



Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 14, 2022, I electronically filed the foregoing Motion and accompanying documents with the Clerk of the Court using the Court's CM/ECF system. Notice of this filing will be sent by operation of the Court's electronic filing system to the parties indicated on the electronic filing receipt.

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## INTRODUCTION

This case concerns the operation of two discrete government programs designed to provide foster care for unaccompanied immigrant minors—the Unaccompanied Refugee Minor (“URM”) Program and the Unaccompanied Alien Children (“UC”) Program. And because Plaintiffs do not have taxpayer standing to challenge how these programs affect *other* people, this case is limited to Plaintiffs’ ability to participate in these programs in a specific geographic location (the Dallas-Fort Worth area). Nevertheless, the expert report of Dr. David M. Brodzinsky, proffered by Plaintiffs, does not focus on the URM and UC programs—much less how they operate in the Dallas-Fort Worth area. Instead, it focuses on the U.S. foster-care “system” generally. Dr. Brodzinsky opines at length about the merits of same-sex foster parenting and the downsides of “excluding” same-sex couples from serving as foster parents. But he ignores that the Plaintiffs in this case are not being excluded from serving as foster parents, and no party has put the merits of same-sex foster parenting at issue. In fact, the report completely fails to address the fundamental changes the government has implemented to ensure that all prospective foster parents in the Dallas-Fort Worth area can participate on equal terms in the URM and UC programs—without excluding USCCB and its significant resources from being brought to bear to help vulnerable children .

The result is a report that is wholly divorced from the facts of the case and the programs at issue. Indeed, because many of Dr. Brodzinsky’s conclusions are simply irrelevant, they can be excluded on that basis alone. For example, Dr. Brodzinsky speaks of the need to include all “qualified foster and adoptive families so as to best serve the needs of children” and to reduce a purported shortage of foster parents. Not only does this ignore the fact that Plaintiffs *are not excluded*, but it also fails to account for the reality that while the national foster-care system *generally* may have a shortage of foster parents, the URM and UC programs do not. Likewise, Dr. Brodzinsky warns of reduced family placement options and “additional negative consequences for

LGBTQ youth” that could arise from the exclusion of same-sex foster parents. But again, these are non-issues here given that Plaintiffs are not being excluded, and that *all* children in the URM or UC programs have access to a *nationwide* range of placement opportunities.

Dr. Brodzinsky’s failure to engage with the relevant facts similarly means that his opinions are not reliable. What is more, Dr. Brodzinsky is not qualified to opine on his facially implausible claim that excluding faith-based organizations such as USCCB from the URM and UC programs would not lead to a reduction in placement opportunities for children in those programs.

For all these reasons, Dr. Brodzinsky’s report should be excluded.

### **BACKGROUND**

The Office of Refugee Resettlement (“ORR”), a component of the U.S. Department of Health and Human Services, administers two programs to care for unaccompanied immigrant children: the URM Program and the UC Program. Dkt. 106-2, USCCB Statement of Undisputed Material Facts (“SUMF”) ¶¶ 1–2, 6. Rather than provide foster-care services directly, ORR issues grants to a network of public and private agencies to care for these children. SUMF ¶ 10. While faith-based organizations may participate, 45 C.F.R. § 87.3(a); SUMF ¶ 12, the government’s selection criteria are secular and neutral, SUMF ¶ 11.

Defendant USCCB is one of these grantees. As part of its longstanding religious mission to “care for immigrants,” USCCB has for decades served unaccompanied immigrant children. SUMF ¶ 14. USCCB is one of the largest refugee settlement agencies in the world, SUMF ¶ 15, and has acquired a global reputation as an expert on migrating children and for setting a “high bar for quality of services.” Dkt. 106-3, USCCB Appendix of Cited Material (“App.”) 150. USCCB allocates funds provided by the government to subgrantees responsible for providing foster-care services in a manner consistent with its sincerely held religious beliefs. SUMF ¶¶ 20–22. Among other things, USCCB does not allocate funds to any organization that would use those funds to

provide services contrary to the teaching of the Catholic Church, including by licensing or placing children with same-sex foster parents. SUMF ¶¶ 23–25.

The litigation here arose from the conduct of one of USCCB’s former subgrantees, Catholic Charities of Fort Worth (“CCFW”), which provided foster services under both the URM and UC programs in the Dallas-Fort Worth area. SUMF ¶¶ 27–28. Plaintiffs Fatma Marouf and Bryn Esplin, a same-sex married couple, approached CCFW about fostering a refugee child. SUMF ¶¶ 36, 38. Due to its faith commitments, CCFW informed Plaintiffs that it could not license them as foster parents. SUMF ¶¶ 39–40.

After Plaintiffs contacted ORR’s URM program office about the incident, SUMF ¶ 41, the government worked to accommodate their desire to foster children from the programs, SUMF ¶ 53; App. 225–29. Specifically, ORR identified two organizations to provide additional foster-care services in the Dallas-Fort Worth area. SUMF ¶¶ 54–56. ORR appointed Lutheran Immigration and Refugee Services (“LIRS”) as a second replacement designee to establish a URM Program in the Dallas-Fort Worth area, which it did through its subgrantee Upbring. SUMF ¶¶ 54–55. ORR also awarded Baptist Children Family Services (“BCFS”) a grant to establish a UC Program in the same area. SUMF ¶ 56. Today, both programs are operating and willing to license and make placements with same-sex foster parents. SUMF ¶¶ 57–58.

On February 20, 2018, Plaintiffs filed suit alleging that the government violated the Constitution by awarding grants to USCCB, which in turn awarded subgrants to CCFW. *E.g.*, FAC ¶ 56. Plaintiffs contend this violated the Establishment Clause, along with the equal protection and due process components of the Fifth Amendment. FAC ¶¶ 74, 83, 91. In Plaintiffs’ view, the government’s failure to require CCFW to make foster placements in violation of its religious

beliefs was itself a violation of the Establishment Clause, along with the equal protection and due process components of the Fifth Amendment. FAC ¶¶ 74, 83, 91.

Though the factual record is fairly straightforward—and despite USCCB’s willingness to stipulate to all relevant facts, *see e.g.*, App. 6–13—Plaintiffs insisted on pursuing extensive discovery. The result was voluminous document production and *ten* depositions. In addition, Plaintiffs proffered Dr. David M. Brodzinsky, Ph.D. as an expert witness. Neither the government nor USCCB pursued expert testimony.

Plaintiffs served Dr. Brodzinsky’s expert report on August 24, 2020, and provided a corrected expert report on November 19, 2020. In his expert report, Dr. Brodzinsky attests that he was retained “to prepare a written expert report ... relating to professional standards for inclusion of qualified families in the child welfare system, and the impact on children and families that can result when a private child-placement agency that contracts with or receives a grant from the Federal government excludes same-sex couples based on the agency’s religious belief that this group of individuals should not be foster parents.” Dkt. 108-38, Expert Report of David M. Brodzinsky, Ph.D. (“Report”) at 1.<sup>1</sup> Dr. Brodzinsky argues that his opinions “are supported by research and scholarly writings in the areas of child development, family psychology, and child welfare, as well as [his] professional experience.” Report at 5. He offers five primary opinions:

- Opinion “A”: “Professional child welfare standards provide for the inclusion of all qualified foster and adoptive families so as to best serve the needs of children.” Report at 6.
- Opinion “B”: “Children in the foster care system are harmed when there are not enough families to meet their needs.” Report at 12.

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<sup>1</sup> While Dr. Brodzinsky filed a corrected report, *see* Ex. A, Corrected Expert Report of David M. Brodzinsky, Ph.D.; Ex. E, Transcript of Deposition of Dr. Brodzinsky at 8–9 (Nov. 20, 2020), Plaintiffs cite and rely on his original submission. Accordingly, USCCB will address the as-filed version of Dr. Brodzinsky’s report in this filing.

- Opinion “C”: “Permitting private child placement agencies, funded by and acting on behalf of the federal government, to turn away same-sex couples can reduce family placement options for children in the child welfare system, thereby undermining their long-term well-being.” Report at 16.
- Opinion “D”: “Permitting private agencies that administer federal foster care programs to turn away same-sex couples could result in additional negative consequences for LGBTQ youth in the foster care system.” Report at 21.
- Opinion “E”: “Enforcing nondiscrimination provisions in Federally-funded contracts with or grants to private child placement agencies would not reduce the availability of families for children in the foster care system.” Report at 23.

Defendants deposed Dr. Brodzinsky on November 20, 2020. Since that date, significant changes have occurred. As an initial matter, ORR no longer provides funds to USCCB for long-term foster-care services in Texas under the UC Program. SUMF ¶ 67. And all prior UC grant funds were expended by February 28, 2021. App. 3. Thus, USCCB no longer has any subgrantees participating in the UC Program in the Dallas-Fort Worth area.

More fundamentally, the government has named “a neutral third party”—the U.S. Committee for Refugees and Immigrants (“USCRI”)—“to field all inquiries from prospective URM foster parents in the Dallas/Fort Worth, Texas area.” SUMF ¶ 59. USCRI works in consortium with LIRS and its subgrantee Upbring, as well as USCCB and its subgrantee Catholic Charities of Dallas (“CCD”),<sup>2</sup> to “ensure that all prospective foster parents in the Dallas-Fort Worth area have the opportunity to work with a URM provider.” SUMF ¶ 60. Specifically, USCRI serves as a clearinghouse to field all inquiries from prospective URM foster parents in that region. SUMF ¶¶ 61, 64–65. It then refers those prospective foster parents to either CCD or Upbring for training and licensing based on information collected during the intake process and criteria

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<sup>2</sup> Since this litigation began, CCFW has undergone a programmatic restructuring and no longer provides foster-care services. SUMF ¶ 51; App. 177. Accordingly, as of July 1, 2019, USCCB began allocating funds received from ORR to CCD, which has taken over all services previously provided by CCFW. SUMF ¶ 52; App. 10.

(including religious objections) established by each consortium partner. SUMF ¶¶ 62–63. Dr. Brodzinsky has not commented on the impact of either of these changes on his opinions.

### LEGAL STANDARD

Federal Rule of Evidence 702 governs admission of expert testimony. It provides:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.

This “imposes a special obligation upon a trial judge to ‘ensure that any and all scientific testimony ... is not only relevant, but reliable.’” *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147 (1999) (quoting *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 589 (1993)). This “general holding—setting forth the trial judge’s general ‘gatekeeping’ obligation—applies not only to testimony based on ‘scientific’ knowledge, but also to testimony based on ‘technical’ and ‘other specialized’ knowledge.” *Id.* at 141. The party offering expert testimony must establish its admissibility by a “preponderance of proof.” *Meister v. Med. Eng’g Corp.*, 267 F.3d 1123, 1127 n.9 (D.C. Cir. 2001).

