. state approval) as may be requested by the Commissioner or the City's Risk Manager. In the event the City grants such approval, Provider understands and agrees that the City, its officers, employees and agents shall be entitled to receive the same coverages and benefits under Provider's self-insurance program that they would have received had the insurance requirements set forth above been satisfied by a reputable insurer admitted and duly authorized to do business in the Commonwealth of Pennsylvania or otherwise acceptable to the City. If at the time of commencement of the Term of this Contract, Provider self-insures its professional liability or workers' compensation and employers' liability coverage, Provider may, in lieu of the foregoing, furnish to the City a current copy of the state certification form for self-insurance or a current copy of the State Insurance Commissioner's letter of approval, whichever is appropriate. The insurance (including self-insurance) requirements set forth herein are not intended and shall not be construed to modify, limit or reduce the indemnifications made in this Contract by Provider to the City, or to limit Provider's liability under this Contract to the limits of the policies of insurance (or self-insurance) required to be maintained by Provider hereunder.

- 10.3 **Evidence of Insurance Coverage.** Certificates of insurance evidencing the required coverages must specifically reference the City contract number for which they are being submitted, indicate that the City of Philadelphia, its officers, employees and agents are named as additional insureds and that coverage is included for sexual abuse/molestation. The original certificates of insurance and a copy of Provider's current sexual abuse/molestation endorsement must be submitted to the City's Risk Manager at the following address:

The City of Philadelphia  
Office of the Director of Finance  
Division of Risk Management  
1515 Arch Street, 14th Floor  
Philadelphia, PA 19102-1579  
(Fax No.: 215-683-1705).

A copy of the certificates of insurance shall be submitted to the Commissioner at the address of the Department set forth in the Notice Section of the Provider Agreement. Both submissions must be made at least ten (10) days before work is begun and at least ten (10) days before each Additional Term. The City, in its sole discretion, may waive the ten (10) day requirement for advance documentation of coverage in situations where such waiver will benefit the City, but under no circumstances shall Provider actually begin work (or continue work, in the case of an Additional Term) without providing the required evidence of insurance. The actual endorsement adding the City as an additional insured must specifically reference the City contract number and be submitted to the City's

Risk Manager at the above address. The City reserves the right to require Provider to furnish certified copies of the original policies of all insurance required under this Contract at any time upon ten (10) days written notice to Provider.

- 10.4 **Fidelity Bond.** When required by the City, Provider shall, at its sole cost and expense, obtain and maintain during the Initial Term and any Additional Term(s) of this Contract, a fidelity bond in an amount equal to the greater of (a) Ten Thousand Dollars (\$10,000) or (b) the amount specified in the Provider Agreement, covering Provider's employees who have financial responsibilities related to the receipt and disbursement of funds under this Contract. In lieu of a fidelity bond, Provider may obtain coverage for crime insurance with limits that are the greater of (a) ten thousand dollars (\$10,000) or (b) the amount specified in the Provider Agreement. The fidelity bond or crime insurance, whichever is obtained by Provider, shall name the City as a beneficiary. Evidence of the existence of the fidelity bond or crime insurance shall be submitted to the City prior to the commencement of Services in conformity with the requirements of Section 10.3 (Evidence of Insurance Coverage) above.

**ARTICLE XI: OWNERSHIP OF MATERIALS; PROPRIETARY INFORMATION;  
CONFIDENTIALITY**

- 11.1 **City Data.** Except as may be provided otherwise in the section of the Provider Agreement dealing with exceptions to these General Provisions, "City Data" shall include: any and all records, documents, and data furnished by the City to Provider in relation to the work required under the Contract; and all Deliverables, Materials, other work product(s), and items of work created by Provider as part of, or to perform work required under, the Contract. "City Data" shall not, however, include any information which: was known to Provider, prior to the commencement of its performance of the Contract, free of any obligation to keep it confidential; is proprietary to Provider; was generally known to the public at the time of receipt by Provider, or becomes generally known to the public through no act or omission of Provider; or was independently developed by Provider, unrelated to work performed for the City, and without knowledge or use of any information obtained from the City.

11.2 **Ownership of Materials.**

- (a) Subject to Applicable Law, all Materials shall be the sole and absolute property of the City and the City shall have title thereto and unrestricted use thereof. To the extent that any Materials relating to this Contract developed by or for Provider embody a copyrightable work, including, but not limited to, a "compilation" as that term is used in 17 U.S.C. §101, as amended from time to time, the City and Provider agree that such copyrightable work(s) shall be considered as one or more "works made for hire" by Provider for the City, as that term is used in 17 U.S.C. §§101 and 201(b), as amended from time to time. To the extent that any Materials

relating to this Contract developed by or for Provider embody one or more copyrightable works but are neither a "compilation" nor any other form of "work made for hire," Provider hereby assigns, and agrees to execute instruments evidencing such assignment, all copyrights in all of such works to the City. Provider shall cause all Materials developed or produced by Provider and any Subcontractor in connection with this Contract which embody a copyrightable work to bear the following designation: "©\_\_\_The City of Philadelphia" [complete then current year in blank line].

- (b) Without limitation of the foregoing, and in order to ensure continuity of care, medical records may be retained in the custody and control of Provider. The City shall be allowed unlimited access to all medical records, and if copies are required they shall be made at Provider's expense.
- (c) Provider shall make available to the City, upon the City's request, a copy of any Materials prepared by or for Provider in performance of this Contract, at no cost to the City.
- (d) All computer programs, tapes and software developed under this Contract shall be compatible with specifications set by the Department.
- (e) Provider hereby grants, and shall require its Subcontractors to grant, to the City a royalty-free, nonexclusive and irrevocable right to publish, translate, reproduce, deliver, perform and authorize others to do so, all studies, media, curricula, reports and other Materials not owned by the City under this Contract but which relate to the performance of the Services, Materials or this Contract; provided, however, that Provider shall not be required to grant such right to the City with respect to any Materials for which Provider would be liable to pay compensation to third parties because of such grant.
- (f) If federal or Commonwealth funds are used for the development of new software or for modifications of software, the Provider hereby grants to the Commonwealth of Pennsylvania and the federal government a royalty-free, nonexclusive and irrevocable license. Said license shall include the rights to reproduce, publish, or otherwise use, and to authorize others to use for State and Federal Government purposes, including software or modifications thereof and associated documentation designed, developed or installed with federal financial participation. Said license shall apply except when in the case that the software purchase is of proprietary operating/vendor software packages (e.g., ADABAS or TOTAL) which are provided at established catalog or market prices and sold or leased to the general public.

- 11.3 **Non-Disclosure and Destruction of Data.** Provider and its employees, agents, Subcontractors, suppliers, and any person or entity acting on its behalf (i) will maintain in strict confidence all City Data; (ii) will not, without the City's written permission, issue, divulge, disclose, publish, communicate, or distribute any City Data to any person or entity except as may be strictly necessary to perform under the Contract; (iii) will not, without the City's written permission, in any way use any City Data for their businesses, research, or other advantage or gain (except as may be strictly necessary to perform under the Contract), including, without limitation, any use of City Data in any presentation, demonstration, or proposal to perform work, to the City or to others, that may be conducted or created as part of their business activities or otherwise; and (iv) except as required by Applicable Law, will immediately upon termination of the Contract return all City Data to the City, destroy any and all copies of any City Data that are in their possession, whether on paper or in electronic or other form and, if requested by the City in writing, will certify in writing that there has been full compliance with this section.

#### ARTICLE XII: EVENTS OF DEFAULT

- 12.1 **Events of Default.** Each of the following shall be an Event of Default by Provider under this Contract:
- (a) Failure by Provider to comply with any provision of this Contract;
  - (b) Occurrence of an Event of Insolvency with respect to Provider;
  - (c) Falseness or inaccuracy of any warranty or representation of Provider contained in this Contract or in any other document submitted to the City by Provider;
  - (d) Misappropriation by Provider of any funds provided under this Contract or failure by Provider to notify the City upon discovery of any misappropriation;
  - (e) A violation of law which results in a guilty plea, a plea of nolo contendere, or conviction of a criminal offense by Provider, or any of its directors, employees, or agents (1) directly or indirectly relating to this Contract or the Services or Materials provided under this Contract, whether or not such offense is ultimately adjudged to have occurred; or (2) which adversely affects the performance of this Contract; or (3) in any factual circumstances bearing any substantial similarity to any of the Services under this Contract;
  - (f) Indictment or other issuance of formal criminal charges against Provider, its directors, employees or agents for any criminal offense or any other violation of Applicable Law directly relating to this Contract or Services or Materials, in any factual circumstances bearing any substantial

similarity to any of the Services under this Contract or which otherwise adversely affects Provider's performance of this Contract in accordance with its terms, whether or not such offense or violation is ultimately adjudged to have occurred;

- (g) Debarment or suspension of Provider or any agent, employee or Subcontractor of Provider under federal, state or local law, rule or regulation; and/or
- (h) Any act, omission, or misrepresentation which renders Provider ineligible for a City contract or renders the contract voidable under Philadelphia Code Chapter §17-1400.

12.2 **Notice and Cure.** The City agrees that the City will not exercise any right or remedy provided for in Section 13.1 (The City's Remedies) below because of any Event of Default unless the City has first given written notice of the Event of Default to Provider, and Provider, within a period of ten (10) days thereafter, or such additional cure period as the City may authorize, shall have failed to correct the Event of Default; provided, however, that no such notice from the City shall be required nor shall the City permit any period for cure if:

- (a) Provider has temporarily or permanently ceased providing Services and/or Materials;
- (b) The Event of Default creates an emergency which requires, as determined by the City in the City's sole discretion, immediate exercise of the City's rights or remedies;
- (c) The City has previously notified Provider in the preceding twelve (12) month period of any Event of Default under this Contract;
- (d) An Event of Default occurs as described in 12.1(b), (c), (d), or (f) above; or
- (e) Provider has failed to obtain or maintain the insurance or any bond required under this Contract.

Nothing contained in this Section shall limit the City's rights under Article XIII (Remedies) below.

### ARTICLE XIII: REMEDIES

#### 13.1 **The City's Remedies.**

- (a) In the event Provider has committed or permitted an Event of Default and has been notified thereof in accordance with Section 12.2 (Notice and Cure) above, then the City may, but shall not be obligated to, without

further notice to or demand on Provider and without waiving or releasing Provider from any of its obligations under this Contract:

- (1) perform (or cause a third party to perform) this Contract, in whole or in part, including, without limitation, obtaining or paying for any required insurance or performing other acts capable of performance by the City. Provider shall be liable to the City for all sums paid by the City and all expenses incurred by the City (or a third party) pursuant to this Section 13.1, together with interest at a rate equal to the Prime Rate as set by First Union National Bank or its successors, plus five (5) percent, provided, however, such interest rate and expense shall not exceed the highest legal rate permitted in the Commonwealth of Pennsylvania thereon from the date the City or its agent incurs such costs. The City shall not in any event be liable for inconvenience, expense or any other damage (including, but not limited to, consequential damages or lost profits) incurred by Provider by reason of the City's performance or paying such costs or expenses, and the obligations of Provider under this Contract shall not be altered or affected in any manner by the City's exercise of its rights under this Section 13.1 (The City's Remedies);
  - (2) withhold payment of, or offset against, any funds payable to or for the benefit of Provider;
  - (3) collect, foreclose or realize upon any bond, collateral, security or insurance provided by or on behalf of Provider;
  - (4) exercise any other right the City has or may have at law, in equity, or under this Contract.
- (b) In the event Provider has committed or permitted an Event of Default and has been notified thereof in accordance with Section 12.2 (Notice and Cure) above, then the City may, but shall not be obligated to, without waiving or releasing Provider from any of its obligations under this Contract, terminate or suspend this Contract in whole or in part, as set forth more fully in Article XIV (Transition, Termination, and Suspension) below. In the event of partial termination or suspension, Provider shall continue the performance of this Contract to the extent not terminated or suspended.
- (c) The Services and Materials purchased from Provider are unique, personal in nature and not otherwise readily available. Accordingly, Provider acknowledges that, in addition to all other remedies to which the City is entitled, the City shall have the right, to the fullest extent permitted under Applicable Law, to enforce the terms of this Contract without limitation, by a decree of specific performance or by injunction restraining a

violation, or attempted or threatened violation, of any provision of this Contract.

- 13.2 **Concurrent Pursuit of Remedies; No Waiver.** The City may exercise any or all of the remedies set forth in this Article XIII (Remedies), each of which may be pursued separately or in conjunction with such other remedies as the City in its sole discretion shall determine. No extension or indulgence granted by the City to Provider shall operate as a waiver of any of the City's rights in connection with this Contract. The rights and remedies of the City as described in this Article XIII (Remedies) and as described elsewhere in this Contract shall not be exclusive and are in addition to any other rights or remedies available to the City under this Contract at law or in equity.

#### **ARTICLE XIV: TRANSITION, TERMINATION AND SUSPENSION**

- 14.1 **Transition.** As provided for in Section 2.1, this Contract shall not exceed the term period of one (1) year. However, the City shall have the right at any point, in either whole or in part, to transition the Services and Materials covered under this Contract to another contract. At least sixty (60) days notice of the need to transition the Services and Materials covered under this Contract will be provided with a transition start date and transition end date.
- 14.2 **Termination or Suspension.** In addition to its rights under Articles VI (Compensation) and XIII (Remedies) above, the City shall have the right, in either whole or in part, to terminate this Contract or suspend Provider's performance under this Contract at any time during the Initial Term or any Additional Term(s) of this Contract, for any reason, including, without limitation, the convenience of the City. If this Contract is terminated, the City shall issue a written Termination Notice, which shall set forth the effective date of the termination. If this Contract is suspended, the City shall issue a written Suspension Notice, which shall set forth the effective date of the suspension.
- 14.3 **Provider Responsibilities Upon Transition, Termination or Suspension.**
- (a) Upon the City's transmission of a Transition Notice, Termination Notice or a Suspension Notice under any provision of this Contract, Provider and its agents, employees and Subcontractors, shall
- (1) take immediate action in an orderly manner to discontinue Services and Materials, and demobilize work forces to minimize the incurrence of costs; and
  - (2) upon request by the City by notice to Provider, collect, assemble and transmit to the City all Materials in such state of completion as may exist as of the effective date of the transition, termination or suspension. All such Materials shall be clearly labeled and indexed to the satisfaction of the Commissioner and delivered to



the Commissioner by Provider on or before the date for delivery of the Materials set forth in the Transition Notice, Termination Notice or Suspension Notice or, if no such date is set forth in the Termination Notice or Suspension Notice, then before the effective date of termination set forth in the Transition Notice, Termination Notice or Suspension Notice. Provider waives and releases any and all right to any retaining or charging liens or similar right or remedy in favor of Provider.

- (b) The City's transition, termination or suspension of this Contract shall not affect any obligations or liabilities of either Party accruing prior to the effective date of such termination or suspension.
- (c) There shall be no liability, cost or penalty to the City (including, but not limited to, consequential damages or lost profits) for transition, termination or suspension of this Contract.

**14.4 Payment of Provider upon Transition, Termination or Suspension.**

- (a) Upon termination or suspension of this Contract by the City for an Event of Default, Provider shall be entitled to payment of such an amount, to be determined by the City and subject to audit, as shall compensate it for the work satisfactorily performed prior to the termination date; provided, however, that:
  - (1) no allowance shall be included for termination expenses or for anticipated profits, unabsorbed or under absorbed overhead, or unperformed Services and Materials not satisfactorily delivered; and
  - (2) the City shall deduct from any amount due and payable to Provider prior to the termination date, but withheld or not paid, the total amount of fees, costs or additional expenses incurred by the City in order to satisfactorily complete the Services and Materials required to be performed by Provider under this Contract, including the expense of engaging another provider for this purpose, and such other damages, costs, losses and expenses of the City as may be incurred or result from such termination for an Event of Default.
- (b) In the event of transition, termination or suspension of this Contract by the City for the City's convenience, Provider shall be paid such an amount as shall compensate Provider for the portion of the Services satisfactorily performed and Materials satisfactorily delivered prior to the date of transition, termination or suspension. The City shall not pay Provider any amount for Provider's transition, termination or suspension expenses or anticipated profits, unabsorbed or underabsorbed overhead, or unperformed Services and Materials not satisfactorily delivered.

- 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”)

(collectively, "M/W/DSBE") in City contracts. The purpose of this Antidiscrimination Policy is to ensure that all businesses desiring to do business with the City have an equal opportunity to compete by creating access to the City's procurement process and meaningfully increasing opportunities for the participation by M/W/DSBEs in City contracts at all tiers of contracting, as prime contractors, Subcontractors and joint venture partners. In furtherance of this policy, the City will, from time to time, establish participation ranges for City Contracts and City Related Special Projects. Provider agrees to comply with the requirements of the Antidiscrimination Policy, and where participation ranges are established by OEO, Provider agrees, without limitation, to submit documentation responsive to each of the participation ranges established for the Contract.

