

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Docket No. 18-2574

SHARONELL FULTON, et al., Appellants,

v.

THE CITY OF PHILADELPHIA, et al., Appellees.

Joint Motion to Seal Joint Appendix Volume IV

MARK L. RIENZI
LORI H. WINDHAM
STEPHANIE BARCLAY
NICHOLAS R. REAVES
The Becket Fund for Religious Liberty
1200 New Hampshire Ave. NW, Suite 700
Washington, DC 20036
(202) 955-0095
mrienzi@becketlaw.org

NICHOLAS M. CENTRELLA
Conrad O'Brien PC
1500 Market Street, Suite 3900
Philadelphia, PA 19102-2100
(215) 864-8098
ncentrella@conradobrien.com

Counsel for Plaintiffs-Appellants

CITY OF PHILADELPHIA
LAW DEPARTMENT
MARCEL S. PRATT, City Solicitor

ELEANOR N. EWING (PA ID No. 28226)
Chief Deputy City Solicitor,
Affirmative & General Litigation
DIANA CORTES (PA ID No. 204274)
Chair, Litigation Group
JANE LOVITCH ISTVAN (PA ID No. 66634)
Chief Deputy Solicitor, Appeals
BENJAMIN H. FIELD (PA ID No. 204569)
Deputy City Solicitor,
Affirmative & General Litigation
MICHAEL PFAUTZ (PA ID No. 325323)
Assistant City Solicitor,
Affirmative & General Litigation
1515 Arch Street, 15th Floor
Philadelphia, PA 19102
Phone: (215) 683-5038

Counsel for Defendants-Appellees

Dated: August 27, 2018

JOINT MOTION TO SEAL UNDER 3D CIR. L.A.R. 106.1

Appellants Sharonell Fulton, Toni Simms-Busch, Cecelia Paul, and Catholic Social Services, and Appellees the City of Philadelphia, the Department of Human Services for the City of Philadelphia (“DHS”), and the Philadelphia Commission on Human Relations respectfully move to seal Volume IV of the Joint Appendix.¹

FACTUAL AND PROCEDURAL BACKGROUND

On June 12, Appellees filed an opposition to Appellants’ motion for temporary restraining order and preliminary injunction, which included certain confidential information regarding the foster child referred to in Appellants’ motion and subsequent filings as Doe Foster Child #1. Appellees therefore concurrently filed a motion to seal the relevant portion of their opposition as well as Exhibits 1, 1-A, 1-B, 1-C, 1-D, and 3-A, because those exhibits likewise contained confidential personal information relating to the child, including records, case notes, and other personal data. The District Court granted the motion to seal on June 18.

ARGUMENT

Under L.A.R. Misc. 106.1(a), a party may file a motion to seal a document, setting forth with particularity the reasons why sealing is necessary. In addition,

¹ Intervenor-Appellees Philadelphia Family Pride and Support Center for Child Advocates have no objection to this motion.

L.A.R. 30.3(b) provides for the filing of a sealed appendix for records sealed in the district court.

Pennsylvania law protects the confidentiality of child abuse information and strictly limits who can receive it. 23 Pa. C.S. §§ 6339, 6340. State regulations further require that county child-welfare agencies, as well as private agencies, must also protect the confidentiality of child-welfare information. *See* 55 Pa. Code §§ 3130.44, 3680.34.

Here, the Appellants and Appellees seek to include within a separate, sealed volume to the Joint Appendix the Declaration of Kimberly Ali, a DHS Deputy Commissioner, and the documents attached to that Declaration, which were filed with the District Court below as Exhibits 1, 1-B, 1-C, and 1-D to Appellees' opposition to the amended TRO motion. These documents contain confidential personal information belonging to a foster child in DHS' custody, including records, case notes, and other personal information. Due to the sensitive, confidential nature of portions of these records, Appellants and Appellees seek to seal these materials permanently to keep a foster child's confidential information out of the public realm in compliance with applicable Pennsylvania Laws.

CONCLUSION

For the reasons set forth above, Appellants and Appellees jointly request that this Court grant leave to file Volume IV of the Joint Appendix under seal.

Respectfully submitted,

CITY OF PHILADELPHIA
LAW DEPARTMENT
MARCEL S. PRATT, City Solicitor

By: /s/ Mark L. Rienzi
MARK L. RIENZI
LORI H. WINDHAM
STEPHANIE BARCLAY
NICHOLAS R. REAVES
The Becket Fund for Religious Liberty
1200 New Hampshire Ave. NW,
Suite 700
Washington, DC 20036
(202) 955-0095
mrienzi@becketlaw.org

NICHOLAS M. CENTRELLA
Conrad O'Brien PC
1500 Market Street, Suite 3900
Philadelphia, PA 19102-2100
(215) 864-8098
ncentrella@conradobrien.com

Counsel for Plaintiffs-Appellants

By: /s/ Eleanor N. Ewing
ELEANOR N. EWING (PA ID No. 28226)
Chief Deputy City Solicitor,
Affirmative & General Litigation
DIANA CORTES (PA ID No. 204274)
Chair, Litigation Group
JANE LOVITCH ISTVAN (PA ID No. 66634)
Chief Deputy Solicitor, Appeals
BENJAMIN H. FIELD (PA ID No. 204569)
Deputy City Solicitor,
Affirmative & General Litigation
MICHAEL PFAUTZ (PA ID No. 325323)
Assistant City Solicitor,
Affirmative & General Litigation
1515 Arch Street, 15th Floor
Philadelphia, PA 19102
Phone: (215) 683-5038

Counsel for Defendants-Appellees

CERTIFICATION OF COMPLIANCE.

This motion complies with the type-volume limitation of Federal Rules of Appellate Procedure 27(d) and 32(a)(7)(B) because this brief contains 408 words, excluding the parts of the brief exempted by Federal R. App. Proc. 32(f).

1. This motion 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 motion 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 a virus detection program was performed on this electronic motion/file using Windows Bit Defender, and that no virus was detected.

Dated: August 27, 2018

/s/ Mark L. Rienzi

Mark L. Rienzi

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Dated: August 27, 2018

/s/ Mark L. Rienzi

Mark L. Rienzi