“At the end of the day, the basic question posed by both *Daubert* and Rule 702 is this: Is the proposed expert testimony ‘ground[ed] in the methods and procedures of science’ and likely to aid the jury, or is it mere ‘subjective belief or unsupported speculation,’ liable to waylay the finder of fact?” *Patteson v. Maloney*, 968 F. Supp. 2d 169, 173 (D.D.C. 2013) (quoting *Daubert*, 509 U.S. at 590). In other words, the expert testimony must be both *relevant* and *reliable* to be admissible. *Id.*

## ARGUMENT

### I. DR. BRODZINSKY'S OPINIONS ARE IRRELEVANT.

At the most basic level, expert testimony must be relevant to be admissible. This “*Daubert* prong ... is fairly straightforward.” *Campbell v. Nat’l R.R. Passenger Corp.*, 311 F. Supp. 3d 281, 297 (D.D.C. 2018). To determine whether proffered testimony is relevant, the court must decide whether it “is sufficiently tied to the facts of the case and whether it will aid the factfinder in resolving a factual dispute.” *Id.* Said otherwise, “[e]xpert testimony is relevant if it will assist the trier of fact to understand the evidence presented in the case.” *Blake v. Securitas Sec. Servs., Inc.*, 292 F.R.D. 15, 17 (D.D.C. 2013). As described by the *Daubert* court, this inquiry is one of “fit.” *Campbell*, 311 F. Supp. 3d at 297. And it must have real teeth: “the ‘decision to receive expert testimony’ cannot be ‘simply tossed off to the jury under a ‘let it all in’ philosophy.’” *Id.* (quoting *Joy v. Bell Helicopter Textron, Inc.*, 999 F.2d 549, 569 (D.C. Cir. 1993)).

Recognizing this reality, courts have repeatedly determined that portions of an expert report are inadmissible as irrelevant where the proffered testimony is not tied to the issues at hand. For example, in *Bazarian International Financial Associates, LLC v. Desarrollos Aerohotelco, C.A.*, 315 F. Supp. 3d 101 (D.D.C. 2018), the court addressed a motion to exclude the testimony and reports of an investment banking company’s expert witness in a breach-of-contract action against a hotel developer. Considering whether to exclude the expert’s opinion as to whether the debt fee found in the contract is the industry standard for such contracts, the court observed that “plaintiff fail[ed] entirely to explain how the reasonableness of the fee amount to which the plaintiff claims entitlement is relevant to whether the plaintiff is in fact due such fee.” *Id.* at 118. “The issue here,” the court explained, “is not whether the fee amount is reasonable but rather whether the plaintiff satisfied the contract’s terms so as to be entitled to the fee.” *Id.* at 118–19. “Any testimony as to what fee amount is industry standard thus is irrelevant.” *Id.* at 119; *see also Radiologix, Inc. v.*

*Radiology & Nuclear Med., LLC*, No. 15-4927-DDC-KGS, 2018 WL 1070876, at \*7–8 (D. Kan. Feb. 26, 2018) (excluding proposed expert testimony as “not relevant to defendant’s ... claim” and as “irrelevant to the issues that the trier of fact must decide here”).

Similarly, the court excluded irrelevant evidence in *Keys v. Washington Metropolitan Area Transit Authority*, 577 F. Supp. 2d 283 (D.D.C. 2008). That case involved various claims of gender discrimination and hostile work environment under Title VII and related provisions. The court noted that “[e]xpert testimony is irrelevant if it has no bearing on any issue in the case.” *Id.* at 285. The plaintiff offered expert testimony “in support of [the] allegation that ‘[an employer] failed to take adequate steps to prevent the unlawful employment practices against [p]laintiff’” and “regarding the deficiencies of [the employer’s] policies and procedures.” *Id.* at 286. The court declined to admit such testimony. This information, the court concluded, was “neither relevant to the case as it currently stands nor helpful to the trier of fact.” *Id.* “[B]ecause [the employer] ha[d] represented that it w[ould] no longer assert that it had an established sexual harassment policy, that it exercised reasonable care to prevent and correct sexually harassing behavior, or that the plaintiff unreasonably failed to take advantage of corrective or preventative opportunities presented by WMATA,” the testimony offered by plaintiff was irrelevant. *Id.*

In short, to be relevant, the proffered expert testimony must be tied to the factual disputes and particular claims at issue in the case. *See, e.g., United States v. Kahn*, 711 F. Supp. 2d 9, 10–12 (D.D.C. 2010) (expert testimony excluded in prosecution for mail fraud and conspiracy where proffered testimony on the creation of the United States monetary system, bills of exchange and redemption theory, government enforcement actions to counter fraud, and actions of persons with shared beliefs was irrelevant to claims at issue); *In Def. of Animals v. U.S. Dep’t of Agric.*, 587 F. Supp. 2d 178 (D.D.C. 2008) (granting motion to exclude expert testimony in FOIA action where

“the only issue for trial is whether the information withheld by the USDA, if released, would cause competitive harm to” another organization under investigation by the USDA, and “[t]he animal rights organizations in which [the expert] claims expertise are not commercial competitors”).

**A. The Addition of Alternative Providers and the Adoption of a Consortium Model Have Rendered Dr. Brodzinsky’s Opinions Irrelevant.**

Dr. Brodzinsky’s opinions are irrelevant because they are generalizations about the national foster-care system, and fail to address the particular facts of the URM and UC programs in the Dallas-Fort Worth area—the only issue relevant to Plaintiffs’ claims. At the time Plaintiffs filed this suit, CCFW was the only foster-care provider participating in the URM and UC programs in the Dallas-Fort Worth area. But that is no longer the case. A USCCB subgrantee no longer participates in the UC Program; the government has selected an alternative provider instead. *Supra* p. 3. Furthermore, the government has established a consortium to “ensure that all prospective foster parents in the Dallas-Fort Worth area have the opportunity to work with a URM provider.” *Supra* p. 5. As a result, nothing precludes “a couple in a same sex relationship in the Dallas-Fort Worth area from having their application to serve as a foster parent” considered by a URM or UC provider. App. 293; *see also* App. 283, 293–94.

These changes render the bulk of Dr. Brodzinsky’s Report “neither relevant to the case as it currently stands nor helpful to the trier of fact.” *Keys*, 577 F. Supp. 2d at 286; *cf. Marcel v. Placid Oil Co.*, 11 F.3d 563, 567 (5th Cir. 1994) (affirming the exclusion of an “outdated, statistically suspect, and untrustworthy” report). After all, Dr. Brodzinsky was retained to opine on the harms that result from “exclud[ing] same-sex couples based on [a foster] agency’s religious belief.” Report at 1. According to Dr. Brodzinsky, such exclusion would contribute to an alleged shortage of foster parents and lead to a reduction of potential placement options for children. *See supra* pp. 4–5 (listing opinions A–D). But given the changes detailed above, there is no reason to

believe *any* prospective foster parents will be excluded from the programs at issue in the relevant geographic area. “[A]ll qualified foster” families now have the opportunity to serve, meaning that any shortage of foster parents able to “meet the[] needs” of children in the programs cannot be attributed to USCCB’s religious beliefs. Report at 6, 12. And because no same-sex couples will be “turn[ed] away,” there is no risk of a “reduc[tion] in family placement options” that could “undermin[e]” the “long-term well-being” of children in the programs or “result in additional negative consequences for LGBTQ youth.” Report at 16, 21.<sup>3</sup> Furthermore, to the extent Dr. Brodzinsky’s opinions speak to the UC Program, they are irrelevant, as a USCCB subgrantee no longer participates in that program in the Dallas-Fort Worth area. *See supra* pp. 5 n.2. Dr. Brodzinsky’s opinions are thus no longer “sufficiently tied to the facts of the case” to be useful in resolving this dispute. *Campbell*, 311 F. Supp. 3d at 297.

**B. Opinions Divorced from the Facts of This Case Are Irrelevant.**

Dr. Brodzinsky’s opinions A-D (regarding the purported effects of excluding prospective same-sex couples) are also irrelevant for another reason: they are premised on facts that are simply not true of the URM and UAC programs. *Desarrollos Aerohotelco*, 315 F. Supp. 3d at 119 (deeming evidence irrelevant where it focused on “industry standard[s]” rather than the specifics of the case); *Kahn*, 711 F. Supp. 2d at 10–12 (excluding evidence on general topics unnecessary to understand the specifics of the case). Specifically, opinions A-D rest on two assumptions: (1) that the refusal to recruit same-sex foster parents contributes to “a dramatic shortage of families

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<sup>3</sup> Likewise, the fact that no couples will be “turned away,” means that concerns regarding any resulting “hesitan[cy] about approaching another agency” or “deterrent to . . . participation in the foster care . . . system as a whole” are irrelevant. Report at 18–19. The availability of the consortium and alternative providers in the Dallas-Fort Worth area also means there is “another agency located nearby that can meet [the] needs” of any same-sex couples that seek to foster. *Id.* at 20.

available to meet the needs of children in the foster care system,” Report at 9–10, 12–16 (discussing the consequences of “insufficient families” or “[r]educing the pool of available foster” families); and (2) that such a refusal by USCCB subgrantees could cause “children in the care of th[ose] agenc[ies to] lose out on the family that would have best served their needs,” Report at 16–22 (describing, *inter alia*, the benefits of having “the largest pool of prospective foster . . . applicants available” and the potential “loss of families who are likely to be the preferred placement for many LGBTQ youth”). Neither assumption is accurate with respect to the programs at issue.

1. There is no indication that there is a “shortage”—“dramatic” or otherwise—of foster parents in either the URM or UAC programs during the time period at issue in this litigation, either nationally or in the Dallas-Fort Worth area. According to Jallyn Sualog, the deputy director for children’s programs at ORR, the UC program has more capacity than children in need of services. Ex. B, Transcript of Deposition of Jallyn Sualog (Aug. 26, 2020) (“Sualog Dep.”) at 56:6–13. Similarly, Kenneth Tota, another ORR deputy director, stated that he has “never had an indication that [the URM program] did not have enough foster care families available.” Ex. C, Transcript of Deposition of Kenneth Tota (Sept. 28, 2020) (“Tota Dep.”) at 179:2–4. And Krystin Peck, who oversaw USCCB’s foster-care programs at the time of incident at issue in this litigation, testified that during her time at USCCB, there was no shortage of qualified foster parents for either program. Ex. D, Transcript of Deposition of Krystin Peck (Oct. 2, 2020) (“Peck Dep.”) at 138:7–23. To the contrary, USCCB was “consistently advocating for more” children to place within its existing network. *See id.*

The Report does not account for this testimony or provide any evidence to the contrary. Instead, it cites only general statistics concerning the foster-care system as a whole. *See Report at*

9–10 (citing national and state-wide child welfare statistics); *see also* Report at 12 (“Without sufficient numbers of motivated and qualified families ...”); Report at 14 (“When there are insufficient families available to adopt children ...”). In fact, when forming his opinion, Dr. Brodzinsky had *no* information concerning whether CCFW had enough families to meet its needs in 2017, *see* Ex. E, Transcript of Deposition of Dr. Brodzinsky (Nov. 20, 2020) (“Dep.”) at 69:3–8, or whether USCCB had enough families to meet its foster-care needs in Texas or elsewhere in 2017, *see* Dep. 69:9–13. Nor did he have information or data indicating whether the UC and URM programs had enough foster families to meet their needs in 2017 or whether the programs have had enough families since 2017 until the present. *See* Dep. 66:1–12; *see also, e.g.*, Dep. 61:17–20, 62:7–9, 62:21–25, 63:13–17. Dr. Brodzinsky could only testify that “generally there’s a shortage of foster homes across the country,” but admitted that he “can’t specifically say what’s happening in Dallas-Fort Worth,” Dep. 61:22–25, or the programs generally, Dep. 62:1–2, 66:1–12.