- (a) **General Requirements.** In furtherance of the purposes of the Antidiscrimination Policy, Provider agrees to the following:
- (1) Provider, if it has achieved participation commitments with M/W/DSBEs, represents that it has entered into legally binding agreement(s) with M/W/DSBEs as participants under this Contract ("Participant Agreement(s)") for the services and in the dollar amount(s) and percentage(s) as specified in the M/W/DSBE Participation Exhibit to this Contract (the "Contract Commitment(s)").
  - (2) Provider shall secure the prior written approval of the Office of Economic Opportunity ("OEO"), before making any changes or modifications to any Contract Commitments made by Provider herein, including, without limitation, substitutions for its MBEs, WBEs and/or DSBES, changes or reductions in the services provided by its M/W/DSBE Subcontractors, or changes or reductions in the dollar and/or percentage amounts paid to its M/W/DSBE Subcontractors.
  - (3) Unless otherwise specified in a Participant Agreement as described in (a) (1) above, Provider shall, within five (5) business days after receipt of a payment from the City for work performed under the Contract, deliver to its M/W/DSBE Subcontractors the proportionate share of such payment for services performed by its M/W/DSBE Subcontractors. In connection with payment of its M/W/DSBE Subcontractors, Provider agrees to fully comply with the City's payment reporting process which may include the use of electronic payment verification systems.
  - (4) Provider shall, in the event of an increase in units of work and/or compensation under the Contract, increase its Contract Commitment(s) with its M/W/DSBE Subcontractors proportionately, which increase shall be reflected in the Participant

Agreement(s). OEO may from time to time request documentation from Provider evidencing compliance with this provision.

- (5) Provider shall submit, within the time frames prescribed by the City, any and all documentation the City may request, including, but not limited to, copies of Participant Agreements, participation summary reports, M/W/DSBE Subcontractor invoices, telephone logs and correspondence with M/W/DSBE Subcontractors, cancelled checks and certification of payments. Provider shall maintain all documentation related to this Section for a period of five (5) years from the date of Provider's receipt of final payment under the Contract.
- (6) Provider agrees that the City may, in its sole discretion, conduct periodic reviews to monitor Provider's compliance with the terms of this Antidiscrimination Policy.
- (7) Provider agrees that in the event the City determines that Provider has failed to comply with any of the requirements of this Antidiscrimination Policy, including substantial compliance with any Contract Commitment, the City may, in addition to any other rights and remedies it may have under the Contract which includes termination of the Contract, exercise one or more of the following remedies which shall be deemed cumulative and concurrent:
  - a) Debar Provider from proposing on and/or participating in any future contracts for a maximum period of three (3) years.
  - b) Recover as liquidated damages, i.e., without institution of a civil lawsuit, one percent (1%) of the total dollar amount of the Contract, which amount shall include any increase by way of amendments to the Contract, for each one percent (1%) (or fraction thereof) of the shortfall in Contract Commitment(s) to Provider's M/W/DSBE Subcontractors.
- (8) No privity of contract exists between the City and any M/W/DSBE Subcontractor identified herein and the City does not intend to give or confer upon any such M/W/DSBE Subcontractor(s) any legal rights or remedies in connection with the Subcontracted services pursuant to the Antidiscrimination Policy or by reason of this Contract except such rights or remedies that the M/W/DSBE Subcontractor may seek as a private cause of action under any legally binding contract to which it may be a party. The remedies enumerated above are for the sole benefit of the City and City's failure to enforce any provision or the City's indulgence of any non-compliance with any provision hereunder, shall not operate as

a waiver of any of the City's rights in connection with this Contract nor shall it give rise to actions by any third parties including identified M/W/DSBE Subcontractors.

(b) **Special Requirements Applicable to Non-Profit Providers.** In the event the Provider is a non-profit, the Contract may not be subject to M/W/DSBE participation ranges, but Provider shall demonstrate its compliance with the Antidiscrimination Policy in the following manner:

- (1) Provide to the OEO annually, a written diversity program identifying the race, gender and ethnic composition of its board of directors, its employment profile, a list of all vendors that the non-profit does business with in its M/W/DSBE procurement program (e.g., "M/W/DSBE Supplier Diversity Program") and a statement of the geographic area(s) where its services are most concentrated; and
- (2) Demonstrate, to the OEO's satisfaction, that the non-profit's organization makes appropriate efforts to maintain a diverse workforce and board of directors and operates a fair and effective M/W/DSBE procurement program.

(c) **Criminal Liability for Fraudulent or False Statements.** It is understood that false certification or representation made in connection with this Antidiscrimination Policy may be subject to prosecution under Title 18 Pa.C.S. Sections 4107.2 and 4904.

15.4 **Federal Laws.** Provider shall comply with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. Sections 2000d - 2000d.7), Section 504 of the Federal Rehabilitation Act of 1973 (29 U.S.C. Section 794), the Age Discrimination Act of 1975, (42 U.S.C. Sections 6101 - 6107), Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681), and 45 C.F.R. Part 92, as they may be amended from time to time, which together prohibit discrimination on the basis of race, color, national origin, sex, handicap, age and religion.

15.5 **Americans With Disabilities Act.** Provider understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Contract or from providing Services or Materials under this Contract. By executing and delivering this Contract, Provider covenants to comply with all provisions of the Americans With Disabilities Act (the "ADA"), 42 U.S.C. §§12101 - 12213, and all regulations promulgated thereunder, as the ADA and regulations may be amended from time to time, which are applicable (a) to Provider; (b) to the benefits, Services, Materials, activities, facilities and programs provided in connection with this Contract; (c) to the City, or the Commonwealth of Pennsylvania; (d) to the benefits, services, activities, facilities

and programs of the City or of the Commonwealth; and (e) if any funds under this Contract are provided by the federal government, which are applicable to the federal government and its funds, benefits, services, activities, facilities and programs applicable to this Contract. Without limiting the applicability of the preceding sentence, Provider shall comply with the "General Prohibitions Against Discrimination," 28 C.F.R. Part 35.130, and all other regulations promulgated under Title II of the ADA, as they may be amended from time to time, which are applicable to the benefits, services, facilities, programs and activities provided by the City through contracts with outside contractors.

15.6 **Northern Ireland.**

- (a) In accordance with Section 17-104 of the Code, Provider (including any parent company, subsidiary, exclusive distributor or company affiliated with Provider) (1) confirms that it does not have, and agrees that it will not have at any time during the Term of this Contract (including any extensions of the Term), any investments, licenses, franchises, management agreements or operations in Northern Ireland and (2) agrees that no product to be provided to the City under this Contract will originate in Northern Ireland, unless Provider has implemented the fair employment principles embodied in the MacBride Principles.
- (b) In the performance of this Contract, Provider agrees that it will not use any suppliers, Subcontractors or subconsultants at any tier (1) who have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises, management agreements or operations in Northern Ireland or (2) who will provide products originating in Northern Ireland unless said supplier, subconsultant or Subcontractor has implemented the fair employment principles embodied in the MacBride Principles.
- (c) Provider agrees to cooperate with the City's Director of Finance in any manner which the said Director deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of the Code. Provider expressly understands and agrees that any false certification or representation in connection with this Section 15.6 (Section 17-104 of the Code) and any failure to comply with the provisions of this Section 15.6 (the Section 17-104 of the Code) shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law (including, but not limited to, Section 17-104 of the Code) or in equity. In addition, Provider understands that false certification or representation is subject to prosecution under Title 18 Pa. C.S. Section 4904.

15.7 **Limited English Proficiency.** Provider understands and agrees that no individual who is limited in his or her English language proficiency shall be denied access to

Services provided under this Contract on the basis of that limitation. As a condition of accepting and executing this Contract, Provider shall comply with all provisions of Title VI of the Civil Rights Act of 1964, Executive Order No. 12250 of the President of the United States, publication of the Mayor of the City of Philadelphia's Executive Order entitled, "Access to Federally Funded City Programs and Activities for Individuals with Limited English Proficiency" dated September 29, 2001, and all regulations promulgated thereunder, as the Act and regulations may be amended from time to time, which are applicable (a) to Provider, (b) to the benefits, services, activities and programs provided in connection with this Contract, (c) to the City, or the Commonwealth of Pennsylvania, and (d) to the benefits, services, activities and programs of the City or of the Commonwealth, and if any funds under this Contract are provided by the federal government, which are applicable to the federal government and its benefits, services, activities and programs. Without limiting the applicability of the preceding sentence, Provider shall comply with 45 C.F.R. 80 et. seq. and all other regulations promulgated under Title VI of the Civil Rights Act of 1964, as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through contracts with outside contractors.

- 15.8 **Business, Corporate and Slavery Era Insurance Disclosure.** In accordance with Section 17-104 of the Code, the Provider, after execution of this Contract, will complete an affidavit certifying and representing that the Provider (including any parent company, subsidiary, exclusive distributor or company affiliated with Provider) has searched any and all records of the Provider or any predecessor company regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any slaves or slaveholders described in those records must be disclosed in the affidavit.

The Provider expressly understands and agrees that any false certification or representation in connection with this Section and/or any failure to comply with the provisions of this Section shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available in law (including, but not limited to, Section 17-104 of the Code) or equity and the Contract will be deemed voidable. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa. C.S. Section 4904.

15.9 **Protected Health Information**

- (a) The City of Philadelphia is a "Covered Entity" as defined in the regulations issued pursuant to the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The City's business activities include both (1) functions which make the City a Covered Entity, and, therefore, subject to HIPAA, and (2) functions that are not subject to HIPAA. In accordance with 45 CFR §164.105(a)(2)(iii)(D), the City has



designated certain departments and units of the City as health care components that must comply with HIPAA (“Covered Components”). The Covered Components of the City as of April 1, 2017 include: Ambulatory Health Services (a unit of the Philadelphia Department of Public Health (“PDPH”)); the Philadelphia Nursing Home (a unit of PDPH); the Sexually Transmitted Disease Control Program (a unit of PDPH); the Philadelphia Public Health Laboratory (a unit of PDPH); the Benefits Administration Unit of the Office of Human Resources; Emergency Medical Services (a unit of the Philadelphia Fire Department); and the Office of Behavioral Health and Intellectual disAbility Services. This list is subject to change, and any department or unit of the City that the City in the future determines to be a Covered Component under HIPAA shall be deemed to be a Covered Component for purposes of this Section 15.9.

- (b) To the extent (1) this Contract is entered into by the City for or on behalf of a Covered Component and/or requires the performance of services that will be delivered to or used by a Covered Component (whether or not the City department or unit through which the City entered the Contract is a Covered Component), and (2) Provider is a “Business Associate” of the City, as defined in 45 CFR §160.103, Provider shall comply with the City’s Terms and Conditions Relating to Protected Health Information (“City PHI Terms”) posted on the City’s website (at <https://secure.phila.gov/eContract/> under the “About” link). The City PHI Terms are hereby incorporated in this Section 15.9 as if fully set forth herein. (A printed version of the City PHI Terms, in the City’s sole discretion, also may be attached to this Contract.)

#### 15.10 Chapter 17-1300 of The Philadelphia Code: Philadelphia 21st Century

##### Minimum Wage and Benefits Standard

- (a) Provider is a “Service Contractor” in that by virtue of entering into this Contract, Provider has entered into a “Service Contract,” as those terms are defined in Section 17-1300 of the Code. Any Subcontract between Provider and a Subcontractor to perform work related to this Contract is a “Service Contract” and such Subcontractors are also “Service Contractors” for purposes of Chapter 17-1300 as are any Subcontract and Subcontractor at any tier providing Services under this Contract. (Chapter 17-1300 is accessible at <http://www.amlegal.com/library/pa/philadelphia.shtml>.) If such Service Contractor (Provider or any Subcontractor at any tier) is also an “Employer,” as that term is defined in § 17-1302 of the Code (more than 5 employees), and further described in § 17-1303 of the Code, then absent a waiver, during the Initial Term and any Additional Term, in addition to any applicable state and federal requirements, Provider shall

provide, and shall enter into Subcontracts and otherwise cause any Subcontractors at any tier that are also Service Contractors to provide their respective covered Employees (persons who perform work for a covered Employer that arises directly out of a Service Contract), with at least the minimum wage standard and minimum benefits standard, and required notice thereof, stated in Applicable Law and in Chapter 17-1300 of the Code. A summary of the current requirements is as follows:

(1) **Minimum Wage**

Commencing as of January 1, 2016, for wages to be provided on and after January 1 of each year during which the Initial Term and any Additional Term is in effect, Provider, and any Subcontractor at any tier, shall provide their covered Employees with an hourly wage, excluding benefits, that is no less than the result of multiplying \$12 by the then current Consumer Price Index Multiplier (CPI Multiplier) as annually adjusted. For purposes of determining the minimum hourly wage required, the CPI Multiplier is calculated annually by the City's Director of Finance by dividing the most recently published Consumer Price Index for all Urban Consumers All Items Index for Philadelphia, Pennsylvania, by the most recently published Consumer Price Index for all Urban Consumers (CPI-U). The then current minimum hourly wage applicable to City contractors and subcontractors will be posted on the City's website. As of January 1, 2017 that wage is \$12.10 per hour.

(2) **Minimum Benefits**

- (a) To the extent an Employer provides health benefits to any of its employees, then absent a waiver, during the Initial Term and any Additional Term, in addition to any applicable state and federal requirements, such Employer shall provide each full-time, non-temporary, non-seasonal covered Employee with health benefits at least as valuable as the least valuable health benefits that are provided to any other full-time employees of the Employer; and
- (b) provide to each full-time, non-temporary, non-seasonal covered Employee at least the minimum number of earned sick leave days required by Code Section 17-1305(2).

(3) **Change in Law**

- (c) Generally. Chapter 17-1300 of the Philadelphia Code requires that employers pay the higher of either: 150% of the federal minimum wage, or \$12 multiplied by the CPI Multiplier. To the extent a

change in law would require an increase in wages or benefits under Chapter 17-1300 (for example, an increase in the federal minimum wage to \$9.00/hour, which would increase the required City minimum wage to \$13.50 due to the Chapter's requirement of 150% of the federal minimum wage), such new requirement will take effect only at the start of an Additional Term, if any, commencing on or after the date of the new legal requirement.

- (b) If covered, absent a waiver, Provider shall promptly provide to the City all documents and information as the City may require verifying its compliance, and that of all Service Contractors providing Services under the Contract, with the requirements of Chapter 17-1300. Each covered Service Contractor shall notify each affected Employee what wages and benefits are required to be paid pursuant to Chapter 17-1300.
- (c) Absent a waiver, a Provider subject to Chapter 17-1300 shall comply with all of its requirements as they exist on the date when the Provider entered into this Contract with the City or into an amendment thereto. Provider shall take such steps as are necessary to notify its Subcontractors of these requirements, and to cause such Subcontractors to notify lower-tier Subcontractors that are Service Contractors of these requirements, including, without limitation, by incorporating this Section 15.10, with appropriate adjustments for the identity of the parties, in its Subcontracts with such Subcontractors. A Provider or Subcontractor at any tier subject to Chapter 17-1300 that fails to comply with these provisions may, after notice and hearing before the Director of Finance or such other officer or agency designated by the Mayor, be suspended from receiving financial assistance from the City or from bidding on and/or participating in future City contracts, whether as a prime contractor or a Subcontractor, for up to three (3) years. City Council may also initiate a similar suspension or debarment process. Such suspension or debarment shall be in addition to any of the other sanctions or remedies set forth in Chapter 17-1300 or this Contract.
- (d) Without limiting the applicability of Articles XI (Events of Default) and XII (Remedies) above, Provider's failure to comply, or the failure of Subcontractors at any tier to comply, with the requirements of Chapter 17-1300 shall constitute 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.
- (e) Provider's covered Employees shall be deemed third-party beneficiaries of Provider's representation, warranty, and covenant to the City under this Section 15.10 only, and the covered Employees of a Subcontractor at any tier that is also a covered Employer performing Services directly or

indirectly under a Subcontract at any tier shall be deemed third-party beneficiaries of their Employer's representation, warranty and covenant to Provider or such Subcontractors at any tier, as the case may be, under this Section.

- (f) The City may grant a partial or total waiver of Chapter 17-1300 based on specific stipulated reasons elaborated in Section 17-1304 of the Code. An overview offering guidance on the applicability of, and requirements placed on City contractors and Subcontractors by Chapter 17-1300 of the Code is available on the City's website at <https://secure.phila.gov/eContract/> under the "About" link; see "Minimum Wage and Equal Benefits Ordinances Impacting Some City Contractors."

15.11 **Chapter 17-1400 of the Philadelphia Code: Contributions and Other**

**Mandatory Disclosures.**

- (a) Provider confirms on behalf of itself and its Subcontractor(s) that no contribution(s) have been made, and agrees that none shall be made during the Term of this Contract, and any Additional Term, by Provider, any Subcontractor, or any party from which a contribution can be attributed to the Provider or Subcontractor, that would render the Provider or Subcontractor, as applicable, ineligible to apply for or enter into a Non-Competitively Bid Contract under the provisions of Code Sections 17-1404(1) and 17-1405; and that disclosures made as part of its application to receive a Non-Competitively Bid Contract contain no material misstatements or omissions. Breach of this covenant shall constitute an event of default and render the Contract voidable at the City's option, and, as to contributions attributable to Provider, shall make the Provider liable for liquidated damages to the City in the amount of ten percent (10%) of the maximum payments to the Provider allowed under the Contract, regardless whether actually paid. The City may exercise any or all of the remedies set forth in this Section 15.11 (Contributions and Other Mandatory Disclosures), each of which may be pursued separately or in conjunction with such other remedies as the City in its sole discretion shall determine. No extension or indulgence granted by the City to Provider shall operate as a waiver of any of the City's rights in connection with this Contract. The rights and remedies of the City as described in this Section 15.11 and as described elsewhere in this Contract shall not be exclusive and are in addition to any other rights or remedies available to the City under this Contract at law or in equity.
- (b) Provider shall, during the term of the Contract, and any Additional Term, and for one year thereafter, disclose any contribution of money or in-kind assistance the Provider, or any Subcontractor or Consultant utilized by

Provider in connection with this Contract, has made, or any individual or entity has made if such contributions can be attributed to Provider, or such Subcontractor or Consultant pursuant to the attribution rules of Section 17-1405, during such time period to a candidate for nomination or election to any public office in the Commonwealth of Pennsylvania or to an individual who holds such office, or to any political committee or state party in the Commonwealth of Pennsylvania, or to any group, committee or association organized in support of any such candidate, office holder, political committee or state party, and the date and amount of such contribution.

