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October 22, 2018

Patricia Dodszuweit, Clerk of the Court
Office of the Clerk
United States Court of Appeals for the Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Re: *Fulton, et al., v. City of Philadelphia, et al.*, No. 18-2574
(Response to Submission Under Fed. R. App. Proc. 28(j) (347 words))

Dear Ms. Dodszuweit:

Contrary to Appellant's suggestion, *ACLU v. Azar*, 2018 WL 4945321 (N.D. Cal. Oct. 11, 2018), is inapposite. Because *Azar* is a taxpayer standing case, it examined only whether the government had expended funds to endorse religious activity because a religious organization operating a government shelter for undocumented minors refused to provide abortion and contraception to residents because of its religious beliefs. *Id.* at *17-*19. The *Azar* Plaintiffs could not establish that the government had unconstitutionally limited medical services available to shelter residents based upon the operator's religious criteria because the government was able to obtain those services for shelter residents from other providers. *Id.* at *16-*17.

Given the *Azar* Plaintiffs' limited standing, *Azar* refused to consider their argument that the government's accommodation of the shelter's religious beliefs impermissibly harmed third parties because the accommodation required minors seeking abortions to leave their original shelter placement and delay their abortions while they transferred to other shelters. *Id.* at *17-*19. Here, by way of contrast, this Court can freely consider the harm that rejection and discrimination cause for same-sex couples that is not ameliorated by the availability of other providers willing to serve them.

The stigma that results from a City partner agency refusing to serve an entire segment of the population is inherent and may deter some couples from pursuing foster parent status at all; in addition, other agencies may claim their own religious exemptions and refuse to serve vulnerable communities as well. City Br. 58-59; Appx. 483-84 (allowing contractor to refuse

service to same-sex couples sends message that rights are not protected and sends message to LGBTQ youth in DHS custody that DHS will not support their rights when they are adults); Intervenor's Brief at 30-34, 43.

Therefore, contrary to CSS' analogy, this case does not present a mere harmless substitution of providers for same-sex couples seeking to become foster parents, but rather, it allows CSS to employ religious criteria in performance of its government contract in a manner that is harmful to same-sex couples, to LGBT youth in the City's care, and to the foster care system itself.

Respectfully submitted,

Jane Lovitch Istvan
Counsel for Appellees