2. Moreover, Dr. Brodzinsky fails to account for the fact that, even apart from the consortium model described above, *supra* pp. 9–10, all children in the URM and UC programs have access to the full range of placement opportunities. Contrary to Dr. Brodzinsky’s evident belief, *e.g.*, Report at 16 (referring to “children in the care” of particular “agenc[ies]”), no provider has “a pool of children that are just waiting to be placed,” Ex. F, Transcript of Deposition of Anne Mullooly (May 18, 2022) (“2d Mullooly Dep.”) at 109:5–10. Instead, there is a “national network of URM providers” to which ORR or the State Department refers URM children. 2d Mullooly Dep. 108:13–109:3. If a provider tells the government it has a family that meets the child’s needs, and the government approves, only then will the provider take custody of the child and place the child with that family. 2d Mullooly Dep. 107:20–112:3. This system ensures that every child has the opportunity to be placed with foster parents recruited and licensed by providers across the nation—

including providers that recruit and license same-sex couples. *See* 2d Mullooly Dep. 108:13–112:3 (stating that “every licensed foster parent[] in any pool of any URM provider agency [nationwide] is eligible to receive a” placement).

The system is much the same for the UC program. Individual grantees do not place children with foster parents; rather, ORR identifies children in need of placement, and various grantees—including some who have no objection to licensing same-sex foster parents—from across ORR’s network identify possible placement opportunities. Sualog Dep. 128:1–3, 12–15; 157:5–11. Once grantees put forth potential matches, ORR selects from among those matches. Sualog Dep. 149:6–22.

In short, the government’s use of a national placement system ensures that every child has the opportunity to be placed with foster parents who “best serve[]” their needs.” Report at 16; Dkt. 107-1, Pls’ SUMF ¶¶ 113–14 (acknowledging this system). Because no child’s placement opportunities are limited by the grantee or subgrantee that a particular foster couple works with, it is both wrong and irrelevant for Dr. Brodzinsky to opine that any foster child could be deprived of placement options as a result of a particular agency’s refusal to work with same-sex couples.

### **C. Opinions on the Merits of Same-Sex Parenting Are Irrelevant.**

Dr. Brodzinsky likewise spends a great deal of his Report opining on the relative merits of same-sex couples serving as foster parents. *E.g.*, Report at 7–8 (stating that “well-established professional standards in the field of child welfare promote practices that welcome all capable prospective foster and adoptive parents regardless of ... sexual orientation”); *id.* at 8–9 (noting that numerous organizations “affirm[] that sexual minority adults are just as capable of raising children as their heterosexual counterparts” and describing applicable research); *id.* at 10–11 (describing research comparing the participation of same-sex couples to heterosexual couples in the foster-care system). These opinions, however, are irrelevant to the issues in this case.

Simply put, no Defendant has put the merits of same-sex foster parenting at issue. *Keys*, 577 F. Supp. 2d at 286 (deeming testimony irrelevant where the defendant took certain arguments off the table). In its response to Plaintiff’s First Requests for Admission, the government stated that it would not “raise any defense in this litigation that there is a ‘valid basis in social or child welfare principles for the government categorically to prefer different-sex couples over same-sex couples when considering or approving would-be foster or adoptive parents or making foster or adoptive placement decisions.’” Ex. G, Fed. Defs.’ Obj. & Resp. to Pls.’ 1st Requests for Admission at 7 (Nov. 4, 2019). USCCB also has not, and will not, raise any such argument in this litigation. As has been evident from the outset of this case, it is religious beliefs that compel USCCB to decline to fund organizations that will license same-sex couples. Indeed, Dr. Brodzinsky himself declined to challenge the sincerity of those beliefs and stated that he had “no basis to question” that they formed the basis for the conduct at issue here. *See* Dep. 75:14–18, 75:25, 76:1–4, 76:20–24. Accordingly, the portions of the Report that seek to demonstrate the merits of same-sex parenting should be excluded. *See Campbell*, 311 F. Supp. 3d at 297; *Keys*, 577 F. Supp. 2d at 286.

## **II. DR. BRODZINSKY’S OPINIONS ARE NOT RELIABLE.**

For similar reasons, many of Dr. Brodzinsky opinions should be excluded because they are unreliable. His opinions are unsupported, not the product of reliable methods and principles, and—most importantly—utterly divorced from the facts of the case.

Under Rule 702, even if expert testimony is (1) “based on sufficient facts or data” and (2) “the product of reliable principles and methods,” it must still be excluded if the expert failed to (3) “reliably appl[y] th[os]e principles and methods *to the facts of the case.*” Fed. R. Evid. 702(b)–(d) (emphasis added); *see also Campbell*, 311 F. Supp. 3d at 296–97. The reliability inquiry is “flexible,” *Kumho*, 526 U.S. at 141, and “may vary from case to case,” *Blake*, 292 F.R.D. at 17 (D.D.C. 2013) (quoting *United States v. Frazier*, 387 F.3d 1244, 1262 (11th Cir. 2004) (en banc)).

Broadly, the Rule 702 gatekeeping inquiry requires the district court to “focus solely on principles and methodology, not on the conclusions that they generate.” *Campbell*, 311 F. Supp. 3d at 297 (quoting *Ambrosini v. Labarraque*, 101 F.3d 129, 133 (D.C. Cir. 1996)). Thus, the expert’s underlying reasoning are what matters for admissibility purposes. Further, “[t]he expert must form his own opinions by *applying* his extensive experience and a reliable methodology” to the material at issue. *Gilmore v. Palestinian Interim Self-Gov’t Auth.*, 843 F.3d 958, 972 (D.C. Cir. 2016) (cleaned up). In other words, an expert must actually *apply* his methodology and experience to the facts at hand—not merely recite unsubstantiated propositions.

In summary, the district court “must find that [expert testimony] is properly grounded, well-reasoned, and not speculative before it can be admitted.” *Blake*, 292 F.R.D. at 17 (quoting Fed. R. Evid. 702 (adv. comm. note (2000 amends.))).

**A. Dr. Brodzinsky’s Opinions Are Wholly Divorced from the Facts of This Case.**

To start, Dr. Brodzinsky failed to ground each of his opinions in “the facts of [*this*] case.” Fed. R. Evid. 702. Because he did not “reliably appl[y his] principles and methods” those facts at hand, *id.*, his testimony is inadmissible, *Campbell*, 311 F. Supp. 3d at 296–97.

Indeed, Dr. Brodzinsky does not even *purport* to apply his methodologies and experience to the facts at hand. As he explained, his report deals with the foster-care “system in general.” Dep. 70:22–24; *see also* Dep. 74:16–20 (opinions “deal[] with the issues, generally”). Indeed, he expressly disclaimed any attempt to “deal[] with the analysis at a case level.” Dep. 78:14–18. “It was a general assignment to do with general issues,” Dep. 109:22–23, and his “concern” is “about how the system would be impacted broadly speaking,” Dep. 115:9–10. That is not the question at issue in this case. Rather, this case involves two specific federal programs—the URM and UC programs—that provide foster-care services to two particular categories of children—refugees and unaccompanied minors. And it involves the operation of those programs only in a specific

geographical area—Dallas-Fort Worth—where the State of Texas has stepped away from administering the URM program. *See* Tota Dep. 66:23–67:2. Dr. Brodzinsky’s “general” opinions about the domestic foster-care system do not meet the standards of admissibility required by Rule 702.

Plaintiffs cannot claim otherwise. In fact, Dr. Brodzinsky admitted that he did no work that could be construed as reasonable application of principles and methods to the facts of this case. In his words, he did “not deal[] with the analysis at a case level, but [instead] as a broader issue.” Dep. 78:16–18. He did not review the Answers, any deposition testimony, interrogatories, interrogatory responses, any agreements between USCCB and the federal government, or the subgrant agreement between USCCB and CCFW. Dep 29:20–30:20; *see also* Dep. 131:22–25; 132:1, 10–11. He appears to be unfamiliar with the operation of the URM and UC Programs, and whether those programs had enough families to meet their needs. *See supra* pp. 11–13. He has never spoken to the Plaintiffs, Dep. 29:7–9, nor has he performed a clinical psychological evaluation of either of them, Dep. 85:2–5. He was not aware that the government had stood up alternative providers in the Dallas-Fort Worth area that were willing to work with prospective same-sex foster parents. *See* Dep. 41–44. He has never conducted any research regarding USCCB, Catholic Charities, or CCFW. Dep. 32:23–25, 34:22–25, 35:20–23. His report does not cite any peer-reviewed literature regarding USCCB’s UC program, Catholic Charities’ foster-care programs, CCFW’s foster-care programs, or Catholic Charities’ participation in the UC and URM programs. Dep. 32:23–25, 35:16–19, 35:24–25, 36:1–2, 36:11–15. He does not cite research or documents on the URM or UC programs that referred to the USCCB specifically. Dep. 34:1–12. And he has no data about CCFW. Dep. 73:6–11, 47:14–21. Nor does he know when the federal government contracted with USCCB to provide services to refugee children in Texas, *see* Dep.

77:4–6, how long USCCB has operated a foster-care program for refugee minors, *see* Dep. 118:14–16, or how many subgrantees USCCB has for its foster-care programs, *see* Dep. 118:21–23.

In fact, according to Dr. Brodzinsky, the *only* materials he had specific to USCCB are the Complaint and a 2012 study. Dep. 72:25, 73:1–4. But those materials did not provide him with sufficient knowledge or context to evaluate the longstanding contributions of USCCB, its subgrantees, and their expansive network of licensed foster families. *See supra* pp. 2–3. Dr. Brodzinsky’s separation from the facts of this case is easily apparent: he could not name the agency that was unable to license Plaintiffs based on their religious beliefs, *see* Dep. 49:1–5, nor could he recall when Plaintiffs had their encounter with CCFW, *see* Dep. 69:18–25, or where else Plaintiffs applied to be foster parents, *see* Dep. 49:8–10.

Dr. Brodzinsky’s failure to ground his opinions in the facts of this case was evident at the time of his November 2020 deposition, and it is all the more true now. As detailed above, the URM and UC programs in the Dallas-Fort Worth area have undergone a dramatic—and unique—restructuring. *See supra* pp. 9–11. Dr. Brodzinsky did not opine on those changes at all, much less discuss how they might impact his analysis. Given all this, it cannot reasonably be contended that Dr. Brodzinsky’s conclusions are tied to “the facts of [this] case.” Fed. R. Evid. 702.

This is confirmed by a largely identical expert report submitted by Dr. Brodzinsky in another matter in a different jurisdiction. *See* Ex. H, Expert Report of David M. Brodzinsky, Ph.D., *Dumont v. Lyon*, No. 2:17-cv-13080 (E.D. Mich.), ECF No. 23-2 (filed July 24, 2019). In that case, Dr. Brodzinsky submitted an expert report with five opinions, which closely track—or are identical to—the five opinions he offers here. His assignment in *Dumont* was “[v]ery similar to this particular case,” Dr. Brodzinsky explained, and he reviewed that report “in preparation for writing this report, since [he] know that many of the points [he] was going to make ... were already in this

particular document.” Dep. 101:6–19; *see also* Dep. 108:3–5 (“It was the same kind of charges in this one, and it was to deal with the general issues, not case-specific issues or case analysis.”). Thus, there are “some citations that are in both reports.” Dep. 104:1–7. But even a cursory comparison of the two reports demonstrates the extensive overlap between his opinions and explanations. His characterization of the *Dumont* report as a mere “outline” does not account for the repetition of entire paragraphs and opinions. *Cf.* Dep. 24:3–9. The recycled, generic opinions from a prior report demonstrate that Dr. Brodzinsky failed to apply his principles and methods to the facts of this case, as required by Rule 702.