- (1) It shall not be a violation of Section 15.11(b) if Provider fails to disclose a contribution made by a Consultant because the Provider was unable to obtain such information from the Consultant, provided the Provider demonstrates that it used reasonable efforts to attempt to obtain such information, including, at a minimum:
  - (a) Entering into a written agreement with the Consultant for such Consultant's services, before the filing of the application for the Contract, and before the Consultant communicated with a City department or office, official or employee on behalf of the Provider;
  - (b) Including in such agreement a provision requiring the Consultant to provide the Provider in a timely manner with all information required to be disclosed under the provisions of Chapter 17-1400 of the Code, and providing, in effect, that the agreement will be terminated by the Provider if the Consultant fails to provide all required information on a timely basis and that no further payments, including payments owed for services performed prior to the date of termination, will be made to the Consultant by or on behalf of the Provider as of the date of such termination;
  - (c) Communicating regularly with the Consultant concerning the Consultant's obligations to provide timely information to permit the Provider to comply with the provisions of Chapter 17-1400; and
  - (d) Invoking the termination provisions of the written agreement in a full and timely manner.
- (c) The Provider shall, during the Term of the Contract, any Additional Term, and for one year thereafter, disclose the name and title of each City

officer or employee who, during such time period, asked the Provider, any officer, director or management employee of the Provider, or any Person representing the Provider, to give money, services, or any other thing of value (other than a Contribution as defined in Section 17-1401) to any Person, and any payment of money, provision of services, or any other thing of value (other than a Contribution as defined in Section 17-1401) given to any Person in response to any such request. The Provider shall also disclose the date of any such request, the amount requested, and the date and amount of any payment made in response to such request.

- (d) The Provider shall, during the Term, and any Additional Term, of the Contract, disclose the name and title of each City officer or employee who directly or indirectly advised the Provider, any officer, director or management employee of the Provider, or any Person representing the Provider that a particular Person could be used by the Provider to satisfy any goals established in the Contract for the participation of minority, women, disabled or disadvantaged business enterprises. The Provider shall also disclose the date the advice was provided, and the name of such particular Person.
- (e) The disclosures required by Sections 15.11(b), (c) and (d) shall be made utilizing the online disclosure update process through Provider's eContract Philly account which can be accessed on the City's website at [www.phila.gov/contracts](http://www.phila.gov/contracts) by clicking on eContract Philly. Such disclosures shall be made within five (5) business days of the action or event requiring Provider to update its disclosures. In the case of updates to political contributions made by Provider required by Section 15.11(b), the attribution rules of Section 17-1405 shall apply to determine what contributions must be disclosed under this provision as contributions of the Provider or of a Consultant. Provider is advised that any individual who submits an update on eContract Philly must be an authorized signatory of the Provider, authorized to make the required updated disclosures.
- (f) Reports generated automatically by the online process for the updated disclosures required by Sections 15.11(b), (c) and (d) will be automatically forwarded to the President and Chief Clerk of Council, and to the Mayor, Director of Finance, Procurement Department, and the Department of Records.

15.12 Executive Order 10-16: Gifts.

- (a) Pursuant to Executive Order 10-16, no City officer or employee may accept or receive a payment, subscription, advance, forbearance, rendering or deposit of money, services, entertainment, invitation, food, drink, travel, lodging or anything of value, unless consideration of equal or greater value is conveyed in return, from any person who, at time or within 12 months preceding the time a gift is received:
- 1) Is seeking, or has sought, official action from the officer or employee;
  - 2) has operations or activities regulated by the officer's or employee's agency, department, office, board or commission, or, in the case of gifts to members of the Mayor's Cabinet, has operations or activities that are regulated by any agency, department, office, board or commission within the Executive and Administrative branch; or
  - 3) has a a financial or other substantial interest in acts or omissions taken by the officer or employee, which the officer or employee is able to substantially affect by his or her official action.
- (b) Additionally, no City officer or employee shall accept or receive a gift of any value from any person that engages in lobbying on behalf of a principal for economic consideration, and is registered as such, pursuant to the requirements of Section 20-1202 of The Philadelphia Code, including any attorney at law while engaged in lobbying.
- (c) Provider understands and agrees that if it offers anything of value to a City official or employee under circumstances where the receipt of such item would violate the provisions of this Executive Order, Provider shall be subject to sanctions with respect to future City contracts. Such sanctions may range from disqualification from participation in a particular contract to debarment, depending on the nature of the violation.
- (d) All City employees presented with gifts or gratuities as indicated in Executive Order 10-16 have been instructed to report these actions to the appropriate authorities. All Providers, who are solicited for gifts or gratuities by City employees are urged to report these incidents to the appropriate authorities, including but not limited to, the Office of the Inspector General.

15.13 **Chapter 17-1900 of the Philadelphia Code: Equal Benefits Ordinance.**

- (a) Unless Provider is a government agency, this is a “Service Contract” as that term is defined in Section 17-1901(4) of the Code. If the Service Contract is in an amount in excess of \$250,000, then pursuant to Chapter 17-1900 of the Code, Provider shall, for any of its employees who reside in the City, or any of its employees who are non-residents subject to City wage tax under Section 19-1502(1)(b) of the Code, extend the same employment benefits the Provider extends to spouses of its employees to life partners of such employees. Provider certifies that (i) it is in compliance with the requirements of Chapter 17-1900, (ii) its employees have been notified of the employment benefits available to life partners pursuant to Chapter 17-1900, and (iii) such employment benefits are currently, or will be made available within the time required by Section 17-1902(2), or that the Provider does not provide employment benefits to the spouses of married employees.
- (b) Provider acknowledges and agrees that the following terms are included in this Contract:
- (1) Provider shall notify its employees of the employment benefits available to life partners pursuant to Chapter 17-1900 of the Code.
  - (2) Noncompliance by the Provider with the requirements of Chapter 17-1900 of the Code shall be a material breach of this Contract.
  - (3) Discrimination or retaliation by the Provider against any employee on account of having claimed a violation of Chapter 17-1900 shall be a material breach of this Contract.
  - (4) In addition to any other rights and remedies available to the City pursuant to this Contract at law or in equity, a material breach of this Contract related to Chapter 17-1900 may result in the suspension or debarment of Provider from participating in City contracts for up to three (3) years.
- (c) An overview offering guidance on the applicability of, and requirements placed on City contractors by Chapter 17-1900 of the Code is available on the City’s website (at <https://secure.phila.gov/eContract/> under the “About” link) (see “Minimum Wage and Equal Benefits Ordinances Impacting Some City Contractors”).



**ARTICLE XVI: MISCELLANEOUS**

- 16.1 **Governing Law.** This Contract shall be deemed to have been made in Philadelphia, Pennsylvania. This Contract and all disputes arising under this Contract shall be governed, interpreted, construed and determined in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to principles of Pennsylvania law concerning conflicts of laws.
- 16.2 **Amendments; Waiver.** Except as provided in Section 6.9 (Maximum Daily Rate, Days of Care or Units of Service) above, this Contract may not be amended, supplemented, altered, modified or waived, in whole or in part, except by a written Amendment signed by the Parties. Except to the extent that the Parties may have otherwise agreed in writing in an Amendment, no waiver, whether express or implied, by either Party of any provision of this Contract shall be deemed: (a) to be a waiver by that Party of any other provision in this Contract; (b) to be a waiver by that Party of any breach by the other Party of its obligations under this Contract; or (c) a course of conduct, dealing or performance with respect to any other matter arising hereunder. Any forbearance by a Party in seeking a remedy for any noncompliance or breach by the other Party shall not be deemed to be a waiver of rights and remedies with respect to such noncompliance or breach.
- 16.3 **Integration.** The Contract Documents forming this Contract, including the Provider Agreement and the General Provisions and the exhibits incorporated by reference therein, contain all the terms and conditions agreed upon by the Parties, constitute the entire agreement among the Parties pertaining to the subject matter hereof, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties (except to the extent specifically set forth herein). No other prior or contemporaneous agreements, covenants, representations or warranties, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any Party or to vary any of the terms contained in this Contract.
- 16.4 **No Joint Venture.** The Parties do not intend to create, and nothing contained in this Contract shall be construed as creating, a joint venture arrangement or partnership between the City and Provider with respect to the Services or the Materials.
- 16.5 **No Third Party Beneficiaries.** Nothing in this Contract, express or implied, is intended or shall be construed to confer upon or give to any Person, other than the Parties, any rights, remedies, or other benefits, including but not limited to third-party beneficiary rights, under or by reason of this Contract. This Contract shall not provide any third party with any remedy, claim, liability, reimbursement, cause of action or other right other than any such remedy, claim, etc. existing without reference to the term of or the existence of this Contract.

- 16.6 **Counterparts.** This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.
- 16.7 **Severability and Partial Invalidity.** The provisions of this Contract shall be severable. If any provision of this Contract or the application thereof for any reason or in any circumstance shall to any extent be held to be invalid or unenforceable, the remaining provisions of this Contract and the application of such provision to Persons, or circumstances, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.
- 16.8 **Survival.** Any and all provisions set forth in this Contract which, by its or their nature, would reasonably be expected to be performed after the termination of this Contract or are expressly stated as surviving or intended to survive, shall survive and be enforceable after such termination. Any and all liabilities, actual or contingent, which have arisen in connection with this Contract shall survive the expiration or earlier termination of this Contract, including without limitation: Provider's representations, warranties and covenants set forth in Article IV (Provider's Representations and Covenants) above; Provider's obligation to indemnify, defend and hold harmless the City, its officers, employees and agents as set forth in Section 9.2 (Indemnification) above; and the Parties' rights and obligations set forth in Article XI (Ownership of Materials; Proprietary Information; Confidentiality) above.
- 16.9 **Determination of Disputes.** Any dispute arising between the City and Provider under or with respect to either Party's covenants, obligations, powers, rights or duties under this Contract shall be submitted to and decided by the Commissioner or his or her designee. The Commissioner or his or her designee shall render and reduce to writing his or her decision, and furnish a copy to Provider by notice under this Contract. In connection with any dispute under this Contract, the Commissioner shall offer Provider an opportunity to offer evidence in support of its position concerning the subject matter of the dispute. This Section shall not be construed to limit the benefit to the City of Articles XII (Events of Default) or XIII (Remedies) above.
- 16.10 **Interpretation; Order of Precedence.** In the event of a conflict or inconsistency between the terms of the Contract Documents, the terms of the General Provisions shall govern, followed by the terms of the Provider Agreement, and lastly by any exhibit, attachment, or other document incorporated by reference into the Contract. The foregoing notwithstanding, the Provider Agreement may expressly supersede, create exception to, or otherwise modify the General Provisions by specific reference thereto in a section of the Provider Agreement created and labeled for such purpose.
- 16.11 **Headings.** The titles, captions or headings of Articles, Sections and Exhibits or schedules in this Contract are inserted for convenience of reference only; do not

in any way define, limit, describe or amplify the provisions of this Contract or the scope or intent of the provisions, and are not a part of this Contract.

- 16.12 **Statutory and other Citations.** All statutory or other citations of law referenced in the Contract shall refer to the statute referenced, as it may be amended or superseded from time to time.
- 16.13 **Days.** Any references to a number of days in this Contract shall mean calendar days unless this Contract specifies business days.
- 16.14 **Forum Selection Clause; Consent to Jurisdiction.** The Parties irrevocably consent and agree that any lawsuit, action, claim, or legal proceeding involving, directly or indirectly, any matter arising out of or related to this Contract, or the relationship created or evidenced thereby, shall be brought exclusively in the United States District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Philadelphia County. It is the express intent of the Parties that jurisdiction over any lawsuit, action, claim, or legal proceeding shall lie exclusively in either of these two (2) forums. The Parties further irrevocably consent and agree not to raise any objection to any lawsuit, action, claim, or legal proceeding which is brought in either of these two (2) forums on grounds of venue or *forum non conveniens*, and the Parties expressly consent to the jurisdiction and venue of these two (2) forums. The Parties further agree that service of original process in any such lawsuit, action, claim, or legal proceeding may be duly effected by mailing a copy thereof, by certified mail, postage prepaid to the addresses specified in Section 5.1 Notice of the Provider Agreement.
- 16.15 **Waiver of Jury Trial.** Provider hereby waives trial by jury in any legal proceeding in which the City is a party and which involves, directly or indirectly, any matter (whether sounding in tort, contract or otherwise) in any way arising out of or related to this Contract or the relationship created or evidenced hereby. This provision is a material consideration upon which the City relied in entering into this Contract.
- 16.16 **Notices.** All notices, demands, requests, waivers, consents, approvals or other communications which are required or may be given under this Contract shall be in writing and shall be deemed to have been duly made (a) on the date received or refused if delivered by hand with receipt given or refused; (b) on the next business day if delivered by a nationally recognized overnight courier service (e.g., Federal Express or United Parcel Service); (c) on the date confirmed for receipt by facsimile if delivered by facsimile; (d) on the date of receipt or refusal of delivery if sent by certified or registered United States mail, return receipt requested; or (e) on the date confirmed for receipt by electronic mail if delivered by electronic mail. In each case notices shall be sent to the addresses set forth in Section 5.1 of the Provider Agreement, or to such other address as either Party may specify to the other by a notice complying with the terms of this Section 16.16.

16.17 **E-signatures.** DHS is increasing its administrative efficiency through the use of electronic signature technology.

- (a) **Technology Changes.** As updates become necessary, the Department will continue to notify providers of technology requirement changes through the use of the Department Extranet and/or any other established means of communication identified by the Department.
- (b) **Electronic Submissions.** Submission of electronic invoices and documents shall be considered binding and have the full and same effect as a signed paper submission. By submitting an invoice or document electronically Provider certifies that the information in that invoice or document is true and correct to the best of Provider's knowledge, information, and belief, and that the submission constitutes Provider's signature and certification as if it were physically written.
- (c) **Breach.** Failure to comply with any DHS e-signature technology requirements (including, but not limited to the use of [www.phila.gov/contracts](http://www.phila.gov/contracts) and eContract Philly) may result in a financial penalty and/or a finding that an Event of Default has occurred.

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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 | jamato@chs-adphila.org     |
| Franz Fruehwald | Chief Financial Officer               | ffruehwald@chs-adphila.org |

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)

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

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| CONTRACT SUMMARY AND ENDORSEMENT   |              |      |                    |                               |                      | DATE                      | 9/18/2017                    |
|--|--------------|------|--------------------|-------------------------------|----------------------|---------------------------|------------------------------|
| 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<br>Catholic Social Services   |              |      | FINANCE CONTR. NO. |                               | LAW DEPT. NO.        |                           |                              |
|  |              |      | 16 20030           |                               | 16 20030 04          |                           |                              |
| DESCRIPTION Placement Services   |              |      | AMT. OF CONTRACT   |                               | ANN. SURETY BOND     |                           |                              |
|  |              |      | \$43,178,007.23    |                               |                      |                           |                              |
|  |              |      | PERIOD COVERED     |                               | 7/1/2015 - 6/30/2018 |                           |                              |
| <b>ENDORSEMENT</b>   |              |      |                    |                               |                      |                           |                              |
| OFFICE OF THE DIRECTOR OF FINANCE-ACCOUNTING DIVISION  |              |      |                    | OFFICE OF THE CITY CONTROLLER |                      |                           |                              |
| Examined:<br>Pat Preston   |              |      |                    | Examined:                     |                      |                           |                              |
| PP 9-1-17  |              |      |                    |                               |                      |                           |                              |
| (For the Director of Finance)  |              |      |                    | (Date)                        |                      | (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:   |              |      |                    |                               |                      |                           |                              |
| Alfred P. Halverson  |              |      |                    | 09-19-17                      |                      |                           |                              |
| (For the Director of Finance)  |              |      |                    | (Date)                        |                      | (For the City Controller) |                              |
|  |              |      |                    |                               |                      |                           |                              |
| 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            | \$3,300,925.80               |
| 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            | \$105,936.00                 |
| 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:<br>Contract increased to \$43,178,007.23.<br>Contract extended to 6/30/2018.  |              |      |                    |                               |                      |                           |                              |
| Amendment  |              |      |                    |                               |                      | Page 1 of 1               |                              |

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| CONTRACT SUMMARY AND ENDORSEMENT   |              |      |         |                               |       |                           | DATE                         | 9/15/2017 |
|--|--------------|------|---------|-------------------------------|-------|---------------------------|------------------------------|-----------|
| 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<br>Catholic Social Services   |              |      |         | FINANCE CONTR. NO.            |       | LAW DEPT. NO.             |                              |           |
|  |              |      |         | 16 20030                      |       | 16 20030 04               |                              |           |
|  |              |      |         | AML OF CONTRACT               |       | ANN. SURETY BOND          |                              |           |
|  |              |      |         | \$43,178,007.23               |       |                           |                              |           |
| DESCRIPTION Placement Services   |              |      |         | PERIOD COVERED                |       | 7/1/2015 - 6/30/2018      |                              |           |
| ENDORSEMENT  |              |      |         |                               |       |                           |                              |           |
| OFFICE OF THE DIRECTOR OF FINANCE-ACCOUNTING DIVISION  |              |      |         | OFFICE OF THE CITY CONTROLLER |       |                           |                              |           |
| Examined:<br>Pat Preston   |              |      |         | Examined:                     |       |                           |                              |           |
| PP 09/15/17  |              |      |         |                               |       |                           |                              |           |
| (For the Director of Finance)  |              |      |         | (Date)                        |       | (For the City Controller) |                              |           |
|  |              |      |         | (Date)                        |       | (Date)                    |                              |           |
| 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:   |              |      |         |                               |       |                           |                              |           |
| O. P. Halpin   |              |      |         | 09-19-17                      |       |                           |                              |           |
| (For the Director of Finance)  |              |      |         | (Date)                        |       | (For the City Controller) |                              |           |
|  |              |      |         | (Date)                        |       | (Date)                    |                              |           |
| 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.<br>Contract increased to \$43,178,007.23.<br>Contract extended to 6/30/2018.  |              |      |         |                               |       |                           |                              |           |
|  |              |      |         |                               |       |                           | Page 1 of 1                  |           |



**Certificate Of Completion**

|  |   |
|--|---|
| Envelope Id: 421E34E1110943FD947827B82F8F845C                          | Status: Completed   |
| Subject: Contract #16-20030-04 Catholic Social Services 290 SAA (Corp) |   |
| Source Envelope:   |   |
| Document Pages: 118  | Signatures: 4   |
| Supplemental Document Pages: 0   | Initials: 0   |
| Certificate Pages: 4   |   |
| AutoNav: Enabled   | Payments: 0   |
| Envelopeld Stamping: Enabled   |   |
| Time Zone: (UTC-05:00) Eastern Time (US & Canada)                      |   |
|  | Envelope Originator:<br>City of Philadelphia - Department of Human Services                                     |
|  | City Hall, Room 215<br>Philadelphia, PA 19107<br>dhs.contractinitiation@phila.gov<br>IP Address: 170.115.248.25 |

**Record Tracking**

|                       |  |                    |
|-----------------------|--|--------------------|
| Status: Original      | Holder: City of Philadelphia - Department of Human Service | Location: DocuSign |
| 8/15/2017 12:03:55 PM | dhs.contractinitiation@phila.gov                           |                    |

**Signer Events**

James Amato  
Jamato@chs-adphila.org  
Security Level: Email, Account Authentication (None), Access Code

**Signature**

DocuSigned by:  
*James Amato*  
0C8D462686944FD...