**B. Dr. Brodzinsky’s Individual Opinions Are Unreliable.**

Dr. Brodzinsky’s individual opinions are also unreliable. They are unsupported, contradictory, and in many cases, inconsistent with the facts of this case. The Supreme Court has set forth “specific factors” that a “trial court *may* consider” in deciding whether to admit expert testimony “when doing so will help determine that testimony’s reliability.” *Kumho*, 526 U.S. at 141. These factors include whether a “theory or technique” “can be (and has been) tested,” whether it “has been subjected to peer review and publication,” “the known or potential rate of error,” and “general acceptance” in the “relevant scientific community.” *Daubert*, 509 U.S. at 593–94. However, “the test of reliability is ‘flexible,’ and *Daubert*’s list of specific factors neither necessarily nor exclusively applies to all experts or in every case.” *Kumho*, 526 U.S. at 141. “Rather, the law grants a district court the same broad latitude when it decides *how* to determine reliability as it enjoys in respect to its ultimate reliability determination.” *Id.* at 142. Thus, “the gatekeeping inquiry is tied to the facts of each case.” *Patteson*, 968 F. Supp. 2d at 173.

**1. This court cannot rely on Dr. Brodzinsky’s conclusion that allowing Catholic foster agencies to participate in the URM and UC programs reduces family-placement options.**

As noted above, Dr. Brodzinsky argues that permitting faith-based foster agencies to decline to work with “a class of prospective families such as same-sex couples” could negatively impact youth in the programs—either because there will not be enough families to meet their needs, or because they will not have the opportunity to be placed with a “family that would have best served their needs.” Report at 9–10, 16–21; *supra* pp. 10–11. For the reasons detailed in the prior Part, that conclusion does not account for either the adoption of the consortium model or the national placement system employed by the URM and UC programs. *Supra* pp. 9–13. That, in and of itself, would be enough for this Court to conclude that Dr. Brodzinsky has not applied his analysis to “the facts of [this] case.” Fed. R. Evid. 702. But there are additional reasons those opinions are unreliable.

*First*, Dr. Brodzinsky did not provide *any* evidence that a significant number of willing same-sex families are excluded from becoming foster parents through the UC or URM programs as a result of the participation of agencies that share USCCB’s religious beliefs. He merely assumes that such individuals are being excluded or deterred in numbers sufficient to contributed to a purported shortage of foster families or placement options. Those assumptions are belied, however, by the absence of any actual shortage of foster parents in the programs. *Supra* pp. 11–12. And at a minimum, he must point to some indication that there are prospective same-sex foster parents waiting in the wings that would be participating in the URM or UC programs, but for USCCB’s policy.<sup>4</sup>

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<sup>4</sup> Moreover, Dr. Brodzinsky admitted that he cites *no* data to support his related claim that exempting faith-based foster agencies from a requirement to place children with same-sex couples could encourage other foster agencies to similarly refuse to work with same-sex couples. *See* Dep. 111:20–22. He provided no examples of this happening in Texas, *see* Dep. 111:23–24, let alone in

*Second*, while Dr. Brodzinsky’s concerns relate to the effects of a purported shortage of foster parents or placement options, he nowhere accounts for the *loss* of foster parents that would result from effectively barring Catholic agencies from the URM and UC programs. In other words, he opines that allowing Catholic agencies to participate harmfully reduces family-placement options, but fails to consider how the elimination of Catholic agencies will impact placement options. And there is strong reason to believe that the loss of Catholic agencies would dramatically reduce family recruitment, leading to *fewer* placement options for foster children. *See infra* pp. 24–29 (noting that with respect to the URM Program, capacity would be reduced by half). This is particularly so given the longstanding, widespread network of foster families that exists through the USCCB and its subgrantees. *See id.* To provide a reliable prediction regarding how the exclusion of Catholic agencies would impact on family-placement options, an expert would need to weigh the likely number of Catholic-recruited foster parents *lost* against the number of same-sex or other foster parents *gained*. Dr. Brodzinsky failed to do so. This “analytical gap” renders his opinion inadmissible. *See Chesapeake Climate Action Network v. Exp.-Imp. Bank of the U.S.*, 78 F. Supp. 3d 208, 219 (D.D.C. 2015) (“Testimony based on ‘subjective belief or unsupported speculation’ is not admissible as expert testimony. A court may refuse to admit expert testimony if it concludes that ‘there is simply too great an analytical gap between the data and the opinion proffered.’” (citation omitted) (quoting *Daubert*, 509 U.S. at 590 and *Groobert v. President & Dirs. of Georgetown Coll.*, 219 F. Supp. 2d 1, 6 (D.D.C. 2002))).

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Dallas-Fort Worth, *see* Dep. 111:25–112:1. More broadly, Dr. Brodzinsky admitted that he was unaware of *any* circumstances—in Texas or otherwise—in which a foster-care agency with no religious objection placing children with same-sex couples decided not to work with those couples because faith-based organizations were not required to do so. *See* Dep. 112:2–7; Dep. 115:21–24. And he admitted that his opinion was only a “can”—not a “definitely will”—with respect to whether other agencies would decline to work with same-sex couples on that basis. *See* Dep. 114:13–15. Such unsupported speculation is inadmissible. *Patteson*, 968 F. Supp. 2d at 173.

**2. This Court cannot rely on Dr. Brodzinsky’s claims regarding same-sex foster parents’ unwillingness to work with alternative providers, or the supposed lack of alternative providers willing to license same-sex foster parents.**

Dr. Brodzinsky further argues that permitting “child placement agencies acting on behalf of the federal government ... to exclude same-sex couples regardless of their qualifications ... creates a deterrent to same-sex couples’ participation in the foster care and adoption system as a whole.” Report at 18. And, he contends, “if private child placement agencies administering federal foster care programs are permitted to exclude same-sex couples as prospective foster or adoptive parents, there may not be another located nearby that can meet their needs.” Report at 20. Dr. Brodzinsky’s first claim is admittedly speculative; his second is inconsistent with the facts of this case.

As to the first, Dr. Brodzinsky does not cite to any evidence to substantiate his “deterrence” theory at all. *Cf. United States v. Day*, 524 F.3d 1361, 1368 (D.C. Cir. 2008) (“[T]he word ‘knowledge’ connotes more than subjective belief or unsupported speculation.” (quoting *Daubert*, 509 U.S. at 590)). He offers no evidence to support his claim that allowing Catholic agencies to place children in accordance with their religious belief has an effect on the willingness of same-sex couples to work with *other* organizations that are willing to work with them. Indeed, Dr. Brodzinsky admitted that there is *no* research that addresses the willingness of prospective same-sex foster parents to work with a different provider in the UC/URM program when a faith-based provider was unable to license them. *See* Dep. 59:6–8.

As to the second, Dr. Brodzinsky did not do any research on alternative providers in the Dallas-Fort Worth area available to Plaintiffs, or whether those providers could “meet their needs.” Report at 20. He claimed that “there may not be” any alternative available, Dep. 47:14–21, 49:8–10, but he admitted that he did not conduct any research regarding BCFS or LIRS, two alternative

providers relevant here. *See* Dep. 41:12–18; 43:9–12. Accordingly, he was “unaware” that BCFS began operating a UC program in the Dallas-Fort Worth area and that it has indicated that it does not object to placing children with same-sex foster parents. *See* Dep. 42:19–25, 43:1–2; Dep. 42:10–15; *see also* Dep. 42–43. He also did not know LIRS had been approved as a URM provider, Dep. 43:16–18, or that it indicated that it has no objection to placing children with same-sex foster parents, Dep. 43:19–22. And of course, he made no comment on the operation of the consortium, or how that model could impact his conclusions. *See supra* pp. 19–10.

**3. This Court cannot rely on Dr. Brodzinsky’s opinion that families who foster minors through faith-based agencies are less likely to meet the needs of certain youth than families who foster minors through secular agencies.**

Dr. Brodzinsky next posits that “permitting private agencies” to “turn away same-sex couples could result in additional negative consequences for LGBTQ youth.” Report at 21–23. But his speculation is again unfounded and logically inconsistent.

*First*, to support his contention, Dr. Brodzinsky cites to research demonstrating the overrepresentation of youth who self-identify as LGBTQ in foster care and that they are less likely to find a permanent placement. Report at 21. In light of such risks, Dr. Brodzinsky contends, “it is critical that the pool of placement applicants be as large as possible so as to find homes for these vulnerable young people with parents who understand, accept, and support them.” Report at 22. But Dr. Brodzinsky admits that “no data exist on the number of LGBTQ youth who are placed through the URM and UC program.” Report at 21–22; *see also* Dep. 53:20–23; Dep. 56:9–13. He thus fails to prove that the general research he cites applies to the specific programs at issue in this case. Moreover, advocating for a placement pool that is “as large as possible” is fundamentally inconsistent with the position that certain private agencies should be excluded—a logical flaw that Dr. Brodzinsky ignores.

*Second*, Dr. Brodzinsky’s speculation regarding “additional negative consequences for LGBTQ youth,” Report at 21, also fails to distinguish between permitting a faith based-agency to decline to place a child with same-sex *parents* and permitting a faith-based agency to decline to serve *children* who self-identify as LGBTQ. He testified that he has seen no evidence that any such child has been turned away by a USCCB subgrantee for any reason through the UC or URM programs. Dep. 78:6–13. Nor did he have a memory of a specific child being involved in Plaintiffs’ discussions with CCFW. Dep. 78:1–5; *see also* Dep. 74:25; 75:1–4 (testifying that his report does not address the issue of whether USCCB caused any harm to any specific child in its care, regardless of the sexual orientation of that child). Thus, there is no indication that any USCCB subgrantee failed to meet (or would fail to meet) the needs of any youth, regardless of their sexual orientation.

*Third*, despite Dr. Brodzinsky’s claim, his Report offers no evidence suggesting that opposite-couples are less likely to meet the needs of children who self-identify as LGBTQ. He admitted that the peer-reviewed research does not “identify which agencies [kids] were processed through,” only the “outcomes for kids in these programs.” Dep. 49:18–24; *see also id.* (failing to recall “any peer-reviewed research that addresses [LGBTQ] kids who come from faith-based organizations”). And he conducted no research relating to the child-welfare outcomes of children who self-identify as LGBTQ that were placed in homes through a faith-based organization, *see* Dep. 50:13–18, or specifically through those organizations that are unable to work with same-sex couples because of their religious belief, *see* Dep. 49:25; 50:1–3. More broadly, Dr. Brodzinsky admitted that there is *no* research on the child-welfare outcomes of LGBTQ children who were placed through faith-based organizations that are unable to work with same-sex couples because of their religious belief. *See* Dep. 50:24–25; 51:1–4. And he concedes that he has found no research

relating to the child welfare outcomes of such children placed in the Dallas-Fort Worth area specifically, *see* Dep. 51:5–12. In other words, there is no evidence that placements through faith-based agencies lead to worse outcomes for children—either those who identify as LGBTQ or those who do not. *Cf.* Dep. 50:13–18 (“The research doesn’t break it down in terms of the children’s sexual orientation.”).

To be sure, Dr. Brodzinsky’s Report does make the unsubstantiated assertion that “same-sex couples ... are likely to be the preferred placement for many LGBTQ youth.” Report at 22. But by his own admission, this claim is speculative: Dr. Brodzinsky testified that there is no data specifically relating to the family placement preferences of such youth in the URM or UC programs. *See* Dep. 56:16–19; 57:17–19. And in any event, Dr. Brodzinsky does not explain why any needs related to this purported preference could not be met via the programs as now structured. *See supra* pp. 9–10.

**4. This Court cannot rely on Dr. Brodzinsky’s opinion that enforcing nondiscrimination provisions in federally-funded contracts with or grants to private agencies will not reduce the availability of families for children in the foster-care system.**

Dr. Brodzinsky’s final opinion is similarly inadmissible. He asserts that, “[b]ased upon [his] professional experience, knowledge of the child welfare literature, and consultations with foster care and adoption organizations and agencies across the country,” he is “*aware of no evidence* suggesting that when child placement agencies have chosen to discontinue their foster care and adoption services because they had religious objections to complying with nondiscrimination requirements to accept all qualified families, this *caused a reduction in the number of families available* for children in the foster care system or otherwise impaired the government’s ability to meet the needs of children in its care.” Report at 23–24 (emphases added). But he offers no support for this counter-intuitive conclusion. *Cf. Fulton v. City of Philadelphia*,

141 S. Ct. 1868, 1882 (2021) (“If anything, including [Catholic Social Services] in the program seems likely to increase, not reduce, the number of available foster parents.”).

*First*, Dr. Brodzinsky’s conclusion is contradicted by evidence regarding the URM and UC programs that he does not address. That evidence indicates that, if USCCB ever withdrew, nationwide capacity in the URM Program would “shrink immediately” by half and there would be a “substantial loss in family placement options.” App. 62, 133–35, 151–53; Tota Dep. 269. While other providers can of course serve prospective foster-parents equally well in a particular geographic region, given USCCB’s deep “expertise” and “historical knowledge,” it would not be “eas[y]” for “other providers” to “replicate[]” USCCB’s contributions to either program at a national level. App. 62, 133–35, 151–53; Sualog Dep. 261.<sup>5</sup> Nowhere does Dr. Brodzinsky account for these obvious facts. Thus, even assuming his prediction is correct with respect to the domestic foster-care system generally, it still is not tied to the facts of this case.

*Second*, as his assertion makes clear, Dr. Brodzinsky relies solely on the *absence* of evidence indicating a reduction in the number of available families. He cites no evidence that affirmatively supports his contention that a reduction will not occur, and this absence renders his opinion inadmissible speculation. A *lack* of evidence showing that an outcome *will* happen is not sufficient to support a conclusion that the outcome *will not* happen. Dr. Brodzinsky’s opinion elides this logical misstep. *Cf. Campbell*, 311 F. Supp. 3d at 298 (granting motion to exclude expert testimony where expert “d[id] not cite any studies, data, articles, or other academic sources supporting any of his observations”),

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<sup>5</sup> As USCCB has explained, the scope of this case is limited to the Dallas-Fort Worth area. *See supra* p. 1; USCCB Opp’n to Pls. MSJ at 10 n.2. USCCB raises these facts because Dr. Brodzinsky frames his Report at a national level.

Dr. Brodzinsky presumably relies on the absence of evidence because there is no evidence to support his prediction apart from mere anecdote. He does not cite any study to support his conclusion regarding the impact (or lack thereof) of the withdrawal of faith-based organizations such as USCCB, and he testified that there are no peer-reviewed studies on this issue. *See* Dep. 39:4–15. Likewise, he could not opine on whether removing USCCB itself from the programs would result in a decline in foster-placement options. Dep. 125:23–25, 137:1.

Nor has Dr. Brodzinsky undertaken the research necessary rule out the possibility of such a decline. For example, Dr. Brodzinsky does not “know” “the specific population” of foster parents that are “working with the USCCB,” even though he admitted that “foster parents are quite variable.” Dep. 126:10–14. According to Dr. Brodzinsky, “families are not fungible” and different families may be “best suited to understand, support, and advocate for the special needs of each child.” Report at 12. This is significant, because eliminating an agency that cannot license same-sex couples based on its religious belief would also eliminate its network of already-licensed, qualified foster parents. And the variety among foster parents reasonably suggests that there are at least some foster parents licensed through USCCB’s subgrantees who may be willing to foster only through that particular Catholic agency based on religious or other reasons. *See* Report at 20 (explaining that not all foster-care “agencies will be appropriate for [a] family’s circumstances” and that “[d]ifferent agencies may offer different training schedules or services and support”). Losing those families would not only reduce the number of available foster placements, but it could also eliminate families “best suited” for particular children. An expert cannot reliably opine on the likely effects of eliminating a private foster agency on the availability of foster parents or placement options without evaluating that agency’s foster-parent population, and particularly how many are likely to work with an alternative provider.

Moreover, Dr. Brodzinsky's speculation regarding what would or would not happen were providers forced to act contrary to their religious beliefs is inconsistent with his own admissions. At various points, he declined to predict the impact of the withdrawal of either USCCB or one of its subgrantees from the programs at issue. Dep. 136:15–137:1. According to Dr. Brodzinsky, “They haven’t withdrawn yet, have they? There hasn’t been an attempt to make a transition, so I can’t opine on something that hasn’t occurred.” Dep. 136:15–21. This unwillingness to “opine on something that hasn’t occurred” cannot be reconciled with his prediction that “[e]nforcing nondiscrimination provisions in Federally-funded contracts with or grants to private child placement agencies *would not* reduce the availability of families for children in the foster care system.” Report at 23 (emphasis added).

*Third*, Dr. Brodzinsky not only fails to address the *creation* of a gap in available foster families by eliminating faith-based agencies, but also does not explain how the gap might be *filled* by equally-qualified alternative providers to avoid any reduction in the availability or quality of placement options. Such an explanation requires an understanding of the characteristics and capacity of the existing agencies and potential alternative providers—an understanding that Dr. Brodzinsky does not have.

Instead, at least with respect to this opinion, Dr. Brodzinsky appears to treat various agencies as interchangeable, and assumes that if one foster-care provider drops out, another will step in to take its place. Report at 23–24. This conclusion, however, is belied by his testimony elsewhere that foster-care providers are not necessarily fungible. Report at 20–21. It also fails to account for USCCB's unique contributions to the programs at issue, which Dr. Brodzinsky did not consider because he admittedly did not “do any kind of analysis of the agencies involved,” Dep. 109:18–22. Dr. Brodzinsky's “general” testimony ignores USCCB's long-running participation in

the URM and UC programs and its extensive network of subgrantees and foster families. *See* Dep. 77:4–6 (did not know when federal government contracted with USCCB to provide services to refugee children in Texas); 118:14–16 (did not know how long USCCB has operated a foster-care program for refugee minors); 118:21–23 (did not know how many subgrantees USCCB has for its foster-care program of refugee minors); *supra* p. 25. As a result, forcing USCCB out of the URM program would significantly reduce the number of families available to serve as foster parents. *See* App. 62, 133–35, 151–53; Tota Dep. 269; Sualog Dep. 261.

Dr. Brodzinsky’s failure to understand USCCB’s place within the programs at issue is compounded by his apparent inability to identify any agencies that could replace all of the resources devoted by USCCB and its subgrantees—whether in the Dallas-Fort Worth area or nationally. He testified that he does not know whether there are any other agencies comparable to USCCB in terms of the network of their subgrantees. *See* Dep. 119:4–10. He further admitted that he “ha[s] not reviewed or researched or made reference to any specific . . . agencies’ programs,” whether in the Dallas-Fort Worth area or elsewhere. Dep. 47:6–13. He did not know which foster agencies were operating in the Dallas-Fort Worth area in 2017—when Plaintiffs contacted CCFW—let alone research those providers. *See* Dep. 44:3–5; 115:1–5; 115:1–5. In fact, his report makes no mention of specific agencies, Dep. 44:7–12, and cites no data that specifically references the Dallas-Fort Worth area, Dep. 53:14–16.<sup>6</sup>

*Finally*, it is not evident how Dr. Brodzinsky’s opinion that there would not be a reduction in the availability of foster families differs from that of a layperson. He offers no explanation of

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<sup>6</sup> Dr. Brodzinsky’s failure to identify alternative providers that would be able to fill in the gap created by effectively barring faith-based providers such as USCCB from participating in the URM and UC programs is striking, because he elsewhere acknowledges the danger of limiting the availability of agencies participating in these federal programs. *See* Report at 20.

his methodology, instead pointing only to the *absence* of evidence. This is not enough. To opine as an expert, a proffered witness must do more than “review[] certain documents and reach[] a series of conclusions.” *Chesapeake Climate Action Network*, 78 F. Supp. 3d at 219. Rather, the expert must “identif[y] [his] principles or methodology,” and “describe[]” how his “review of the materials led him to reach his conclusions.” *Id.*

Dr. Brodzinsky has failed to do so. *See* Dep. 21:10–11 (describing his time spent preparing the Report as “reviewing and reading articles”); Dep. 21:21–25; 22:1–2 (explaining that his time spent on research “involved library research, looking for articles that I didn’t have copies of that I wasn’t aware of, reviewing articles that I had in my files ....”); Dep. 26:6–7 (“I continued to review different articles.”); Dep. 29:1–6 (testifying that his work for this case involved “research, library research, and tele conversations”); Dep. 70:7–21 (“What I am prepared to do is talk about the impact of being exempt from the antidiscrimination provisions on the system in general ... those opinions are based upon both broad knowledge of the field and also information from research that has to do with what—how—what circumstances impact families ....”). “[I]t is improper to use opinion evidence” “where the jury is just as competent to consider and weigh the evidence as is an expert witness and just as well qualified to draw the necessary conclusions therefrom.” *Gilmore*, 843 F.3d at 973 (quoting *Henkel v. Varner*, 138 F.2d 934, 935 (D.C. Cir. 1943)). Dr. Brodzinsky’s opinions are thus inadmissible. *See id.* at 972–73 (concluding that it was within district court’s discretion to deny admission of expert report where the expert “did not apply ‘a reliable methodology’ to form his opinion” or “explain how this methodology led to his opinions,” and “[i]t was also unclear how [the expert’s] approach differed from that of a layperson”).

### III. DR. BRODZINSKY IS NOT QUALIFIED TO TESTIFY AS AN EXPERT IN THIS CASE.

Rule 702 permits only a witness who is qualified as an expert to testify in the form of an opinion. Accordingly, “[t]he trial judge must determine ... whether the proffered witness is *qualified to give the expert opinion he seeks to express.*” *Arias v. DynCorp.*, 928 F. Supp. 2d 10, 15 (D.D.C. 2013) (emphasis added); *see also Meister*, 267 F.3d at 1127 n.9. The witness’s expertise is not determined as a general matter, but with respect to the particular opinion offered. The party offering the expert testimony must establish the expert’s qualification by a “preponderance of proof.” *Meister*, 267 F.3d at 1127 n.9 (quoting *Daubert* U.S. at 592 n.10).

To determine whether the proffered witness is qualified, “the court must assess whether the proffered expert has ‘sufficient specialized knowledge to assist the jurors in deciding the particular issues in th[e] case.’” *Arias*, 928 F. Supp. 2d at 15 (quoting *Kumho*, 526 U.S. at 156). In other words, “the trial court must determine whether the proposed expert possesses ‘a reliable basis in the knowledge and experience of [the relevant] discipline.’” *SEC v. e-Smart Techs., Inc.*, 85 F. Supp. 3d 300, 310–11 (D.D.C. 2015) (quoting *Daubert*, 509 U.S. at 592). “The Court may look directly to [the proffered expert’s] testimony in determining whether the expert is so qualified, as well as other evidence.” *DL v. District of Columbia*, 730 F. Supp. 2d 78, 80 (D.D.C. 2010) (citation omitted). Holding a graduate degree is not, by itself, enough. *See Arias*, 928 F. Supp. 2d at 15; *see also Dyson v. Winfield*, 113 F. Supp. 2d 44, 50 (D.D.C. 2000) (“[T]he key to qualifying him as an expert is his knowledge, not his academic degree.”). Instead, “the witness must explain how [his] experience leads to the conclusion reached, why that experience is a sufficient basis for the opinion, and how that experience is reliably applied to the facts.” Fed. R. Evid. 702 (adv. comm. note (2000 amends.)). “[S]parse evidence” of a proffered expert’s experience and a “conclusive[]” assertion of experience “without further explanation” does not suffice. *DL*, 730 F. Supp. 2d at 81.