**Timestamp**

Sent: 8/15/2017 12:06:38 PM  
Viewed: 8/15/2017 1:02:04 PM  
Signed: 8/16/2017 12:41:46 PM

Using IP Address: 72.237.20.231

**Electronic Record and Signature Disclosure:**  
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ID: 5b7f6f70-14ba-4dd4-8743-90cc1f43b2ca

Franz Fruehwald  
ffruehwald@chs-adphila.org  
Security Level: Email, Account Authentication (None), Access Code

DocuSigned by:  
*Franz Fruehwald*  
DH26312AM334D4...

Sent: 8/16/2017 12:41:49 PM  
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Signed: 8/16/2017 1:47:38 PM

Using IP Address: 72.237.20.231

**Electronic Record and Signature Disclosure:**  
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ID: 1af965ac-0460-43dc-8d54-7d8ebc90dd1b

Terri Scarbo  
Terri.Scarbo@phila.gov  
Security Level: Email, Account Authentication (None)

**Completed**

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Viewed: 8/16/2017 2:00:24 PM  
Signed: 8/16/2017 2:01:13 PM

Using IP Address: 170.115.248.24

**Electronic Record and Signature Disclosure:**  
Accepted: 8/16/2017 2:00:24 PM  
ID: a75eb74a-1ee3-468e-9d9a-e3bce956262b

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


DocuSigned by:  
*Crystal T. Espanol*  
7777B8C1F7E44C9...

Sent: 8/16/2017 2:01:16 PM  
Viewed: 8/18/2017 9:54:00 AM  
Signed: 8/18/2017 10:04:54 AM

Using IP Address: 170.115.248.25

**Electronic Record and Signature Disclosure:**  
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ID: d0cdd1ca-dfd6-4d41-ab14-e1ecc0ad6da9



| Signer Events   | Signature   | Timestamp   |
|---|---|---|
| Finance Contract Certification<br>Finance.ContractCertification@phila.gov<br>Security Level: Email, Account Authentication (None) | <b>Completed</b><br><br>Using IP Address: 170.115.248.25  | Sent: 8/18/2017 10:04:57 AM<br>Viewed: 9/15/2017 3:22:07 PM<br>Signed: 9/19/2017 1:57:04 PM |
| <b>Electronic Record and Signature Disclosure:</b><br>Accepted: 9/19/2017 1:51:12 PM<br>ID: 78d572d1-9af6-4f15-9404-e43b371a878f  |   |   |
| Jacqueline Dunn<br>Jacqueline.Dunn@phila.gov<br>City of Philadelphia<br>Security Level: Email, Account Authentication (None)      | <b>Completed</b><br><br>Using IP Address: 170.115.248.25  | Sent: 9/19/2017 1:57:08 PM<br>Viewed: 9/19/2017 6:18:26 PM<br>Signed: 9/19/2017 6:18:32 PM  |
| <b>Electronic Record and Signature Disclosure:</b><br>Not Offered via DocuSign  |   |   |
| Cynthia Figueroa<br>cynthia.figueroa@phila.gov<br>Security Level: Email, Account Authentication (None)                            | <br><br>Using IP Address: 170.115.248.24 | Sent: 9/19/2017 6:18:35 PM<br>Viewed: 9/20/2017 2:08:49 PM<br>Signed: 9/20/2017 2:09:25 PM  |
| <b>Electronic Record and Signature Disclosure:</b><br>Not Offered via DocuSign  |   |   |
| Terri Scarbo<br>Terri.Scarbo@phila.gov<br>Security Level: Email, Account Authentication (None)                                    | <b>Completed</b><br><br>Using IP Address: 170.115.248.24  | Sent: 9/20/2017 2:09:29 PM<br>Viewed: 9/20/2017 2:26:05 PM<br>Signed: 9/20/2017 2:26:06 PM  |
| <b>Electronic Record and Signature Disclosure:</b><br>Accepted: 9/20/2017 2:26:05 PM<br>ID: 6d0bb28e-44c6-47ea-a692-fe4d7b5c47b1  |   |   |
| Kathleen Rush<br>Kathleen.Rush@phila.gov<br>Security Level: Email, Account Authentication (None)                                  | <b>Completed</b><br><br>Using IP Address: 170.115.248.24  | Sent: 9/20/2017 2:26:11 PM<br>Viewed: 9/20/2017 2:44:44 PM<br>Signed: 9/20/2017 2:47:08 PM  |
| <b>Electronic Record and Signature Disclosure:</b><br>Accepted: 2/16/2017 8:26:55 AM<br>ID: 0dce6c59-8808-429a-a117-b2f1e6a3bb27  |   |   |

| In Person Signer Events  | Signature   | Timestamp                   |
|--|---|-----------------------------|
| <b>Editor Delivery Events</b>  | <b>Status</b>   | <b>Timestamp</b>            |
| <b>Agent Delivery Events</b>   | <b>Status</b>   | <b>Timestamp</b>            |
| <b>Intermediary Delivery Events</b>  | <b>Status</b>   | <b>Timestamp</b>            |
| <b>Certified Delivery Events</b>   | <b>Status</b>   | <b>Timestamp</b>            |
| <b>Carbon Copy Events</b>  | <b>Status</b>   | <b>Timestamp</b>            |
| Terri Scarbo<br>Terri.Scarbo@phila.gov<br>Security Level: Email, Account Authentication (None) | <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <b>COPIED</b> </div> | Sent: 8/15/2017 12:06:37 PM |
| <b>Electronic Record and Signature Disclosure:</b>   |   |                             |

| Carbon Copy Events | Status | Timestamp |
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|  |               |  |
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| Accepted: 8/16/2017 2:00:24 PM<br>ID: a75eb74a-1ee3-468e-9d9a-e3bce956262b<br><br>Kumar Roy<br>kumar.roy@phila.gov<br>Security Level: Email, Account Authentication (None)<br><b>Electronic Record and Signature Disclosure:</b><br>Not Offered via DocuSign | <b>COPIED</b> | Sent: 8/16/2017 1:47:41 PM<br>Viewed: 8/16/2017 1:54:17 PM |
| Rita Cairy<br>rita.cairy@phila.gov<br>Security Level: Email, Account Authentication (None)<br><b>Electronic Record and Signature Disclosure:</b><br>Not Offered via DocuSign   | <b>COPIED</b> | Sent: 8/16/2017 1:47:41 PM                                 |
| Carolyn Pownall<br>Carolyn.Pownall@phila.gov<br>Security Level: Email, Account Authentication (None)<br><b>Electronic Record and Signature Disclosure:</b><br>Not Offered via DocuSign   | <b>COPIED</b> | Sent: 9/20/2017 2:47:11 PM<br>Viewed: 9/20/2017 3:45:58 PM |
| Controller Contracts<br>Controller.Contracts@phila.gov<br>Security Level: Email, Account Authentication (None)<br><b>Electronic Record and Signature Disclosure:</b><br>Not Offered via DocuSign   | <b>COPIED</b> | Sent: 9/20/2017 2:47:11 PM                                 |
| Linda Chaney<br>linda.chaney@phila.gov<br>Security Level: Email, Account Authentication (None)<br><b>Electronic Record and Signature Disclosure:</b><br>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 |
| Certified Delivered | Security Checked | 9/20/2017 2:47:12 PM |
| 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 |
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Electronic Record and Signature Disclosure created on: 9/5/2016 1:40:22 AM

Case 2:18-cv-02075-PBT Document 13-6 Filed 06/07/18 Page 4 of 28  
Parties agreed to: James Amato, Franz Fruhwald, Terri Scarbo, Crystal T. Espanol, Finance Contract Certification, Terri Scarbo, Kathleen Rush, Terri Scarbo

This Electronic Records and Signature Disclosure is provided by the City of Philadelphia in connection with a pending electronic transaction. Any party proceeding with such electronic transaction is deemed to have consented i) to conduct the transaction by electronic means; and ii) where execution of an agreement is required, to the use of electronic signatures using the method provided in the agreement. Questions regarding this Electronic Records and Signature Disclosure should be addressed to [econtractphilly@phila.gov](mailto:econtractphilly@phila.gov).



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 provide 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,



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

**From:** Jonathan Janiszewski [<mailto:Jonathan.Janiszewski@Phila.gov>]  
**Sent:** Tuesday, June 5, 2018 12:13 PM  
**To:** Lori Windham <[lwindham@becketlaw.org](mailto:lwindham@becketlaw.org)>  
**Subject:** Catholic Social Services - DHS Continuing Contract Relations

Dear Ms. Windham:

I am the attorney currently serving as head of the City of Philadelphia Law Department's Finance and Contracts Division. I represent the City of Philadelphia and, in this instance, its Department of Human Services ("DHS"), in business dealings. I understand from my colleague, Benjamin Field, that you have requested any communications from DHS and related to Catholic Social Services ("CSS") flow through you. Consequently, I have copied a message for your client, Mr. Amato, below. Please forward it to him for his urgent review. The message pertains to the maintenance of on-going services for children in the custody of DHS and in the care of CSS.

I look forward to working with you and appreciate your assistance.

-----Begin Forwarded Message-----

Dear Mr. Amato:

Throughout our respective histories, Catholic Social Services ("CSS") and the City of Philadelphia Department of Human Services ("DHS") have always agreed on one thing: we are here to nurture, guide, and protect the children and families we serve. Although recent circumstances have highlighted differences in our respective philosophies regarding certification of same-sex foster and adoptive parents, and while DHS makes no concession regarding its position in that matter, I write to you in our mutual spirit of service to propose interim measures that will enable CSS and DHS to ensure that no child or family suffers while we resolve our differences.

The City's fiscal year 2018 closes on June 30, 2018 and the current contract between CSS and DHS then comes to its natural end. However, when the current contract ends, CSS will still have in its care children placed in the custody of DHS. In order to minimize disruption for those children and families, DHS is prepared to offer CSS a new one-year contract to continue its work on behalf of these children and families. The new contract would: 1) acknowledge our current dispute; 2) enable DHS to continue payment of CSS for the administration and maintenance of existing foster homes where children in DHS's care reside; 3) allow for referrals of new child foster care placements in limited circumstances where a CSS placement is in the best interests of the child, such as when a child shares a prior relationship with the foster or pre-adoptive parents, or when siblings should be placed together; and 4) provide time for the orderly transition of services, should that become necessary.

Please know that DHS values its historic relationship with CSS, and if CSS is able to find a way to approve same-sex foster and adoptive parents, consistent with current law and city policy, DHS would offer CSS a new contract that allows CSS to continue to select and recruit new foster parents, and to continue to receive new referrals. However, if CSS is unable to do so, DHS still intends to send you an official award letter to prepare for a new contract under the terms described above. You should anticipate receiving DHS's official award letter later this week. Please contact me if you wish to discuss the matter.

Thank you for your commitment to service, and your understanding.

Sincerely,

*Jon*



Jonathan R. Janiszewski, Esq.  
Divisional Deputy City Solicitor  
Finance & Contracts Division  
Commercial Law Unit  
City of Philadelphia Law Department  
One Parkway Building  
1515 Arch Street, 17th Floor  
Philadelphia, PA 19102

Phone: (215) 683-5035

Fax: (215) 683-5069



CITY OF PHILADELPHIA

June 11, 2018

James Amato, Secretary, Catholic Human Services
Catholic Social Services, Archdiocese of Philadelphia
222 North 17th Street, Room 328
Philadelphia, PA 19103

Re: FY 2019 Award Letter (290) PA
Child Welfare Operations
Placement Services (Foster/Kinship Care), \$2,400,000.00

DEPARTMENT OF HUMAN SERVICES
1515 Arch Street, Philadelphia, PA 19102
215-683-4DHS (4347)
Commissioner
CYNTHIA F. FIGUEROA
First Deputy Commissioner
JESSICA S. SHAPIRO
Deputy Commissioners
Child Welfare Operations
KIMBERLY ALI
Finance
CHRISTOPHER SIMI
Juvenile Justice Services
TIMENE FARLOW
Administration and Management
VONGVILAY MOUNELASY
Performance Management and Technology
LIZA RODRIGUEZ
Prevention
WALESKA MALDONADO

Dear Secretary:

This letter is to provide you with information on the City of Philadelphia Department of Human Services' (hereinafter referred to as "DHS" or "Department") contract process for Fiscal Year 2019 beginning on July 1, 2018. The funding levels referenced above reflect the Department's budget constraints and priorities.

Consistent with the City's policy of non-discrimination and its prior notices to you to the same effect, the scope of the FY 19 contract will change. DHS will continue to make payment to CSS for the administration and maintenance of existing foster homes where children in DHS's care reside.

Additionally, the FY 19 contract will allow for referrals of new child foster care placements only in limited authorized circumstances where a CSS placement is in the best interests of the child, such as when a child shares a prior relationship with the foster or pre-adoptive parents, or when siblings should be placed together.

The new contract will also provide time for the orderly transition of services, should that become necessary. The contract amount has been adjusted to reflect the volume of services projected under the new scope of the contract.

However, please be advised that the authorized levels of service and the continued funding of contracts is contingent upon the availability of proposed City, State and Federal funds and this award letter does not guarantee your agency a contract with DHS.

Starting in FY2019, all Foster Care/Kinship Care services rate sheets will have a different look. The new rate sheet will separate all Foster Care/Kinship Care service rates into maintenance and administrative costs for your reference. Please note that these rates are subject to change.

Please be advised that DHS is not obligated to make any payment to your agency until after the execution and conformance of a formal written contract, containing such terms and conditions as are satisfactory to DHS; and provided that your agency has satisfied any conditions precedent to the start of work (e.g. insurance certificates or licenses) as required by the contract. Please review this letter and its attachments thoroughly as some of the information requested will be used to develop your agency's contract. If you have any questions about the content of this letter or its attachments, please contact your contract Conformance Manager. To obtain your Conformance Manager's contact information, you may call the Director of Contracts & Audit, Robert Hodge, at (215) 683-4200. Please email any questions to dhscontracts@phila.gov.

If you have a question, complaint, concern, or suggestion about DHS and its operations call the Commissioner's Action Response Office (CARO) at 215-683-6000 or visit our website: dhs.phila.gov and click on the "suggestions" link.

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On behalf of the Department and the children and families we serve, I would like to express our thanks and appreciation for your commitment to provide high quality and effective services to Philadelphia's children and families. During this changing and challenging time the strength of the public/private partnership is critical as we work together toward the common goal of ensuring the overall safety and well-being of children and families in our City.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Cynthia F. Figueroa', with a long horizontal flourish extending to the right.

Cynthia F. Figueroa  
Commissioner

cc: Lori Windham, Esquire  
Jonathan Janiszewski, Esquire  
Kimberly Ali, Deputy Commissioner  
Robert Hodge, Director of Contracts and Audit  
Rita Cairry, Contracts Administrator

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If you have a question, complaint, concern, or suggestion about DHS and its operations  
call the Commissioner's Action Response Office (CARO) at 215-683-6000  
or visit our website: [dhs.phila.gov](http://dhs.phila.gov) and click on the "suggestions" link.

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EXHIBIT PA-1  
FISCAL YEAR 2019  
Catholic Social Services  
6606

| Rate Type | Service Code | Service Description (Rates Paid on a Per Diem Basis Unless Otherwise Noted) | FY19 Maximum Rate (Q1-Q2) | FY19 Maximum Rate (Q3-Q4) | FY19 Administrative Portion (All Quarters) | FY19 Maintenance Portion (Q1-Q2)     | FY19 Maintenance Portion (Q3-Q4)     |
|-----------|--------------|---|---------------------------|---------------------------|--|--------------------------------------|--------------------------------------|
| CUA       | E1GG         | FFC-Emergency Shelter   | \$ 52.63                  | \$ 53.63                  | \$ 23.00                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | FFC-Emergency Shelter 13+   | \$ 62.63                  | \$ 63.63                  | \$ 23.00                                   | \$ 39.63                             | \$ 40.63                             |
|           | J14G         | FFC-Respite   | \$ -                      | \$ -                      | Immediately preceding placement rate       | Immediately preceding placement rate | Immediately preceding placement rate |
|           | J1GG         | FFC-General   | \$ 52.63                  | \$ 53.63                  | \$ 23.00                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | FFC-General 13+   | \$ 62.63                  | \$ 63.63                  | \$ 23.00                                   | \$ 39.63                             | \$ 40.63                             |
|           | J1GW         | FFC-College Rate  | \$ 33.13                  | \$ 34.13                  | \$ -                                       | \$ 33.13                             | \$ 34.13                             |
|           | J1JG         | FFC-Maternity   | \$ 52.63                  | \$ 53.63                  | \$ 23.00                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | FFC-Maternity 13+   | \$ 62.63                  | \$ 63.63                  | \$ 23.00                                   | \$ 39.63                             | \$ 40.63                             |
|           | J1MR         | FFC-Medical   | \$ 52.63                  | \$ 53.63                  | \$ 23.00                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | FFC-Medical 13+   | \$ 62.63                  | \$ 63.63                  | \$ 23.00                                   | \$ 39.63                             | \$ 40.63                             |
|           | J1WC         | FFC-M/B-Baby  | \$ -                      | \$ -                      | \$ -                                       | \$ -                                 | \$ -                                 |
|           | J1WP         | FFC-M/B-Mother  | \$ 64.63                  | \$ 65.63                  | \$ 23.00                                   | \$ 41.63                             | \$ 42.63                             |
|           |              | FFC-M/B-Mother (2B)   | \$ 73.13                  | \$ 74.13                  | \$ 23.00                                   | \$ 50.13                             | \$ 51.13                             |
|           |              | FFC-M/B-Mother (2B) 13+   | \$ 83.13                  | \$ 84.13                  | \$ 23.00                                   | \$ 60.13                             | \$ 61.13                             |
|           |              | FFC-M/B-Mother (3B)   | \$ 81.63                  | \$ 82.63                  | \$ 23.00                                   | \$ 58.63                             | \$ 59.63                             |
|           |              | FFC-M/B-Mother (3B) 13+   | \$ 91.63                  | \$ 92.63                  | \$ 23.00                                   | \$ 68.63                             | \$ 69.63                             |
|           |              | FFC-M/B-Mother 13+  | \$ 74.63                  | \$ 75.63                  | \$ 23.00                                   | \$ 51.63                             | \$ 52.63                             |
|           | Z1DC         | KIN-Emergency-M/B-Baby  | \$ -                      | \$ -                      | \$ -                                       | \$ -                                 | \$ -                                 |
|           | Z1DG         | KIN-Emergency   | \$ 52.63                  | \$ 53.63                  | \$ 23.00                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | KIN-Emergency 13+   | \$ 62.63                  | \$ 63.63                  | \$ 23.00                                   | \$ 39.63                             | \$ 40.63                             |
|           | Z1DP         | KIN-Emergency-M/B-Mother  | \$ 64.63                  | \$ 65.63                  | \$ 23.00                                   | \$ 41.63                             | \$ 42.63                             |
|           |              | KIN-Emergency-M/B-Mother (2B)   | \$ 73.13                  | \$ 74.13                  | \$ 23.00                                   | \$ 50.13                             | \$ 51.13                             |
|           |              | KIN-Emergency-M/B-Mother (2B) 13+   | \$ 83.13                  | \$ 84.13                  | \$ 23.00                                   | \$ 60.13                             | \$ 61.13                             |
|           |              | KIN-Emergency-M/B-Mother (3B)   | \$ 81.63                  | \$ 82.63                  | \$ 23.00                                   | \$ 58.63                             | \$ 59.63                             |
|           |              | KIN-Emergency-M/B-Mother (3B) 13+   | \$ 91.63                  | \$ 92.63                  | \$ 23.00                                   | \$ 68.63                             | \$ 69.63                             |
|           |              | KIN-Emergency-M/B-Mother 13+  | \$ 74.63                  | \$ 75.63                  | \$ 23.00                                   | \$ 51.63                             | \$ 52.63                             |
|           | Z1GG         | KIN-General   | \$ 52.63                  | \$ 53.63                  | \$ 23.00                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | KIN-General 13+   | \$ 62.63                  | \$ 63.63                  | \$ 23.00                                   | \$ 39.63                             | \$ 40.63                             |
|           | Z1GW         | KIN-College Rate  | \$ 33.13                  | \$ 34.13                  | \$ -                                       | \$ 33.13                             | \$ 34.13                             |
|           | Z1JG         | KIN-Maternity   | \$ 52.63                  | \$ 53.63                  | \$ 23.00                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | KIN-Maternity 13+   | \$ 62.63                  | \$ 63.63                  | \$ 23.00                                   | \$ 39.63                             | \$ 40.63                             |
|           | Z1MR         | KIN-Medical   | \$ 52.63                  | \$ 53.63                  | \$ 23.00                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | KIN-Medical 13+   | \$ 62.63                  | \$ 63.63                  | \$ 23.00                                   | \$ 39.63                             | \$ 40.63                             |
|           | Z1WC         | KIN-M/B-Baby  | \$ -                      | \$ -                      | \$ -                                       | \$ -                                 | \$ -                                 |
|           | Z1WP         | KIN-M/B-Mother  | \$ 64.63                  | \$ 65.63                  | \$ 23.00                                   | \$ 41.63                             | \$ 42.63                             |
|           |              | KIN-M/B-Mother (2B)   | \$ 73.13                  | \$ 74.13                  | \$ 23.00                                   | \$ 50.13                             | \$ 51.13                             |
|           |              | KIN-M/B-Mother (2B) 13+   | \$ 83.13                  | \$ 84.13                  | \$ 23.00                                   | \$ 60.13                             | \$ 61.13                             |
|           |              | KIN-M/B-Mother (3B)   | \$ 81.63                  | \$ 82.63                  | \$ 23.00                                   | \$ 58.63                             | \$ 59.63                             |
|           |              | KIN-M/B-Mother (3B) 13+   | \$ 91.63                  | \$ 92.63                  | \$ 23.00                                   | \$ 68.63                             | \$ 69.63                             |
|           |              | KIN-M/B-Mother 13+  | \$ 74.63                  | \$ 75.63                  | \$ 23.00                                   | \$ 51.63                             | \$ 52.63                             |
| DHS       | E11G         | FFC-Emergency Shelter   | \$ 59.12                  | \$ 60.12                  | \$ 29.49                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | FFC-Emergency Shelter 13+   | \$ 69.12                  | \$ 70.12                  | \$ 29.49                                   | \$ 39.63                             | \$ 40.63                             |
|           | J12G         | FFC-Level II  | \$ 59.12                  | \$ 60.12                  | \$ 29.49                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | FFC-Level II 13+  | \$ 69.12                  | \$ 70.12                  | \$ 29.49                                   | \$ 39.63                             | \$ 40.63                             |
|           | J14G         | FFC-Respite   | \$ -                      | \$ -                      | Immediately preceding placement rate       | Immediately preceding placement rate | Immediately preceding placement rate |
|           | J1GW         | FFC-College Rate  | \$ 33.13                  | \$ 34.13                  | \$ -                                       | \$ 33.13                             | \$ 34.13                             |
|           | J1JG         | FFC-Maternity   | \$ 47.12                  | \$ 48.12                  | \$ 17.49                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | FFC-Maternity 13+   | \$ 57.12                  | \$ 58.12                  | \$ 17.49                                   | \$ 39.63                             | \$ 40.63                             |
|           | J1MR         | FFC-Medical   | \$ 47.12                  | \$ 48.12                  | \$ 17.49                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | FFC-Medical 13+   | \$ 57.12                  | \$ 58.12                  | \$ 17.49                                   | \$ 39.63                             | \$ 40.63                             |
|           | J1UG         | SBH-Transition FFC  | \$ 88.77                  | \$ 89.77                  | No standard breakdown                      | No standard breakdown                | No standard breakdown                |
|           |              | SBH-Transition FFC 13+  | \$ 98.77                  | \$ 99.77                  | No standard breakdown                      | No standard breakdown                | No standard breakdown                |
|           | J1WC         | FFC-M/B-Baby  | \$ -                      | \$ -                      | \$ -                                       | \$ -                                 | \$ -                                 |
|           | J1WP         | FFC-M/B-Mother  | \$ 72.64                  | \$ 73.64                  | \$ 31.01                                   | \$ 41.63                             | \$ 42.63                             |
|           |              | FFC-M/B-Mother (2B)   | \$ 99.64                  | \$ 100.64                 | \$ 49.51                                   | \$ 50.13                             | \$ 51.13                             |
|           |              | FFC-M/B-Mother (2B) 13+   | \$ 109.64                 | \$ 110.64                 | \$ 49.51                                   | \$ 60.13                             | \$ 61.13                             |
|           |              | FFC-M/B-Mother (3B)   | \$ 126.64                 | \$ 127.64                 | \$ 68.01                                   | \$ 58.63                             | \$ 59.63                             |
|           |              | FFC-M/B-Mother (3B) 13+   | \$ 136.64                 | \$ 137.64                 | \$ 68.01                                   | \$ 68.63                             | \$ 69.63                             |
|           |              | FFC-M/B-Mother 13+  | \$ 82.64                  | \$ 83.64                  | \$ 31.01                                   | \$ 51.63                             | \$ 52.63                             |
|           | Z12G         | KIN-Level II  | \$ 59.12                  | \$ 60.12                  | \$ 29.49                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | KIN-Level II 13+  | \$ 69.12                  | \$ 70.12                  | \$ 29.49                                   | \$ 39.63                             | \$ 40.63                             |
|           | Z1GW         | KIN-College Rate  | \$ 33.13                  | \$ 34.13                  | \$ -                                       | \$ 33.13                             | \$ 34.13                             |
|           | Z1JG         | KIN-Maternity   | \$ 47.12                  | \$ 48.12                  | \$ 17.49                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | KIN-Maternity 13+   | \$ 57.12                  | \$ 58.12                  | \$ 17.49                                   | \$ 39.63                             | \$ 40.63                             |
|           | Z1MR         | KIN-Medical   | \$ 47.12                  | \$ 48.12                  | \$ 17.49                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | KIN-Medical 13+   | \$ 57.12                  | \$ 58.12                  | \$ 17.49                                   | \$ 39.63                             | \$ 40.63                             |

Case 2:18-cv-02075-PBT Document 20-9 Filed 06/12/18 Page 5 of 5

EXHIBIT PA-1  
FISCAL YEAR 2019  
Catholic Social Services  
6606

| Rate Type | Service Code | Service Description (Rates Paid on a Per Diem Basis Unless Otherwise Noted) | FY19 Maximum Rate (Q1-Q2) | FY19 Maximum Rate (Q3-Q4) | FY19 Administrative Portion (All Quarters) | FY19 Maintenance Portion (Q1-Q2) | FY19 Maintenance Portion (Q3-Q4) |
|-----------|--------------|---|---------------------------|---------------------------|--|----------------------------------|----------------------------------|
| DHS       | Z1UG         | SBH-Transition KIN  | \$ 88.77                  | \$ 89.77                  | No standard breakdown                      | No standard breakdown            | No standard breakdown            |
|           |              | SBH-Transition KIN 13+  | \$ 98.77                  | \$ 99.77                  | No standard breakdown                      | No standard breakdown            | No standard breakdown            |
|           | Z1WC         | KIN-M/B-Baby  | \$ -                      | \$ -                      | -  | -                                | -                                |
|           | Z1WP         | KIN-M/B-Mother  | \$ 72.64                  | \$ 73.64                  | \$ 31.01                                   | \$ 41.63                         | \$ 42.63                         |
|           |              | KIN-M/B-Mother (2B)   | \$ 99.64                  | \$ 100.64                 | \$ 49.51                                   | \$ 50.13                         | \$ 51.13                         |
|           |              | KIN-M/B-Mother (2B) 13+   | \$ 109.64                 | \$ 110.64                 | \$ 49.51                                   | \$ 60.13                         | \$ 61.13                         |
|           |              | KIN-M/B-Mother (3B)   | \$ 126.64                 | \$ 127.64                 | \$ 68.01                                   | \$ 58.63                         | \$ 59.63                         |
|           |              | KIN-M/B-Mother (3B) 13+   | \$ 136.64                 | \$ 137.64                 | \$ 68.01                                   | \$ 68.63                         | \$ 69.63                         |
|           |              | KIN-M/B-Mother 13+  | \$ 82.64                  | \$ 83.64                  | \$ 31.01                                   | \$ 51.63                         | \$ 52.63                         |

|      |                            |                 |  |
|------|----------------------------|-----------------|--|
| X1XX | Initial Clothing Allowance | \$ 300.00       | Upon approval by DHS, only allowed one time, at initial DHS commit |
|      | Dependent Total            | \$ 2,400,000.00 |  |
|      | Contract Total             | \$ 2,400,000.00 |  |

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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

Plaintiffs,

v.

Civil Action No. 18-CV-2075

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

Defendants.:

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**DECLARATION OF KIMBERLY ALI**

I, Kimberly Ali, declare the following:

1. I am employed by the City of Philadelphia, Department of Human Services (“DHS”) as the Deputy Commissioner of Child Welfare Operations. I was appointed to this position in October 2016. I report directly to DHS Commissioner Cynthia F. Figueroa.
2. I have worked for the City of Philadelphia since January 2000, when I joined the Department of Human Services as a Social Worker. I held that position until February 2002, when I became a Social Work Supervisor. I held that position until December 2006, when I was promoted to be a Human Services Program Administrator. In that role, among many other responsibilities, I provided oversight and monitored level of care

decisions for the identification and completion of referrals for in home and placement services.

3. I held that position until May 2009, when I was promoted to be a Human Services Staff Services Director of Provider Relations and Evaluation of Programs. In that role, among many other responsibilities, I managed 25 program analyst staff, responsible for monitoring and evaluating a total of 400 child welfare, delinquent, and prevention contracts to ensure quality services to children, youth, and families.
4. I held that position until October 2010, when I became DHS's Operations Director. In that role, I managed and coordinated the daily operations of DHS including its hotline, investigations, and ongoing provision of services to families.
5. I held that role until November 2014, when I was promoted to become the Chief Implementation Officer for Improving Outcomes to Children, a large-scale system transformation into a community based service delivery model, which involved the safe transfer of families from DHS to Community Umbrella Agencies (CUAs). I also created a structured Level Of Care Instrument that determines the least restrictive placement setting for children and youth. I held that role until October 2016 when I was promoted to be the Deputy Commissioner of Child Welfare Operations.
6. As the Deputy Commissioner of Child Welfare Operations, in addition to other duties, I supervise and support the Child Welfare Operations at DHS, one of the largest child welfare agencies in the country. In my role, I assist Commissioner Figueroa and the Department in achieving our goals, overseeing day-to-day operations, systemic issues, and future planning and initiatives. In this capacity, I am familiar with the Department's

operations, policies, and procedures, including the practices that are the subject of this action.

7. The City of Philadelphia Department of Human Services is committed to providing and promoting safety, permanency, and well-being for children and youth at risk of abuse, neglect and delinquency.

#### Foster Care in Pennsylvania

8. State law requires county children and youth agencies like DHS to develop a plan for the provision of protective services for children, and to provide or purchase those services, including the provision of foster care services for children placed in its care.
9. For at least 20 years, Philadelphia has used private agencies to provide services to children and families involved with DHS.
10. DHS values the expertise of private agencies that provide foster care services, and which are frequently located in communities close to homes of origin of children and families needing services.
11. There are 30 foster care agencies in Philadelphia.
12. 51% of children living in family foster care live within 5 miles of their home of origin, and 76% live within 10 miles.
13. The Pennsylvania Department of Human Services licenses foster care agencies. State law and regulations establish the criteria for the certification of prospective foster parents (“resource parents”). These criteria include a DHS history screening and criminal and child abuse history screenings, with limits of certification of individuals with a history of certain prohibited offenses and child abuse history in some circumstances.



14. Agencies are also required to evaluate a prospective resource parent's ability to provide care, nurturing, and supervision to children, their supportive community ties, the household composition, their ability to work with a child with special needs, and their financial stability.
15. Foster care agencies are required to register all resource parent applicants on a state "resource family registry."
16. If a resource parent meets the criteria, a foster care agency must certify the applicant.
17. Even once a foster care agency certifies a resource parent, pursuant to its contract with foster care agencies, DHS can determine that it does not want Philadelphia children placed in that home, such as when there are concerns about the resource parent's prior or current involvement with DHS.

DHS Custody and Placement Process

18. DHS runs a hotline for reports of alleged child abuse or neglect. DHS also receives reports from a state-run hotline and online portal. If the report contains factual allegations that would constitute child abuse or neglect, the report is accepted for investigation and DHS conducts a safety assessment of the situation/child's environment to determine if a safety threat to a child exists. If the safety threat rises to the level of present danger and the child is deemed unsafe, DHS obtains a court order to remove the child from their home and to place the child in foster care.
19. If a child is removed, there will be a hearing at Family Court within 72 hours, at which time the court will determine if the initial removal was appropriate, and if so, it may commit the child to the legal custody of DHS if circumstances have not changed.