Here, Dr. Brodzinsky has no relevant knowledge, training, or experience that otherwise qualify him to opine on the likely effects of forcing private foster agencies violate their religious beliefs by licensing same-sex families. Rule 702 therefore does not permit Dr. Brodzinsky to offer his opinion on this topic.

Predicting the outcome of forcing private foster agencies to license same-sex families requires a complex social-science projection based on a number of factors, each of which is difficult to predict. Among other things, this prediction would require an expert to analyze the harms that would result from effectively barring long-established Catholic foster agencies from participating in the URM and UC programs. This analysis alone raises numerous questions: How many potential foster families would be lost due to reduced recruitment from Catholic agencies? How can the prediction account for the loss of resources and experience that these Catholic agencies provide? Against these harms and losses, an expert would need to consider how many (if any) alternative agencies would be able to fill the gap created by the Catholic agencies' exclusion, and how the alternatives' services would compare to its predecessor agencies. The expert would also need to consider the likely effects of *barring* Catholic agencies as opposed to allowing them to continue to operate in a system that *refers* same-sex families to alternative providers with no religious objections.

Dr. Brodzinsky lacks the qualifications to conduct this inquiry. He is a clinical psychologist, but that does not equip him to opine on these complex social-science issues. An expert may be unqualified despite his "academic and professional experiences" where he fails to show "*why* [his] residency training and clinical practice is a sufficient basis for his opinion." *Arias*, 928 F. Supp. 2d at 17 (emphasis added). Dr. Brodzinsky has failed to show precisely that. Nor could he: His education, training, and experience provide no basis for his opinions where he lacks

any qualifications relating to the complex prediction of likely effects of forcing private foster agencies to license same-sex families, let alone knowledge about the facts about the agency and its network of foster parents in *this* case. *See Sykes v. Napolitano*, 634 F. Supp. 2d 1, 8 (D.D.C. 2009) (excluding expert where witness did “not offer ‘expert’ testimony based on his years of experience” but instead “decide[d] credibility on an incomplete written record, offer[ed] conclusions that have no basis in fact revealed from his report, and advocate[d] for the Plaintiff rather than providing expertise to the fact-finder”).

### **CONCLUSION**

For the foregoing reasons, the expert testimony and report of Dr. David M. Brodzinsky should be excluded.

Dated: September 14, 2022

Respectfully submitted,

*/s/ David T. Raimer.*

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
FATMA MAROUF, <i>et al.</i> ,	)	
	)	
Plaintiffs	)	
	)	Civil Action No. 1:18-cv-00378 APM
v.	)	
	)	
XAVIER BECERRA, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**DECLARATION OF DAVID T. RAIMER IN SUPPORT OF DEFENDANT U.S. CONFERENCE OF CATHOLIC BISHOPS’ MOTION TO EXCLUDE EXPERT REPORT AND TESTIMONY OF DR. DAVID M. BRODZINSKY**

I, David T. Raimer, declare that I am over 18 years of age and otherwise competent to testify as to the matters herein, which are based on my personal knowledge.

1. Along with my colleagues at the law firm Jones Day, I am counsel for Defendant United States Conference of Catholic Bishops (USCCB) in the above-referenced matter. I make this declaration in support of USCCB’s Motion to Exclude Expert Report and Testimony of Dr. David M. Brodzinsky.

2. Attached as Exhibit A is a true and correct copy of the Corrected Expert Report of David M. Brodzinsky, as produced by Plaintiffs in this case.

3. Attached as Exhibit B is a true and correct excerpt of pages from the deposition of Jallyn Sualog. Ms. Sualog was deposed on August 26, 2020 via remote video conference with counsel for all parties present.

4. Attached as Exhibit C is a true and correct excerpt of pages from the deposition of Kenneth Tota. Mr. Tota was deposed on September 28, 2020 via remote video conference with counsel for all parties present.

5. Attached as Exhibit D is a true and correct excerpt of pages from the deposition of Krystin Peck. Ms. Peck was deposed on October 2, 2020 via remote video conference with counsel for all parties present.

6. Attached as Exhibit E is a true and correct excerpt of pages from the deposition of Dr. Brodzinsky. Dr. Brodzinsky was deposed on November 20, 2020 via remote video conference with counsel for all parties present.

7. Attached as Exhibit F is a true and correct excerpt of pages from the second deposition of Anne Mullooly (Government 30(b)(6) witness for the URM Program). Ms. Mullooly was deposed on May 18, 2022 via remote video conference with counsel for all parties present.

8. Attached as Exhibit G is a true and correct excerpt of pages from Federal Defendants' Objections and Responses to Plaintiffs' First Requests for Admission, served by Federal Defendants on November 4, 2019.

9. Attached as Exhibit H is a true and correct copy of the Expert Report of David M. Brodzinsky, Ph.D. as publicly filed in the case docketed at *Dumont v. Lyon*, No. 2:17-cv-13080 (E.D. Mich.), ECF No. 23-2 (filed July 24, 2019).

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 14th day of September 2022 in Washington D.C.

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# **Exhibit A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

FATMA MAROUF AND BRYN ESPLIN,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:18-cv-378 (APM)
	)	
ALEX AZAR, in his official capacity as	)	
Secretary of the UNITED STATES	)	<b>EXPERT REPORT OF DAVID M.</b>
DEPARTMENT OF HEALTH AND HUMAN	)	<b>BRODZINSKY, PH.D.</b>
SERVICES, <i>et al.</i> ,	)	
	)	
<i>Defendants.</i>	)	

**EXPERT REPORT OF DAVID M. BRODZINSKY, PH.D.**

I, David M. Brodzinsky, do solemnly attest as follows:

**I. Assignment**

1. I have been retained by plaintiffs' counsel to prepare a written expert report in this case relating to professional standards for inclusion of qualified families in the child welfare system, and the impact on children and families that can result when a private child-placement agency that contracts with or receives a grant from the Federal government excludes same-sex couples based on the agency's religious belief that this group of individuals should not be foster parents. The analyses and opinions expressed in this report are my own. I am being compensated at a rate of \$250 per hour. My compensation in this matter is in no way contingent or based on the content of my opinions or the outcome of this matter.

**II. Professional Qualifications** (see attached curriculum vitae for more details)

2. I received a Ph.D. in developmental psychology from the State University of New York at Buffalo in 1974, as well as additional training as a clinical psychologist during a clinical

internship at the Irving Schwartz Institute for Children and Youth in Philadelphia from 1972-1973 and a post-doctoral clinical fellowship at the same institution from 1973-1974.

3. I am a licensed psychologist in the state of California (#21152).

4. From 1974 to 2006, I served as an Assistant Professor, Associate Professor, and then Full Professor in the Department of Psychology at Rutgers University, where I taught undergraduate and graduate courses in developmental and clinical psychology, conducted research, and supervised doctoral students in clinical and school psychology. Currently, I am Professor Emeritus of Clinical and Developmental Psychology at Rutgers University.

#### Selection of Specific Qualifications Related to Adoption and Foster Care

5. I have nearly 40 years of experience in the fields of adoption and foster care as a researcher, scholar, teacher, clinician, policy analyst, trainer, consultant, and forensic expert. I have over 100 publications, including numerous peer-reviewed journal articles, book chapters, and six books on adoption and foster care, as well as on other topics in developmental and clinical psychology. I have also reviewed hundreds of articles in these areas submitted for publication to the most prestigious professional journals in developmental and clinical psychology, as well as in child welfare.

6. From 1986 to 1995, I directed a post-adoption service program under contract from the New Jersey Division of Youth and Family Services, now known as the Department of Children and Families. The project provided direct clinical services to children adopted from foster care and their families in several northern counties in New Jersey.

7. From 1989 to 2006, I was Director of the Rutgers Foster Care Counseling Project, a state-funded training and service program focusing on the clinical needs of foster children and their families in central New Jersey. During this period, I trained over 100 doctoral-level psychology

students in psychological issues in foster care, adoption and trauma, and the project served over 700 foster families.

8. From 1996 to 2006, I was on the Board of Directors of the Donaldson Adoption Institute in New York City, an internationally known non-profit organization focusing on policy analysis, research, education, and advocacy in the fields of adoption and foster care. From 2006 through 2014, I served as Research Director for the Institute. During my time with the Donaldson Adoption Institute, I created the Modern Adoptive Families Project, a nationwide survey of adoptive parents focusing on the experiences and outcomes of different types of adoptive families, including those headed by sexual minority individuals/couples<sup>1</sup>. To date, 10 empirical articles or technical reports have been published from this dataset, with additional ones in preparation.

9. I have served or am currently serving on the Editorial Boards of *Adoption Quarterly*, *Developmental Child Welfare*, *Journal of Applied Developmental Psychology*, and *Youth and Society*.

10. I have been in private practice as a psychologist for 35 years, with the majority of my clinical work focusing on the mental health needs of adopted and foster children and their families. Over this time period, I have worked with approximately two thousand families who have adopted or fostered children.

11. From 2008 to 2016, I was a clinical supervisor for A Home Within, a non-profit organization in the San Francisco Bay area providing pro bono clinical services to foster children and their families.

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<sup>1</sup> Sexual minority is a term referring to a group whose sexual identity, orientation or practices differ from the majority of the surrounding society. Primarily used to refer to lesbian, gay, bisexual or non-heterosexual individuals, it can also refer to transgender, non-binary (including third gender) or intersex individuals.

12. I have also been a practicing forensic psychologist for 33 years. During this time I have been involved in approximately 650 forensic cases, testifying over 100 times in 12 different states. Most of my cases have involved issues related to child custody, juvenile dependency, contested adoption, wrongful adoption, child abuse, and trauma-related personal injury. Approximately 45-50 of these forensic cases involved issues related to adoption, fostering, and/or parenting by sexual minority individuals/couples.

13. I have given hundreds of conference presentations, professional workshops, medical grand rounds presentations, invited university lectures, and community lectures to mental health professionals, child welfare professionals, legal professionals, and/or the public related to adoption and foster care throughout the United States, Europe, and parts of South America.

14. I have been a consultant to hundreds of public and private adoption agencies and child welfare agencies in the United States, Canada, England, Northern Ireland, Wales, Spain, Italy, Holland, Sweden, Norway, Iceland, and Colombia. Currently, I am a clinical and training consultant for the Center for Adoption Support and Education in Burtonsville, Maryland, and a research and project consultant for the National Center on Adoption and Permanency in Newton, Massachusetts.

Selection of Specific Qualifications Related to Adoption, Foster Care, and Parenting by Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) Individuals and Couples

15. I have published a dozen peer-reviewed journal articles, policy papers, book chapters, and an edited book (*Adoption by Lesbians and Gay Men: A New Dimension in Family Diversity*, Oxford University Press, 2012) focusing on adoption and parenting by lesbians and gay individuals/couples.

16. I have worked clinically with hundreds of families headed by LGBTQ parents during

my career, including those who have adopted or fostered children. Since moving to California in 2006, approximately 30-40% of my clinical practice has been with families headed by LGBTQ individuals/couples. In addition, I have regularly supervised the clinical work of other professionals working with families headed by LGBTQ parents.