20. Each child in the legal custody of DHS, as well as those who are receiving in home services, receives case management services. These services are provided by one of six private Community Umbrella Agencies (CUAs) with whom DHS contracts. Each CUA provides services in one of 10 geographic regions of Philadelphia.
21. Because DHS is committed to providing services to children and families in their communities, once it is determined that a family needs services, families are assigned to a CUA automatically via an electronic system based on the family's geographic region, with some rare exceptions.
22. Each child serviced by a CUA has a case manager at that CUA. The case manager's responsibilities include assessing the child's safety through visitation, completing a case plan for the child's needs, ensuring the child receives all behavioral health, medical, and educational services for the duration of the case and intervening when necessary.
23. Each CUA case manager has a supervisor, who is supervised by the CUA case management director. DHS provides a practice coach on site to provide technical assistance and learning support to the CUAs, and these staff are further supervised by other DHS staff. In addition, DHS has an Operations Director, Staci Boyd, who oversees all of the CUAs. Ms. Boyd reports directly to me.
24. With regard to identifying a placement, DHS will first ask the family to identify kin, i.e. family members or other people with close relationships with the family who can care for the child. If kin are identified, DHS performs preliminary child abuse and criminal clearances, DHS history clearance, home assessment, and if appropriate will place the child in the home of kin, and identify a foster care agency to certify the kinship home as a foster care home.

25. When kin cannot be identified, the worker submits the referral to the Central Referral Unit (CRU), which is managed by DHS. CRU consults with a nonprofit entity called Community Behavioral Health (CBH), and identifies the correct level of placement and seeks to identify an appropriate placement provider. There are different types of placements, depending on the needs of the child and the level of care needed. Placement providers include but are not limited to: family foster care homes, congregate care facilities (i.e. group homes and institutions), and residential treatment facilities.
26. Once DHS determines the level of care a child needs, it sends a referral to all agencies providing that level of care. Agencies with a potential foster home will relay this information to the CRU, who will provide the information to the CUA. The CUA and the agency then negotiate a placement date. If there are multiple potential foster homes, the CRU chooses which one meets the child's best interest.

#### Transferring Foster Care Agencies

27. While many resource parents stay with a single agency, some families change agencies either due to dissatisfaction with the agency or because their foster child has a need that is higher than the original agency can serve, such as a child with a behavioral issue that requires additional expertise better provided by another agency.
28. In these instances, the assigned worker at the CUA would make a referral to DHS's Central Referral Unit, stating that the entire foster home wants to transfer to another provider agency. Often times, the foster parent selects a new foster care provider agency from the list of Philadelphia foster care agencies. When a transfer occurs, DHS arranges for the previous agency to send over the foster care and child's files to the new agency.

29. The new agency begins to serve the family as soon as it receives the referral. The new agency needs to complete its own certification process of the foster home within 60 days of receiving the referral, but the child remains in the same foster home throughout the process so that the transfer is seamless.
30. As noted above, children are placed in different levels of foster care based on the child's needs: general, specialized behavioral health, or medical. The majority of placements are for permanent foster care placement because of need to stabilize the child.
31. However, a child can be placed in respite foster care, which is a short-term, temporary placement, when, for example, the foster parent is travelling and cannot bring the foster child or when there is a medical issue with the foster parent, they need a break, or if there is a report of child abuse or neglect in the foster home.
32. Foster care agencies and CUAs generally do not make referrals to other agencies; the referrals must be made through DHS's CRU. The only referrals that agencies may make are to another home within their agency, such as for respite care. Under their contract with DHS, they are required to identify respite homes. If they are unable to do so, the referral for another home goes back to CRU.
33. There have been numerous times when DHS' CRU, at the direction of the DHS Commissioner, has stopped referring children to a particular agency, either on a temporary basis due to concerns about a particular agency, or on a permanent basis when the agency stops providing services of its own volition or when DHS terminates the contract.

34. For instance, in March 2016 when Lutheran Children and Family Service of Eastern Pennsylvania decided to stop providing foster care services, there were over 100 children involved who were transitioned to other foster care agencies over a three month period.
35. In that instance, DHS and Lutheran leadership met with all of the foster parents to whom Lutheran provided services. DHS leadership made themselves available and explained to the families that the goal was to keep children in the same home and not disrupt the children in their care. Some families had a particular agency in mind that they were willing to transfer to. For those who didn't have an agency in mind, DHS provided a list of family foster care agencies and then followed up to ensure each family selected one. Lutheran, the sending agency, prepared a foster parent file as well as a child file, and then provided them to the receiving agency.
36. This whole process was managed through CRU along with the CUAs, who, at that time, made some direct referrals to other agencies. No significant issues arose during this process as families were allowed to select the agency that they wanted to transition to. In many instances, DHS was able to look to the date the child was scheduled to be reunified with their family or adopted (called the permanency date) and if possible, expedite that process so that the child would not need to be placed with a second agency at all.

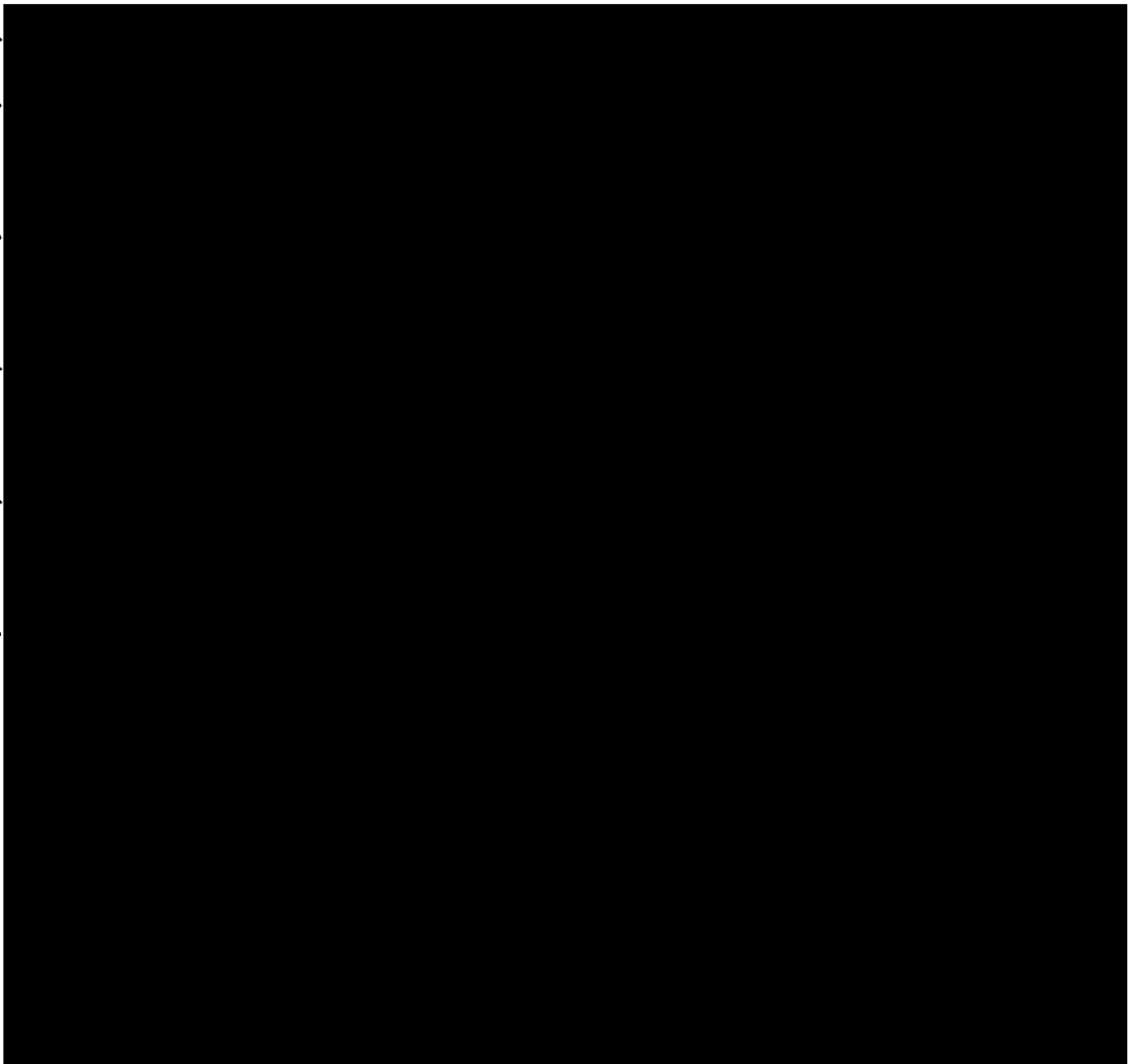
#### Referral Suspension Waivers

37. When referrals to agencies have been temporarily suspended, CUAs and agencies, including the senior leadership of Catholic Social Services (CSS) and Catholic CUA, have reached out to senior DHS leadership to request waivers.
38. Since DHS suspended referrals to CSS, there have been four requests for waivers, including Doe Foster Child #1, discussed below. We have approved a waiver in each

instance based on communications from James Amato, the Secretary of CSS, and others at CSS. Except in these four instances, I have not been contacted by James Amato, James Black, or anyone else from CSS regarding waiver requests for children who have been referred to non-CSS placements when a CSS family was in the best interest of the child. However, even when DHS leadership grants a waiver, a family court order is necessary to effectuate the placement unless it is an emergency.

Foster Child #1 and His History with DHS

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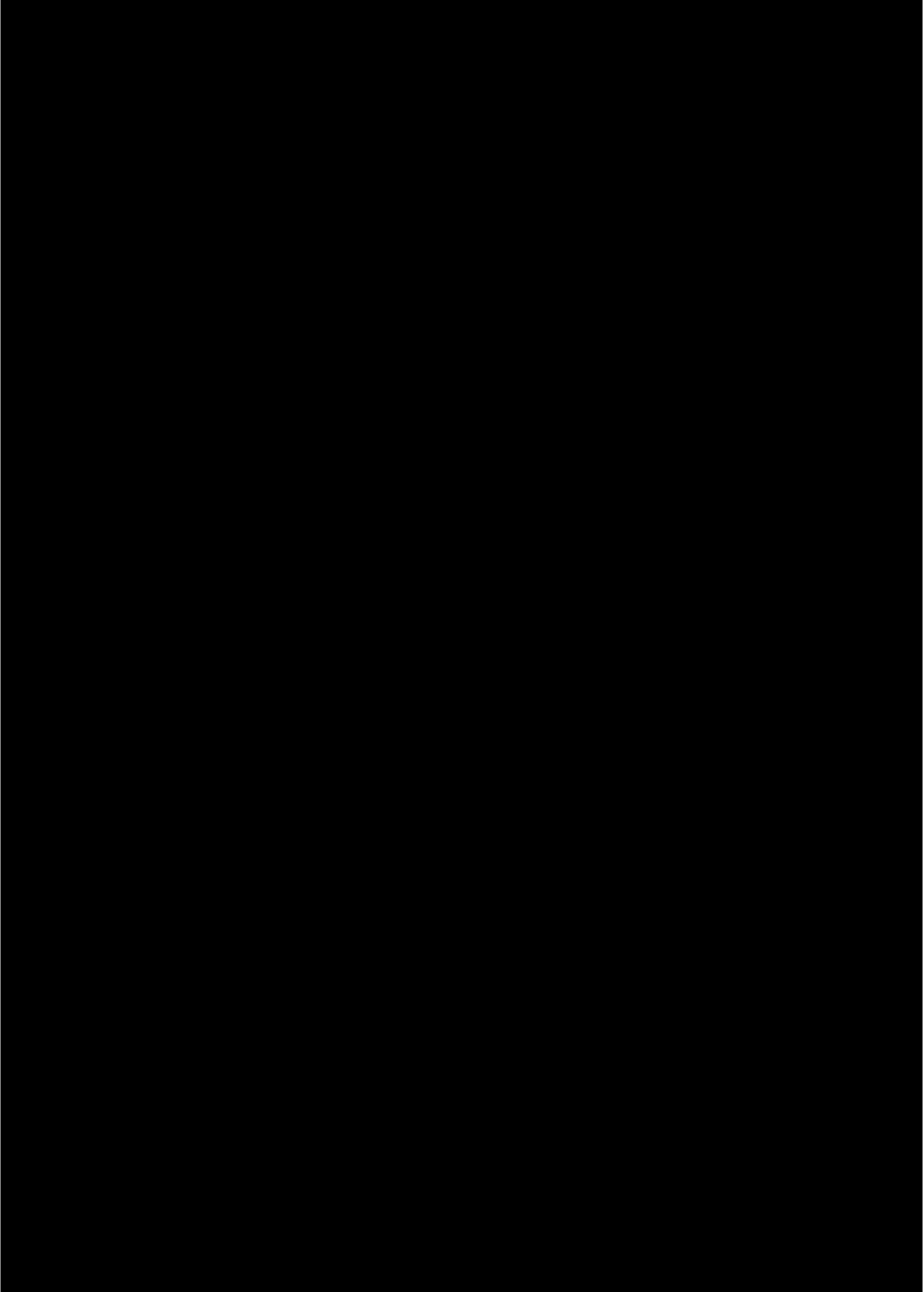


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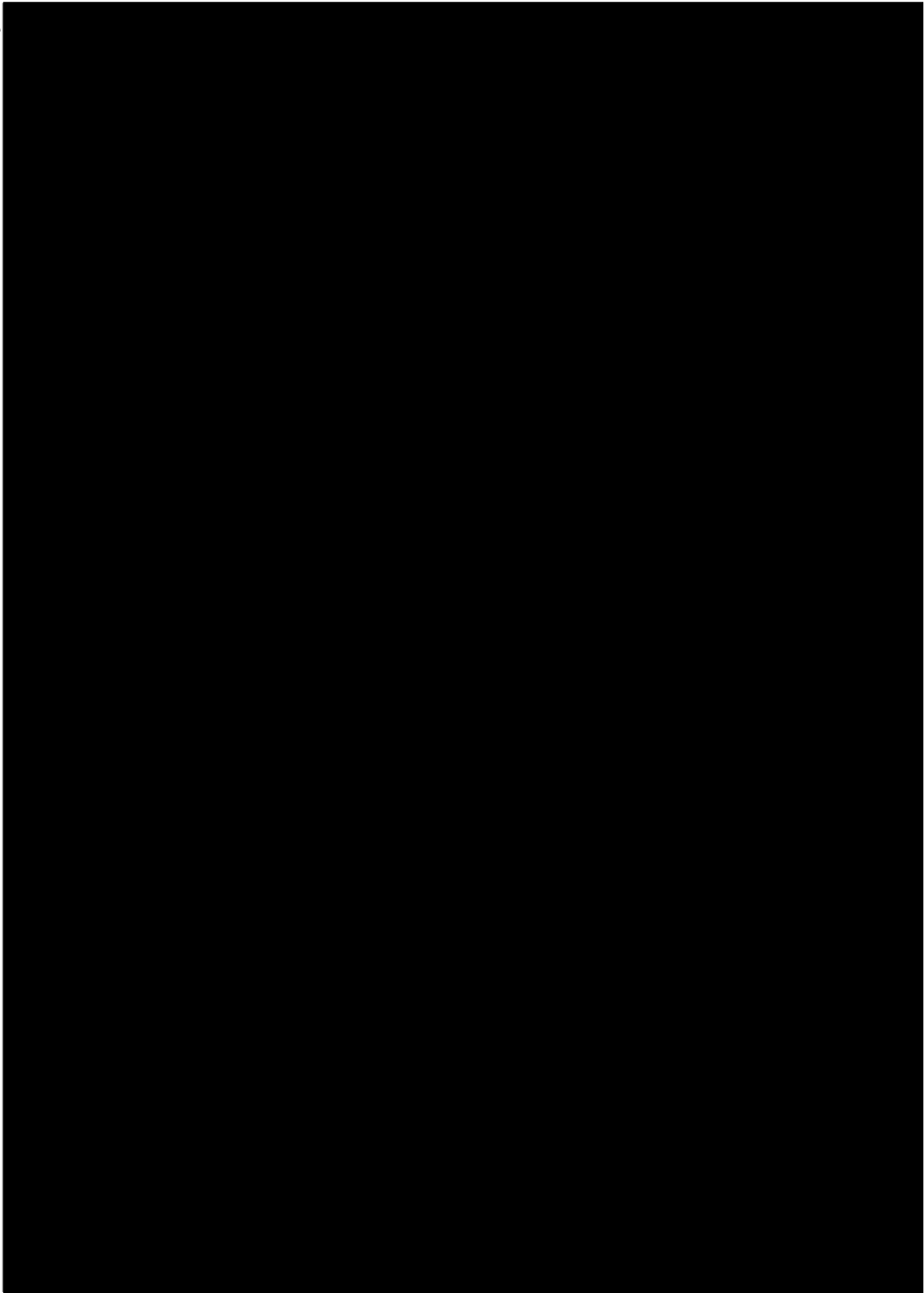
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63. Although referrals had been halted to CSS due to its stated refusal to certify prospective LGBTQ foster families, as noted by the above texts, its leadership was well aware that I could make exceptions to this, and they had contacted me on approximately three other occasions to do so. Each time, I granted the exception.

64. Where a court ordered the move, that was due to the fact that the case was already being heard on that date.

65. I have reviewed James Amato's statement that there are "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." Pltfs. Ex. 1 ¶16. I am not aware of any additional cases where placement with CSS would have been in the best interests of a child but where the child was not moved to one of their homes.
66. As DHS's Deputy Commissioner of Child Welfare Operations, I can unequivocally state that DHS is committed to finding the best placement for children that can meet all of their needs, even if that placement is with CSS.

I have read the foregoing and declare, under penalty of perjury, that the facts recited are true and corrected, based upon my own knowledge and/or belief.

DATE: June 12, 2018



Kimberly Ali

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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

Plaintiffs,

v.

Civil Action No. 18-CV-2075

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

Defendants.

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**DECLARATION OF CYNTHIA F. FIGUEROA**

I, Cynthia F. Figueroa, declare as follows:

1. I am the Commissioner of the Department of Human Services (“DHS”) for the City of Philadelphia. I was appointed to this position in July 2016, effective September 2016.
2. Prior to being appointed Commissioner, I was the Chief Executive Officer of Congreso de Latinos Unidos, a nonprofit focused on strengthening Latino communities through social, economic, education and health services.
3. From 2008 to 2011, I served as Deputy Commissioner for DHS and was responsible for the oversight of what was then known as the Division of Community Based Prevention Services. In that role, I oversaw all child welfare prevention services delivered by community based providers including development of the Education Support Center.

4. Prior to that, I was the Executive Director of Women Against Abuse, a nonprofit organization in Philadelphia that advocates against domestic violence and provides services to victims.
5. As the Commissioner of DHS, I supervise one of the largest child welfare agencies in the country. In my role, I serve as the County Administrator to deliver our Federal and State mandated child welfare service for Philadelphia. I have direct oversight of 1500 employees, a budget of over \$600 million, and approximately 250 contractors. In this capacity, I am familiar with the Department's operations, policies, procedures, and contracts, including the practices that are the subject of this action.
6. The City of Philadelphia Department of Human Services is committed to providing and promoting safety, permanency, and well-being for children and youth at risk of abuse, neglect and delinquency.
7. DHS operates Philadelphia's child abuse hotline and investigates allegations of child abuse and neglect. To find placements for children who are not safe in their own homes, DHS contracts with state-licensed foster care agencies who recruit, certify, and service foster homes for these children. The goal of foster care is to reunite children with their families. DHS also manages Community Umbrella Agencies (CUAs), six private organizations that provide case management and other support services in 10 geographic regions throughout Philadelphia. CUAs serve children and families whose cases are accepted for service.
8. While agencies work with specific foster families to provide training and support, a CUA case manager coordinates the relationship between the foster family, the child, and the child's biological family with the goal of reunification.

9. The Archdiocese of Philadelphia operates a CUA and a foster care agency which is Catholic Social Services. Recently, the City began ranking CUAs. Catholic CUA was ranked second out of ten geographic regions. DHS does not currently rank foster care agencies and has not ranked Catholic Social Services in the last several years.
10. Currently, approximately 6,000 children in DHS's custody are in out-of-home placement. Approximately 86% of those are in family foster care and approximately 12% are in congregate care (i.e., group homes).
11. Approximately 54% of the children in family foster care are in kinship care, which is foster care with a relative or someone who has a significant relationship to the child. Approximately 45% are with families who have been certified as foster parents and who do not have a kinship relationship to the child.
12. In Fiscal Year '17, DHS reunified 1250 children with their families, finalized 636 adoptions and finalized 138 permanent legal custodianships.

#### DHS' Recruitment Drive

13. Recruitment and certification of new families are essential and integral parts of the work of the City's foster care agencies.
14. Each of the City's contracts includes these responsibilities.
15. Because it has the ultimate responsibility of children in its legal custody, DHS is always trying to identify new, qualified foster parents, including through its own recruitment efforts.
16. For example, this year DHS issued an "urgent call" to recruit new foster parents. DHS did this in order to build additional capacity into the system.

17. As part of this effort, DHS was trying to specifically recruit more families to serve children with special needs, older children, children with specialized behavioral health needs, and lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth, based in part on reports DHS received from LGBTQ youth who had negative experiences in homes that did not support them.
18. In addition, DHS' "urgent call" sought to recruit new foster parents to reduce the number of children in congregate care, and in particular, the number of older children in such care. DHS' experience is that there is a greater proportional number of LGBTQ youth in the population of older foster children. This also factored into DHS' recruitment efforts.
19. This "urgent call", however, does not indicate that there is a "crisis" in identifying new homes. Nor does the fact that City seeks to expand its foster care resources indicate that there are not enough foster homes available. At any given time, there are certified foster parents associated with one of the City's foster care agencies who are willing to care for a new child in their home. These households may be awaiting a placement or have exercised their discretion not to take a child due to their own preferences and willingness to accept certain children due to the child's age or the needs of the child.
20. As a result of this recruitment effort, since January 75 new families have been certified.
21. On occasion, and usually for a short period of time, there are children who the City is unable to immediately place with a foster family or in congregate care. There can be many reasons for this, including that on occasion a child comes into the City's custody in the middle of the night.

22. The City's data regarding the placement of foster children reflects that over the past year, the congregate care rate has remained the same.

Closure of CSS Intake

23. On March 9, 2018, DHS was asked by a reporter for the *Philadelphia Inquirer* whether DHS was aware of any organizations discriminating against same sex couples. At that time, DHS was not aware of any such discrimination, but the reporter disclosed that a same-sex couple said they had been turned away by another foster care agency, Bethany Christian Services. The reporter indicated they reached out to CSS and were awaiting a comment.
24. DHS First Deputy Commissioner Jessica Shapiro and I then contacted CSS to determine whether the statements in the article were accurate. Jim Amato of CSS confirmed the CSS would not certify same-sex couples as foster homes or for adoptions.
25. On March 13, 2018, the *Philadelphia Inquirer* published a story titled "Two foster agencies in Philly won't place kids with LGBTQ people." According to the article, neither Bethany nor CSS would place children with LGBTQ couples. A copy of the story is attached here as Exhibit 2-B.
26. In the past, as DHS Commissioner, I have had to suspend referrals and close intake at agencies for a variety of programmatic and administrative reasons.
27. On or about March 14, 2018, I determined that Bethany and CSS's public position raised a concern that it would discriminate against same-sex couples in violation of their contract with the City and the City's Fair Practices Ordinance.



28. I determined that DHS would suspend referrals and close intake at both agencies as long as they refused to certify qualified same-sex foster parents. I did this because CSS told us it could not comply with its contract.
29. In making this decision, I determined based on my professional experience that DHS would continue to be able place children in appropriate family foster homes. It is important to note that roughly half of family foster home placements are kinship care, which do not strain existing foster care capacity. I also knew that there were currently a number of foster families' homes with other agencies willing to accept new foster children and anticipated that our recruitment drive would bring additional families into the system. And since then we have been able to certify 75 new families.
30. In addition, as CSS had communicated that it could not comply with the contract with the City and the City's Fair Practices Ordinance, I had to also consider the best interest of any children who might be placed with CSS in the future.
31. I was concerned that because CSS was in breach of the contract, placing additional children with them—except on an individual, case by case basis—would not be in those children's best interest because of the risk of disruption related to CSS' no longer being a foster care agency for the City.
32. The following day, March 15, 2018, First Deputy Commissioner Shapiro, Kimberly Ali, and I met with representatives of Bethany and CSS. Following the meeting with CSS, Deputy Commissioner of Child Welfare Operations Kimberly Ali called CSS to inform them that DHS was suspending referrals and closing their foster home intake.
33. Following this call, Jim Amato of CSS contacted leadership at DHS to request waivers related to specific children.

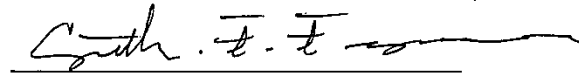
34. Since March 15, 2018, there have been at least two instances where CSS has requested waivers by contacting me to request those waivers. Kimberly Ali worked with CSS in both cases and the waivers were granted.
35. The closure of intake to CSS has had minimal impact on DHS operations. The percentage of children placed in congregate care (as opposed to family foster care) has remained consistent since the closure. Similarly, the number of childcare room overnight stays has actually decreased slightly from nine to eight per month since the closure.
36. I decided on this course of action with CSS with the consideration of arranging an interim contract that would permit CSS to continue to provide services to foster children and families it already had in its care. I continue to believe such an interim agreement is in the best interest of those foster children, however I also continue to believe that permitting CSS to continue to referrals and performing foster home intake services is not in the best interest of children.

Bethany

37. Since suspending referrals to Bethany, the City has been in discussions with Bethany to resolve the dispute.
38. While the City and Bethany are still negotiating a contract for the next fiscal year, the parties are close to a resolution and Bethany has agreed in principle to comply with the Fair Practices Ordinance and to institute a nondiscrimination policy.
39. I fully expect Bethany to enter into a full contract with the City for next fiscal year and that DHS will resume referrals and reopen intake at Bethany.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct, based upon my own knowledge and/or belief.

DATE: June 12, 2018

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

Cynthia F. Figueroa



CITY OF PHILADELPHIA

June 11, 2018

James Amato, Secretary, Catholic Human Services
Catholic Social Services, Archdiocese of Philadelphia
222 North 17th Street, Room 328
Philadelphia, PA 19103

Re: FY 2019 Award Letter (290) PA
Child Welfare Operations
Placement Services (Foster/Kinship Care), \$2,400,000.00

DEPARTMENT OF HUMAN SERVICES

1515 Arch Street, Philadelphia, PA 19102
215-683-4DHS (4347)

Commissioner
CYNTHIA F. FIGUEROA

First Deputy Commissioner
JESSICA S. SHAPIRO

Deputy Commissioners
Child Welfare Operations
KIMBERLY ALI

Finance
CHRISTOPHER SIMI

Juvenile Justice Services
TIMENE FARLOW

Administration and Management
VONGVILAY MOUNELASY

Performance Management and Technology
LIZA RODRIGUEZ

Prevention
WALESKA MALDONADO

Dear Secretary:

This letter is to provide you with information on the City of Philadelphia Department of Human Services' (hereinafter referred to as "DHS" or "Department") contract process for Fiscal Year 2019 beginning on July 1, 2018. The funding levels referenced above reflect the Department's budget constraints and priorities.

Consistent with the City's policy of non-discrimination and its prior notices to you to the same effect, the scope of the FY 19 contract will change. DHS will continue to make payment to CSS for the administration and maintenance of existing foster homes where children in DHS's care reside.

Additionally, the FY 19 contract will allow for referrals of new child foster care placements only in limited authorized circumstances where a CSS placement is in the best interests of the child, such as when a child shares a prior relationship with the foster or pre-adoptive parents, or when siblings should be placed together.

The new contract will also provide time for the orderly transition of services, should that become necessary. The contract amount has been adjusted to reflect the volume of services projected under the new scope of the contract.

However, please be advised that the authorized levels of service and the continued funding of contracts is contingent upon the availability of proposed City, State and Federal funds and this award letter does not guarantee your agency a contract with DHS.

Starting in FY2019, all Foster Care/Kinship Care services rate sheets will have a different look. The new rate sheet will separate all Foster Care/Kinship Care service rates into maintenance and administrative costs for your reference. Please note that these rates are subject to change.

Please be advised that DHS is not obligated to make any payment to your agency until after the execution and conformance of a formal written contract, containing such terms and conditions as are satisfactory to DHS; and provided that your agency has satisfied any conditions precedent to the start of work (e.g. insurance certificates or licenses) as required by the contract. Please review this letter and its attachments thoroughly as some of the information requested will be used to develop your agency's contract. If you have any questions about the content of this letter or its attachments, please contact your contract Conformance Manager. To obtain your Conformance Manager's contact information, you may call the Director of Contracts & Audit, Robert Hodge, at (215) 683-4200. Please email any questions to dhscontracts@phila.gov.

If you have a question, complaint, concern, or suggestion about DHS and its operations call the Commissioner's Action Response Office (CARO) at 215-683-6000 or visit our website: dhs.phila.gov and click on the "suggestions" link.

On behalf of the Department and the children and families we serve, I would like to express our thanks and appreciation for your commitment to provide high quality and effective services to Philadelphia's children and families. During this changing and challenging time the strength of the public/private partnership is critical as we work together toward the common goal of ensuring the overall safety and well-being of children and families in our City.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Cynthia F. Figueroa', with a long horizontal flourish extending to the right.

Cynthia F. Figueroa  
Commissioner

cc: Lori Windham, Esquire  
Jonathan Janiszewski, Esquire  
Kimberly Ali, Deputy Commissioner  
Robert Hodge, Director of Contracts and Audit  
Rita Cairry, Contracts Administrator

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If you have a question, complaint, concern, or suggestion about DHS and its operations  
call the Commissioner's Action Response Office (CARO) at 215-683-6000  
or visit our website: [dhs.phila.gov](http://dhs.phila.gov) and click on the "suggestions" link.

EXHIBIT PA-1  
FISCAL YEAR 2019  
Catholic Social Services  
6606

| Rate Type | Service Code | Service Description (Rates Paid on a Per Diem Basis Unless Otherwise Noted) | FY19 Maximum Rate (Q1-Q2) | FY19 Maximum Rate (Q3-Q4) | FY19 Administrative Portion (All Quarters) | FY19 Maintenance Portion (Q1-Q2)     | FY19 Maintenance Portion (Q3-Q4)     |
|-----------|--------------|---|---------------------------|---------------------------|--|--------------------------------------|--------------------------------------|
| CUA       | E1GG         | FFC-Emergency Shelter   | \$ 52.63                  | \$ 53.63                  | \$ 23.00                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | FFC-Emergency Shelter 13+   | \$ 62.63                  | \$ 63.63                  | \$ 23.00                                   | \$ 39.63                             | \$ 40.63                             |
|           | J14G         | FFC-Respite   | \$ -                      | \$ -                      | Immediately preceding placement rate       | Immediately preceding placement rate | Immediately preceding placement rate |
|           | J1GG         | FFC-General   | \$ 52.63                  | \$ 53.63                  | \$ 23.00                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | FFC-General 13+   | \$ 62.63                  | \$ 63.63                  | \$ 23.00                                   | \$ 39.63                             | \$ 40.63                             |
|           | J1GW         | FFC-College Rate  | \$ 33.13                  | \$ 34.13                  | \$ -                                       | \$ 33.13                             | \$ 34.13                             |
|           | J1JG         | FFC-Maternity   | \$ 52.63                  | \$ 53.63                  | \$ 23.00                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | FFC-Maternity 13+   | \$ 62.63                  | \$ 63.63                  | \$ 23.00                                   | \$ 39.63                             | \$ 40.63                             |
|           | J1MR         | FFC-Medical   | \$ 52.63                  | \$ 53.63                  | \$ 23.00                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | FFC-Medical 13+   | \$ 62.63                  | \$ 63.63                  | \$ 23.00                                   | \$ 39.63                             | \$ 40.63                             |
|           | J1WC         | FFC-M/B-Baby  | \$ -                      | \$ -                      | \$ -                                       | \$ -                                 | \$ -                                 |
|           | J1WP         | FFC-M/B-Mother  | \$ 64.63                  | \$ 65.63                  | \$ 23.00                                   | \$ 41.63                             | \$ 42.63                             |
|           |              | FFC-M/B-Mother (2B)   | \$ 73.13                  | \$ 74.13                  | \$ 23.00                                   | \$ 50.13                             | \$ 51.13                             |
|           |              | FFC-M/B-Mother (2B) 13+   | \$ 83.13                  | \$ 84.13                  | \$ 23.00                                   | \$ 60.13                             | \$ 61.13                             |
|           |              | FFC-M/B-Mother (3B)   | \$ 81.63                  | \$ 82.63                  | \$ 23.00                                   | \$ 58.63                             | \$ 59.63                             |
|           |              | FFC-M/B-Mother (3B) 13+   | \$ 91.63                  | \$ 92.63                  | \$ 23.00                                   | \$ 68.63                             | \$ 69.63                             |
|           |              | FFC-M/B-Mother 13+  | \$ 74.63                  | \$ 75.63                  | \$ 23.00                                   | \$ 51.63                             | \$ 52.63                             |
|           | Z1DC         | KIN-Emergency-M/B-Baby  | \$ -                      | \$ -                      | \$ -                                       | \$ -                                 | \$ -                                 |
|           | Z1DG         | KIN-Emergency   | \$ 52.63                  | \$ 53.63                  | \$ 23.00                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | KIN-Emergency 13+   | \$ 62.63                  | \$ 63.63                  | \$ 23.00                                   | \$ 39.63                             | \$ 40.63                             |
|           | Z1DP         | KIN-Emergency-M/B-Mother  | \$ 64.63                  | \$ 65.63                  | \$ 23.00                                   | \$ 41.63                             | \$ 42.63                             |
|           |              | KIN-Emergency-M/B-Mother (2B)   | \$ 73.13                  | \$ 74.13                  | \$ 23.00                                   | \$ 50.13                             | \$ 51.13                             |
|           |              | KIN-Emergency-M/B-Mother (2B) 13+   | \$ 83.13                  | \$ 84.13                  | \$ 23.00                                   | \$ 60.13                             | \$ 61.13                             |
|           |              | KIN-Emergency-M/B-Mother (3B)   | \$ 81.63                  | \$ 82.63                  | \$ 23.00                                   | \$ 58.63                             | \$ 59.63                             |
|           |              | KIN-Emergency-M/B-Mother (3B) 13+   | \$ 91.63                  | \$ 92.63                  | \$ 23.00                                   | \$ 68.63                             | \$ 69.63                             |
|           |              | KIN-Emergency-M/B-Mother 13+  | \$ 74.63                  | \$ 75.63                  | \$ 23.00                                   | \$ 51.63                             | \$ 52.63                             |
|           | Z1GG         | KIN-General   | \$ 52.63                  | \$ 53.63                  | \$ 23.00                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | KIN-General 13+   | \$ 62.63                  | \$ 63.63                  | \$ 23.00                                   | \$ 39.63                             | \$ 40.63                             |
|           | Z1GW         | KIN-College Rate  | \$ 33.13                  | \$ 34.13                  | \$ -                                       | \$ 33.13                             | \$ 34.13                             |
|           | Z1JG         | KIN-Maternity   | \$ 52.63                  | \$ 53.63                  | \$ 23.00                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | KIN-Maternity 13+   | \$ 62.63                  | \$ 63.63                  | \$ 23.00                                   | \$ 39.63                             | \$ 40.63                             |
|           | Z1MR         | KIN-Medical   | \$ 52.63                  | \$ 53.63                  | \$ 23.00                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | KIN-Medical 13+   | \$ 62.63                  | \$ 63.63                  | \$ 23.00                                   | \$ 39.63                             | \$ 40.63                             |
|           | Z1WC         | KIN-M/B-Baby  | \$ -                      | \$ -                      | \$ -                                       | \$ -                                 | \$ -                                 |
|           | Z1WP         | KIN-M/B-Mother  | \$ 64.63                  | \$ 65.63                  | \$ 23.00                                   | \$ 41.63                             | \$ 42.63                             |
|           |              | KIN-M/B-Mother (2B)   | \$ 73.13                  | \$ 74.13                  | \$ 23.00                                   | \$ 50.13                             | \$ 51.13                             |
|           |              | KIN-M/B-Mother (2B) 13+   | \$ 83.13                  | \$ 84.13                  | \$ 23.00                                   | \$ 60.13                             | \$ 61.13                             |
|           |              | KIN-M/B-Mother (3B)   | \$ 81.63                  | \$ 82.63                  | \$ 23.00                                   | \$ 58.63                             | \$ 59.63                             |
|           |              | KIN-M/B-Mother (3B) 13+   | \$ 91.63                  | \$ 92.63                  | \$ 23.00                                   | \$ 68.63                             | \$ 69.63                             |
|           |              | KIN-M/B-Mother 13+  | \$ 74.63                  | \$ 75.63                  | \$ 23.00                                   | \$ 51.63                             | \$ 52.63                             |
| DHS       | E11G         | FFC-Emergency Shelter   | \$ 59.12                  | \$ 60.12                  | \$ 29.49                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | FFC-Emergency Shelter 13+   | \$ 69.12                  | \$ 70.12                  | \$ 29.49                                   | \$ 39.63                             | \$ 40.63                             |
|           | J12G         | FFC-Level II  | \$ 59.12                  | \$ 60.12                  | \$ 29.49                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | FFC-Level II 13+  | \$ 69.12                  | \$ 70.12                  | \$ 29.49                                   | \$ 39.63                             | \$ 40.63                             |
|           | J14G         | FFC-Respite   | \$ -                      | \$ -                      | Immediately preceding placement rate       | Immediately preceding placement rate | Immediately preceding placement rate |
|           | J1GW         | FFC-College Rate  | \$ 33.13                  | \$ 34.13                  | \$ -                                       | \$ 33.13                             | \$ 34.13                             |
|           | J1JG         | FFC-Maternity   | \$ 47.12                  | \$ 48.12                  | \$ 17.49                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | FFC-Maternity 13+   | \$ 57.12                  | \$ 58.12                  | \$ 17.49                                   | \$ 39.63                             | \$ 40.63                             |
|           | J1MR         | FFC-Medical   | \$ 47.12                  | \$ 48.12                  | \$ 17.49                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | FFC-Medical 13+   | \$ 57.12                  | \$ 58.12                  | \$ 17.49                                   | \$ 39.63                             | \$ 40.63                             |
|           | J1UG         | SBH-Transition FFC  | \$ 88.77                  | \$ 89.77                  | No standard breakdown                      | No standard breakdown                | No standard breakdown                |
|           |              | SBH-Transition FFC 13+  | \$ 98.77                  | \$ 99.77                  | No standard breakdown                      | No standard breakdown                | No standard breakdown                |
|           | J1WC         | FFC-M/B-Baby  | \$ -                      | \$ -                      | \$ -                                       | \$ -                                 | \$ -                                 |
|           | J1WP         | FFC-M/B-Mother  | \$ 72.64                  | \$ 73.64                  | \$ 31.01                                   | \$ 41.63                             | \$ 42.63                             |
|           |              | FFC-M/B-Mother (2B)   | \$ 99.64                  | \$ 100.64                 | \$ 49.51                                   | \$ 50.13                             | \$ 51.13                             |
|           |              | FFC-M/B-Mother (2B) 13+   | \$ 109.64                 | \$ 110.64                 | \$ 49.51                                   | \$ 60.13                             | \$ 61.13                             |
|           |              | FFC-M/B-Mother (3B)   | \$ 126.64                 | \$ 127.64                 | \$ 68.01                                   | \$ 58.63                             | \$ 59.63                             |
|           |              | FFC-M/B-Mother (3B) 13+   | \$ 136.64                 | \$ 137.64                 | \$ 68.01                                   | \$ 68.63                             | \$ 69.63                             |
|           |              | FFC-M/B-Mother 13+  | \$ 82.64                  | \$ 83.64                  | \$ 31.01                                   | \$ 51.63                             | \$ 52.63                             |
|           | Z12G         | KIN-Level II  | \$ 59.12                  | \$ 60.12                  | \$ 29.49                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | KIN-Level II 13+  | \$ 69.12                  | \$ 70.12                  | \$ 29.49                                   | \$ 39.63                             | \$ 40.63                             |
|           | Z1GW         | KIN-College Rate  | \$ 33.13                  | \$ 34.13                  | \$ -                                       | \$ 33.13                             | \$ 34.13                             |
|           | Z1JG         | KIN-Maternity   | \$ 47.12                  | \$ 48.12                  | \$ 17.49                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | KIN-Maternity 13+   | \$ 57.12                  | \$ 58.12                  | \$ 17.49                                   | \$ 39.63                             | \$ 40.63                             |
|           | Z1MR         | KIN-Medical   | \$ 47.12                  | \$ 48.12                  | \$ 17.49                                   | \$ 29.63                             | \$ 30.63                             |
|           |              | KIN-Medical 13+   | \$ 57.12                  | \$ 58.12                  | \$ 17.49                                   | \$ 39.63                             | \$ 40.63                             |