17. From 2009 to 2015, I was a clinical supervisor and consultant to the Pacific Center in Berkeley, California, a non-profit organization serving the mental health needs of the LGBTQ community.

18. I have been involved in numerous court cases related to adoption, fostering, parenting, and marriage by sexual minority individuals/couples, for which I have provided expert reports on case issues, evaluated the parties, and/or testified during deposition or at trial. These cases include the same-sex marriage trial in Hawaii in 1996 (*Baehr v. State of Hawaii*); four separate challenges to Florida's ban on adoption by gay and lesbian adults (*Amer v. Johnson* in 1997; *Lofton v. Kearney, et al.* in 2001; *IMO Adoption of JCB* in 2005; *IMO Adoption of XG and NG* in 2008); *Catholic Charities v. State of Illinois* in 2011; and the Michigan same-sex marriage case (*DeBoer v. Snyder* in 2014). In all of these cases where I appeared in court, I was qualified as an expert on issues related to adoption, fostering, and parenting by LGBTQ adults.

19. I have made numerous presentations on issues related to adoption, fostering, and parenting by sexual minority adults to mental health professionals, child welfare professionals, and legal/judicial professionals throughout the United States, Canada, Western Europe, and Colombia.

### **III. Opinions**

20. The opinions below are supported by research and scholarly writings in the areas of child development, family psychology, and child welfare, as well as my professional experience.

Relevant authoritative books, book chapters, journal articles, policy briefs, and technical reports are cited herein in support of my opinions. In addition to these documents, my opinions are based on 40 years of research, clinical, consultation, training, and forensic experience in child development, family psychology, and/or child welfare, as well as my direct clinical involvement and supervisory experience with hundreds of foster and adoptive families, including many headed by LGBTQ parents.

**A. Professional child welfare standards provide for the inclusion of all qualified foster and adoptive families so as to best serve the needs of children.**

21. Children in foster care are some of the most vulnerable children in our nation, often experiencing pre-placement adversity and trauma such as inadequate health care, neglect, abuse, exposure to domestic violence, exposure to parental psychopathology and/or substance abuse, disrupted emotional attachments to caregivers, and disrupted education. These experiences lead to increased risk for psychological and educational maladjustment during childhood and adolescence, as well as poorer life adjustment in adulthood.<sup>2</sup> Among the thousands of children who enter foster care in the United States each year are those who come into the country through the Unaccompanied Alien Children program (UAC) and the Unaccompanied Refugee Minors (URM) program, both of which are administered through the Federal Office of Refugee Resettlement.<sup>3</sup> Like other foster children, youth who enter foster care through the UAC and URM programs are psychologically vulnerable because of histories of separation from family members, early life adversity and trauma, including, in many cases, abuse, exposure to civil

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<sup>2</sup> American Academy of Pediatrics (2000). Developmental issues for young children in foster care. *Pediatrics*, 106, 1145-1150; Jones, A. & Morris, T.L. (2012). Psychological adjustment of children in foster care: Review and implications for best practice. *Journal of Public Child Welfare*, 6, 129-148.

<sup>3</sup> <https://www.hhs.gov/programs/social-services/unaccompanied-alien-children/latest-uac-data-fy2019/index.html>; <https://www.acf.hhs.gov/orr/programs/urm/about#:~:text=About%20Unaccompanied%20Refugee%20Minors%20Program%201%20Background.%20URM,them.%202%20Program%20Description%203%20URM%20program.%20>

unrest and violence. Research indicates that these children have high rates of Post-Traumatic Stress Disorder, as well as other forms of emotional/behavioral disturbance<sup>4</sup>, although they can also show remarkable resilience and adjustment to their new home and country with appropriate support, care, and expectations from their new families<sup>5</sup>.

22. Given their vulnerability, finding stable, loving, and permanent homes for foster children, including those who are designated as URM or UAC, represents one of the most important responsibilities for child welfare agencies. To fulfill this goal, well-established professional standards in the field of child welfare promote practices that welcome all capable prospective foster and adoptive parents regardless of race, religion, marital status, gender, disability, or sexual orientation.

23. The Child Welfare League of America (CWLA), which is the national standard setter in the field of child welfare, has promulgated the well-accepted Standards of Excellence for Child Welfare Services, including Family Foster Services<sup>6</sup> and Adoption Services.<sup>7</sup> CWLA standards are “goals for the continuing improvement of services for children and their families... CWLA

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<sup>4</sup> Carlson, B.E., Cacciatore, J. & Klimek, B. (2012). A risk and resilience perspective on unaccompanied refugee minors. *Social Work*, 57, 259-269; Franco, D. (2018). Trauma without borders: The necessity for school-based interventions in treating unaccompanied refugee minors. *Child and Adolescent Social Work*, 35, 551-565; Geltman, P.I., Grant-Knight, W., Mehta, S.D., Lloyd-Tragaglini, C., Lustig, S. et al. (2005). *Archives of Pediatric and Adolescent Medicine*, 159, 585-591; Hodes, M., Jagdev, D., Chandra, N. & Cunniff, A. (2008). Risk and resilience for psychological distress amongst unaccompanied asylum seeking adolescents. *Journal of Child Psychology and Psychiatry*, 49, 723-732; Thommessen, S, Laghi, F., Cerrone, C., Baiocco, R., & Todd, B.K. (2013). Internalizing and externalizing symptoms among unaccompanied refugee and Italian adolescents. *Children and Youth Services Review*, 35, 7-10; Van Holen, F., Blijkers, C., Trogh, L., West, D. & Vanderfaeillie, J. (2020). Unaccompanied children in Flemish family foster care: Prevalence and associated factors of placement breakdown. *Children and Youth Services Review*, 109, prepublication online copy <http://doi.org/10.1016/j.childyouth.2019.104736>.

<sup>5</sup> Bates, L., Baird, D., Johnson, D.J., Lee, R.E., Luster, T. & Rehagen, C. (2005). Sudanese refugee youth in foster care: The “lost boys” in America. *Child Welfare: Journal of Policy, Practice, and Program*, 84, 631–648; Carlson, B.E., Cacciatore, J. & Klimek, B. (2012). A risk and resilience perspective on unaccompanied refugee minors. *Social Work*, 57, 259-269.

<sup>6</sup> *Child Welfare League of America Standards of Excellence for Family Foster Care Services* (Rev Ed) (1995). Washington, D.C.

<sup>7</sup> *Child Welfare League of America Standards of Excellence for Adoption Services* (Rev. Ed) (2000). Washington, D.C.

standards are directed to all who are concerned with the enhancement of services to children and their families, including parents; public and voluntary child welfare agency governing board members; direct service, supervisory, and administrative staff members; the general public; citizen groups; public officials; courts and judges; legislators; professional groups; organizations serving children and their families; organizations whose functions include the planning and financing of community services; state or local agencies entrusted by law with functions relating to the licensing or supervision of organizations serving children and their families; tribal organizations; advocacy groups; and federations whose membership requirements involve judgments on the nature of services rendered by their member agencies.”<sup>8</sup>

24. CWLA standards make it clear that all individuals and families should be considered when applying to foster or adopt children, including those who are sexual minority adults. CWLA standards for foster care clearly state that “the family foster care agency should not reject foster applicants solely due to their age, income, marital status, race, religious preference, sexual orientation, physical or disabling condition, or location of the foster home.”<sup>9</sup> Similarly, CWLA standards for adoption state that “applicants should be assessed on the basis of their abilities to successfully parent a child needing family membership and not on their race, ethnicity or culture, income, age, marital status, religion, appearance, differing lifestyle, or sexual orientation. Applicants should be accepted on the basis of an individual assessment of their capacity to understand and meet the needs of a particular available child at the point of the adoption and in the future.”<sup>10</sup>

25. CWLA issued a position statement affirming that sexual minority adults are just as

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<sup>8</sup> CWLA Family Foster Care Services, *ibid*, pg vi

<sup>9</sup> *CWLA Standards of Excellence for Family Foster Care Services*, *ibid*, pg 97

<sup>10</sup> *CWLA Standards of Excellence for Adoption Services*, *ibid*, pgs 56-57

capable of raising children as their heterosexual counterparts and strongly opposing efforts to exclude foster care and adoption applicants based solely on their sexual orientation.<sup>11</sup> Among the many professional organizations issuing similar position statements related to parenting, fostering and/or adoption by LGBTQ adults are the American Psychological Association, American Academy of Child and Adolescent Psychiatry, American Psychiatric Association, American Academy of Pediatrics, and the American Medical Association.

26. The positions taken by these organizations are based on nearly 30 years of research showing that sexual minority parents are as well-adjusted psychologically and have similar parenting competence as their heterosexual counterparts. Furthermore, studies indicate that children are not disadvantaged psychologically, socially, or educationally when they are raised by sexual minority parents. These findings have been replicated many times for sexual minority parents with biological children and adopted children.<sup>12</sup> Although there are fewer studies on outcomes for foster children raised by sexual minority parents, there is no logical or theoretical reason to expect that the findings would be different from those focusing on adopted children. In fact, a sizable percentage of children adopted by sexual minority individuals/couples are from the domestic foster care system, and evidence suggests that these children are doing as well as their agemates adopted by heterosexual parents.<sup>13</sup>

27. One of the many reasons it is so important in the child welfare field to not exclude from the process those who may represent qualified families is the dramatic shortage of families

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<sup>11</sup> <https://www.cwla.org/position-statement-on-parenting-of-children-by-lesbian-gay-and-bisexual-adults/>

<sup>12</sup> Farr, R.H., Vasquez, C.P., & Patterson, C.J. (2020). LGBTQ adoptive parents and their children. In A.E. Goldberg & Allen, K.R. (Eds), *LGBTQ-parent families: Innovations in research and implications for practice*, (pgs 45-64) (2nd ed). New York: Springer.

<sup>13</sup> Cody, P.A., Farr, R.H., McRoy, R.G., Ayers-Lopez, S.J., & Ledesma, K.J. (2017). Youth perspectives on being adopted from foster care by lesbian and gay parents: Implications for families and adoption professionals, *Adoption Quarterly*, 20, 98-118; Lavner, J.A., Waterman, J., & Peplau, L.A. (2012). Can gay and lesbian parents promote healthy development in high-risk children adopted from foster care? *American Journal of Orthopsychiatry*, 82, 465-472.

available to meet the needs of children in the foster care system. In fact, a recent report by the Chronicle of Social Change indicates that at least half of the states in the U.S. have seen foster care capacity decrease between 2012 and 2017.<sup>14</sup> The most recent national child welfare statistics on foster care and adoption are for FY2018 (i.e., October 1, 2017 through September 30, 2018).<sup>15</sup> During this time period, over 437,283 children resided in foster care, with 125,422 children waiting to be placed for adoption.<sup>16</sup> For Texas, in particular, between 2013 and 2017, an average of 29,844 children resided in foster care, with an average of 13,094 waiting to be adopted.<sup>17</sup> The inability to find stable, nurturing, and permanent homes for children in public care reflects, in part, the limited number of motivated and qualified families willing to foster and adopt them. Therefore, if Federally-funded private child welfare agencies are permitted to exclude any group of qualified applicants, including those who are LGBTQ, it will reduce the chances of these children finding nurturing and permanent life-long family connections in a timely manner and increase the risk for long-term adjustment difficulties. Indeed, excluding same-sex couples may have an especially serious impact on children in foster care and those waiting to be adopted because research indicates that members of this group of adults are disproportionately more likely to foster and adopt children than their heterosexual peers. Specifically, among couples raising children, same-sex couples are six times more likely than different-sex couples to be raising foster children and four times more likely to be raising adopted children.<sup>18</sup>

28. Not only is the number of children in need of families great but many have personal and

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<sup>14</sup> <https://imprintnews.org/wp-content/uploads/2017/10/The-Foster-Care-Housing-Crisis-10-31.pdf>

<sup>15</sup> <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport26.pdf>

<sup>16</sup> *ibid.*

<sup>17</sup> <https://cwoutcomes.acf.hhs.gov/cwodatasite/pdf/texas.html>

<sup>18</sup> Gates, G. (2013). *LGBTQ parenting in the United States*. The Williams Institute, Los Angeles.

life circumstances that make it challenging to find families to care for them. A sizable percentage of children in foster care are beyond the infancy and toddler years, have serious medical, developmental or emotional needs, have histories of trauma, and/or have lingered in care for many years. In addition, a disproportionate number of these children are from racial/ethnic minority groups. These characteristics, known as “special needs”, make it more difficult for agencies to find families willing to provide a home for them. Many of these characteristics also apply to children coming into the U.S. through URM and UAC programs – for example, older age when entering foster care, minority racial/ethnic group membership, trauma history).