EXHIBIT PA-1  
 FISCAL YEAR 2019  
 Catholic Social Services  
 6606

| Rate Type | Service Code | Service Description (Rates Paid on a Per Diem Basis Unless Otherwise Noted) | FY19 Maximum Rate (Q1-Q2) | FY19 Maximum Rate (Q3-Q4) | FY19 Administrative Portion (All Quarters) | FY19 Maintenance Portion (Q1-Q2) | FY19 Maintenance Portion (Q3-Q4) |
|-----------|--------------|---|---------------------------|---------------------------|--|----------------------------------|----------------------------------|
| DHS       | Z1UG         | SBH-Transition KIN  | \$ 88.77                  | \$ 89.77                  | No standard breakdown                      | No standard breakdown            | No standard breakdown            |
|           |              | SBH-Transition KIN 13+  | \$ 98.77                  | \$ 99.77                  | No standard breakdown                      | No standard breakdown            | No standard breakdown            |
|           | Z1WC         | KIN-M/B-Baby  | \$ -                      | \$ -                      | -  | -                                | -                                |
|           | Z1WP         | KIN-M/B-Mother  | \$ 72.64                  | \$ 73.64                  | \$ 31.01                                   | \$ 41.63                         | \$ 42.63                         |
|           |              | KIN-M/B-Mother (2B)   | \$ 99.64                  | \$ 100.64                 | \$ 49.51                                   | \$ 50.13                         | \$ 51.13                         |
|           |              | KIN-M/B-Mother (2B) 13+   | \$ 109.64                 | \$ 110.64                 | \$ 49.51                                   | \$ 60.13                         | \$ 61.13                         |
|           |              | KIN-M/B-Mother (3B)   | \$ 126.64                 | \$ 127.64                 | \$ 68.01                                   | \$ 58.63                         | \$ 59.63                         |
|           |              | KIN-M/B-Mother (3B) 13+   | \$ 136.64                 | \$ 137.64                 | \$ 68.01                                   | \$ 68.63                         | \$ 69.63                         |
|           |              | KIN-M/B-Mother 13+  | \$ 82.64                  | \$ 83.64                  | \$ 31.01                                   | \$ 51.63                         | \$ 52.63                         |

|      |                            |                 |  |
|------|----------------------------|-----------------|--|
| X1XX | Initial Clothing Allowance | \$ 300.00       | Upon approval by DHS, only allowed one time, at initial DHS commit |
|      | Dependent Total            | \$ 2,400,000.00 |  |
|      | Contract Total             | \$ 2,400,000.00 |  |



CITY OF PHILADELPHIA

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

Marcel S. Pratt  
City Solicitor

Eleanor N. Ewing  
Chief Deputy City Solicitor  
Affirmative & General  
Litigation Unit  
215-683-5012  
215-683-5069 (fax)  
eleanor.ewing@phila.gov

June 29, 2018

**VIA ECF**

The Honorable Petrese B. Tucker  
United States District Court for the  
Eastern District of Pennsylvania  
James A. Byrne U.S. Courthouse  
601 Market Street  
Philadelphia, PA 10106

**RE: *Fulton et al. v. City of Philadelphia et al., 18-CV-2075***

Dear Judge Tucker:

We write in reply to Plaintiffs' continued, unauthorized submissions following the three-day hearing on Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction.

The City objects to the submission of the Supplemental Declaration of James Amato. The parties had ample opportunity to present their cases during the hearing, and after the record was closed, the Court asked the parties to provide proposed Findings of Fact and Conclusions of Law. Instead, Plaintiffs now seek to offer new evidence in the form of an declaration of a witness who cannot be cross-examined. Essentially, this is no different from Plaintiffs' unsuccessful attempts at the hearing to submit declarations in lieu of live testimony.

The unfairness of this is highlighted by the inaccuracy of the declaration's contents, which concern a meeting between the City and CSS yesterday at which the City attempted to negotiate a limited contract for existing CSS placements. Mr. Amato's supplemental declaration is not an accurate account of that meeting.<sup>1</sup> The City therefore respectfully requests that the

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<sup>1</sup> For example, Mr. Amato asserts that the City is requiring CSS to agree "that the outcome of a home study would be an endorsement and certification of the relationship of a same-sex couple." Amato Suppl. Decl. (ECF 46-1 ¶ 5). As the hearing record makes clear, the City's position is only that CSS must conduct its home studies using the criteria set forth in state law, and is free to find any applicant unqualified so long as the reason for that finding is not an illegal or impermissibly discriminatory one.





CITY OF PHILADELPHIA

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

Court reject any attempts to reopen the record through supplemental declarations. Should the Court accept Plaintiffs' declaration, however, the City must seek leave to submit its own declaration regarding this June 28 meeting.<sup>2</sup>

Over the past week, Plaintiffs also have sent several letters to the Court regarding cases newly decided by the Supreme Court. None are on point. Neither *Janus v. Am. Fed'n of State, Cty., & Mun. Employees, Council 31*, No. 16-1466, 2018 WL 3129785 (U.S. June 27, 2018), nor *Nat'l Inst. of Family & Life Advocates v. Becerra*, No. 16-1140, 2018 WL 3116336 (U.S. June 26, 2018), concerned speech made pursuant to a contract. Indeed, the statute under review in *Becerra*, which concerned a notice crisis pregnancy centers were to provide, specifically exempted any entity that had a contractual or programmatic relationship with the government. *See id.* at \*10.

As we explained in both our opening Brief and Conclusions of law, where speech is made pursuant to a contract, it is not compelled because an individual can choose not to participate in the contract. *See Agency for Int'l Dev. v. Open Soc'y Int'l, Inc.*, 570 U.S. 205, 214 (2013 ("As a general matter, if a party objects to a condition on the receipt of [government] funding, its recourse is to decline the funds.")). As we also explained, an exception has arisen in government contracting cases when the speech the government seeks to regulate is not related to the obligor's contractual duties. *See id.* That exception does not apply here because speech related to selecting and certifying foster parents is integral to the contract.

Neither of these new cases concern that exception because they were not government contracting cases. Therefore, they are not informative on this matter.

Respectfully,

A handwritten signature in blue ink that reads "Eleanor N. Ewing".

Eleanor N. Ewing  
Chief Deputy City Solicitor

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<sup>2</sup> These declarations would also inform the Court of the fact that DHS has reopened intake with Bethany Christian Services following Bethany's agreement to comply with the City's antidiscrimination laws. *See* Julia Terruso, *City resumes foster-care work with Bethany Christian Services after it agrees to work with same-sex couples*, Philly.com (June 28, 2018 12:46 PM), <http://www.philly.com/philly/news/foster-care-lgbt-bethany-christian-services-same-sex-philly-lawsuit-catholic-social-services-20180628.html>.



CITY OF PHILADELPHIA

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

Marcel S. Pratt  
City Solicitor

Diana Cortes  
Chair, Litigation Group  
215-683-5038  
215-683-5069 (fax)  
Diana.Cortes@Phila.gov

July 11, 2018

**VIA ECF**

The Honorable Petrese B. Tucker  
United States District Court for the  
Eastern District of Pennsylvania  
James A. Byrne U.S. Courthouse  
601 Market Street  
Philadelphia, PA 10106

**RE: *Fulton et al. v. City of Philadelphia et al., 18-CV-2075***

Dear Judge Tucker:

Defendants write in response to Plaintiffs' second post-hearing fact submission regarding the above-captioned litigation. Plaintiffs' new submission is unnecessary and inaccurate, and Defendants provide the following information to respond to the letter submitted by Plaintiffs' counsel and to correct and clarify the public record. We also respectfully request that the Court neither consider Plaintiffs' submission nor give any weight to the assertions it contains. Should the Court determine that additional information would assist it in its decision, Defendants continue to stand ready to provide documentary evidence and supplemental declarations. *See* Dkt. 47.

Contrary to Plaintiffs' representation, the kinship care matter they reference was not urgent, and Plaintiffs have not accurately represented the underlying facts regarding the children's placement.<sup>1</sup> For the past year, the kinship foster parent has been caring for five children – the two elementary-school-aged siblings (her niece and nephew) as well as two other foster children and her own biological child. The siblings' placement is through a different foster care agency than CSS and Catholic is not the CUA. A few months ago, the kinship foster parent indicated that she was unable to care for five foster children on a permanent, long term basis. Because of this, the Dependency Court's Order noted that a 30-day notice would be

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<sup>1</sup> Defendants only address CSS' representations regarding specific foster children herein to correct the record. CSS' representations regarding two of its employees adds nothing to CSS' testimony during this Court's hearing and needs no response.

provided after the end of the school year and a follow-up hearing was scheduled for mid-July.<sup>2</sup> Less than a month after the June 12 end of the school year, DHS learned that an appropriate family foster care placement with a resource parent working with one of the City's 29 other foster care agencies would be available on July 13.

DHS was in the process of finalizing that placement when James Amato of CSS wrote to DHS Deputy Commissioner Kimberly Ali on July 9, 2018. Mr. Amato informed Deputy Commissioner Ali that a foster parent CSS works with— who is currently caring for at least one foster child — had a relationship with the siblings' current kinship parent, was prepared to foster both siblings, and requested an exception. Deputy Commissioner Ali promptly reviewed this and approved the exception for placement with the CSS foster parent within twenty minutes. Contrary to CSS' representation, this was the first time that anyone had suggested to DHS that an exception to intake closure should apply. On July 5, the CUA responsible for the siblings contacted DHS' Central Referral Unit (CRU) and informed the CRU that a CSS foster family was available, but there was no suggestion that the family should be subject to an exception because of any prior relationship with the siblings. Further email correspondence reflects that CSS leadership and its counsel with Becket discussed the CSS foster parent, including CSS' belief that the parent should satisfy DHS' kinship exception requirements, on July 5 as well. However, neither CSS nor its counsel reached out to DHS leadership or the City's counsel prior to Mr. Amato's July 9 email to Deputy Commissioner Ali to suggest or request that an exception to the intake closure would apply. Had they done so on July 5 with information supporting an exception, Deputy Commissioner Ali likely could have approved the placement even sooner.

The fact that the transition to a new placement has extended shortly beyond the beginning of July does not mean that DHS, the CUA, and applicable foster agencies are not acting in the best interest of the siblings, or that there is any urgent need for an immediate transfer. Indeed, it reflects the fact that this situation was not an emergency. As we explained, the siblings' aunt, their current kinship parent, has only become an unavailable placement because she has expressed that she is unable to care for all of her foster children on a long term basis. According to the CUA, the siblings are actually currently on vacation with her, and therefore, they are not available to transition to their new placement until July 13 anyway. Further, she is willing to serve as a respite resource for the children when necessary.

In sum, we are at a loss to explain why CSS has deduced that there is urgent need to remove the children from her care immediately, described her care as "sub-optimal," and

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<sup>2</sup> A 30-day notice is a written statement from a foster parent indicating that a child in their care needs to be moved to a new placement. The notice is provided for in DHS' contracts with family foster care agencies as a step in the process of discharging or removing a child that falls within that agency's care. The contract requires that DHS be given a minimum of 30 days' notice to effect a new placement. However, when the situation is not urgent — like in the case here — the notice will often provide for a longer period. And neither state law nor the contract impose any penalties on DHS for extending the 30-day period.

In this instance, the kinship foster parent sent the notice on May 22, 2018 and in the notice requests that the children be relocated by July 1, 2018. She also requests in the notice that the children be with her for a June 30, 2018 graduation party and indicates she is open to hosting them on weekends and serving as respite care for them.

suggested DHS is not acting in the best interest of the children. There is simply no indication that the children have been in a “sub-optimal placement.” Indeed, if CSS believed this situation to be urgent, then Mr. Amato or CSS’ counsel with the Becket Fund should have contacted DHS leadership on July 5 to request an immediate exception and inform DHS about its concerns rather than conferring with counsel first, reaching out to DHS four days later, and then filing a notice with the Court five days after CSS learned of the issue.

This Court should disregard CSS’ submission and permit DHS to handle case-specific determinations in the best interest of the 6,000 children in foster care outside of this litigation and in conjunction with the oversight of Dependency Court.

Respectfully,



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Diana Cortes  
Chair, Litigation Group

**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/ Benjamin H. Field  
Benjamin H. Field  
Deputy City Solicitor  
Affirmative and General Litigation