29. Research indicates that same-sex couples are disproportionately more likely than heterosexual adults to adopt racial minority children and frequently adopt children with developmental and emotional difficulties. For example, in one national survey of families with adopted children, 47% of children in families headed by same-sex couples were racial minority children compared to 37% of children in families headed by heterosexual couples<sup>19</sup>. Therefore, excluding sexual minority individuals and couples from adopting or fostering children reduces the pool of applicants who are willing to take on the challenges of raising special needs children, leading to longer stays in foster care and increased risks for long-term adjustment difficulties. In short, child welfare policies and practices that allow the exclusion of families willing and able to foster and adopt these vulnerable children, simply on the basis of their sexual orientation or gender identity, do not serve the interests of the children or society in general.

30. Even if there were an abundance of families willing to foster and adopt children from the child welfare system, it would still be critical to access every qualified family to ensure that

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<sup>19</sup> Gates et al (2007). *Adoption and foster care by lesbian and gay parents in the United States*. Technical report issued jointly by The Williams Institute (Los Angeles) and the Urban Institute (Washington, D.C.)

all children can be placed with families that are well-matched to meet their specific needs. Child placements are assessed on a case-by-case basis, with the goal of determining which family is best suited to understand, support, and advocate for the special needs of each child. All children have unique needs and families are not fungible. In sum, excluding sexual minority adults from fostering and adopting reduces the pool of families from which to choose when looking for good matches to meet the needs of each child.

31. In addition, research and child welfare practice support maintaining foster and adopted children's connections to their birth family and birth heritage, whenever possible, because these connections often promote more secure identity development and healthier emotional well-being.<sup>20</sup> This goal, although not always achievable, is also true for those youth coming into the country through URM and UAC programs.<sup>21</sup> Sexual minority adults have been shown to be very supportive of their children's need for birth family contact.<sup>22</sup> Therefore, excluding sexual minority adults from fostering and adopting reduces the pool of applicants who are likely to be willing to help their children maintain connections with birth family members and explore their birth heritage.

**B. Children in the foster care system are harmed when there are not enough families to meet their needs.**

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<sup>20</sup> Brodzinsky, D. (2005). Reconceptualizing openness in adoption: Implications for theory, research and practice. In D. Brodzinsky & J. Palacios (Eds.), *Psychological issues in adoption: Research and practice*. Westport, CT: Praeger; CWLA *Standards of Excellence for Adoption Services* (Rev Ed) (2000). Washington, D.C.; Grotevant, H. & McRoy, R. (1998). *Openness in adoption: Exploring family connections*. Thousand Oaks, CA: Sage; Neil, E. & Howe, D. (2004). *Contact in adoption and permanent foster care: Research, theory and practice*. London: British Association for Adoption & Fostering.

<sup>21</sup>

<https://www.acf.hhs.gov/orr/programs/urm/about#:~:text=About%20Unaccompanied%20Refugee%20Minors%20Program%201%20Background.%20URM,them.%202%20Program%20Description%203%20URM%20program.%20>

<sup>22</sup> Brodzinsky, D. & Goldberg, A. (2016). Contact with birth families in adoptive families headed by lesbian, gay male, and heterosexual parents. *Children and Youth Services Review*, 62, 9-17; Brodzinsky, D. & Goldberg, A. (2017). Contact with birth family in intercountry adoptions: Comparing families headed by sexual minority and heterosexual parents. *Children and Youth Services Review*, 74, 117-124

32. Without sufficient numbers of motivated and qualified families, children continue to linger in foster care, often moving from home to home over the years. A longer time in foster care and a greater number of moves while in placement directly contributes to adverse developmental outcomes for children because it undermines the development and/or maintenance of secure attachment bonds, which are the cornerstone of healthy human functioning.<sup>23</sup> In short, children in the foster care system are harmed when there are not enough families available to foster or adopt them.

33. When there are insufficient families available to foster or adopt children, children in the foster care system sometimes end up in group homes or institutional environments. As an example, across the country, for FY2018, 19,253 children in state care (4%) lived in group homes, and 28,040 lived in institutional facilities (6%).<sup>24</sup> In Texas, between 2013 and 2017, an average of 1.8% of foster children who were younger than 12 years when they entered care currently lived in group homes and 4.6% in institutional settings.<sup>25</sup> Data were not available for the percentage of children currently living in these two types of placement who were older than 12 years at the time they first entered foster care. It should be noted, however, that youth who first enter foster care during the teenage years are more likely to be placed in group care and institutional care facilities than younger children. These types of care environments cannot offer children the stability, nurturance, safety, life-long family connections and support, and genuine sense of legal, residential, relational and psychological permanence that families can provide.<sup>26</sup>

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<sup>23</sup> Pecora, P.J. et al. (2009). Mental health services for children placed in foster care: An overview of current challenges. *Child Welfare*, 88, 5-26; Dozier, M. & Rutter, M. (2016). Challenges to the development of attachment relationships faced by young children in foster and adoptive care (696-714). In J. Cassidy & P.R Shaver (Eds), *Handbook of attachment: Theory, research, and clinical applications*. 3<sup>rd</sup> ed. New York: Guilford Press.

<sup>24</sup> <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport25.pdf>.

<sup>25</sup> <https://cwoutcomes.acf.hhs.gov/cwodatasite/pdf/texas.html#fn5>

<sup>26</sup> Brodzinsky, D. & Smith, S. (In Press). *Commentary: Understanding research, policy, and practice issues in*

Although the majority of children placed in care through the Office of Refugee Resettlement are in licensed foster homes, some are in other types of placements including group homes and residential treatment centers.<sup>27</sup> The availability of a larger pool of foster parents, including those who are LGBTQ, would likely increase the chances of placing children from the URM and UAC programs in a stable and nurturing foster home rather than a group care facility.

34. When there are insufficient families available to adopt children or provide other forms of permanence (e.g., guardianship), child welfare agencies often change the case goal to emancipation (i.e., the youth is no longer a ward of the State) as opposed to adoption or other forms of family permanency. These permanency goal changes are associated with greater likelihood for multiple placements and institutional placements and less likelihood for being adopted or achieving other forms of family permanency.<sup>28</sup> From FY2014 through FY2018, between 7% and 9% of youth in care (roughly 20,300 per year on average) failed to achieve permanency and aged out from foster care.<sup>29</sup> In Texas, between 2013 and 2017, nearly 68% of youth who exited foster care through emancipation or “aging out” had entered foster care beyond the age of 12 years<sup>30</sup>. Although research indicates that some emancipated foster care youth maintain connections with their previous foster families and others return to their birth families, many of those who age out from care have no stable, committed, and nurturing relationships they can count on as they transition to adulthood. As a result, these young men and women face tremendous difficulties in areas related to education, employment, housing, physical and mental

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*adoption instability*. Research on Social Work Practice.

<sup>27</sup>

<https://www.acf.hhs.gov/orr/programs/urm/about#:~:text=About%20Unaccompanied%20Refugee%20Minors%20Program%201%20Background.%20URM,them.%202%20Program%20Description%203%20URM%20program.%20>

<sup>28</sup> Cushing, G. & Greenblatt, S.B. (2009). Vulnerability to foster care drift after the termination of parental rights with foster care backgrounds. *Research in Social Work Practice*, 19, 694-698.

<sup>29</sup> Department of Health and Human Services. The AFCARS reports #22-26. Department of Health and Human Services, Children's Bureau. <https://www.acf.hhs.gov/cb/research-data-technology/statistics-research/afcars>

<sup>30</sup> <https://cwoutcomes.acf.hhs.gov/cwodatasite/pdf/texas.html>

health, substance abuse, criminality, and early, unplanned parenting.<sup>31</sup> Furthermore, as a result of the many losses they experienced following removal from their families, as well as subsequent multiple moves they experience in foster care, they are likely to have great difficulty in forming trusting and secure relationships as they get older. In fact, emotional support and relationship permanency are two key missing needs identified by "aging out" youth themselves.<sup>32</sup> The URM and UAC programs are responsible for the placement of many older youth. For example, from FY2015 to FY2018, 33% of youth, on average, were 17 years old.<sup>33</sup> Some of these youth were unable to be placed in stable foster homes, but rather lived in group homes, therapeutic residential centers, or in independent living situations.<sup>34</sup> Like those youth who "age out" from domestic state foster care, adolescents from the URM and UAC programs who do not have an opportunity to develop secure familial relationships are likely to enter adulthood facing significant challenges in multiple domains of functioning (e.g., employment, housing, physical and mental health, etc.).

35. Reducing the pool of available foster or adoptive families increases the chances that children will be placed with families that are not well-matched for their individual needs, or who do not understand or are unprepared to cope with their special needs. When this happens, the chances of placement disruption or adoption breakdown increases. Regardless of the reason, placement breakdowns typically lead to increased adjustment difficulties for children, in large

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<sup>31</sup> Howard, J. & Berzin, S. (2011). *Never too old: Achieving permanency and sustaining connections for older youth in foster care*. New York: Donaldson Adoption Institute; Rebbe, R., Nurius, P.S., Ahrens, K.R., & Courtney, M.E. (2017). Adverse childhood experiences among youth aging out of foster care: A latent class analysis. *Children and Youth Services Review*, 74, 108-116.

<sup>32</sup> Samuels, G. (2009). Ambiguous loss of home: The experience of familial (im)permanence among young adults with foster care backgrounds. *Children and Youth Services Review*, 31, 1229-1239.

<sup>33</sup> <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data>.

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<https://www.acf.hhs.gov/orr/programs/urm/about#:~:text=About%20Unaccompanied%20Refugee%20Minors%20Program%201%20Background.%20URM,them.%202%20Program%20Description%203%20URM%20program.%20>

part because of disruption to existing attachment relationships and support networks.<sup>35</sup> Given the older age of youth placed through the URM and UAC programs and their history of adverse life experiences, they are at risk for the type of individual and relational problems that correlate with placement instability. In fact, placement breakdown is a well known but unfortunate outcome for too many unaccompanied refugee and alien children.<sup>36</sup> Thus, it is in the interest of these youth and society, in general, to have the largest pool of prospective foster and adoptive applicants available, including those who self-identify as LGBTQ, in order to increase the chances of a good placement match.

**C. Permitting private child placement agencies, funded by and acting on behalf of the federal government, to turn away same-sex couples can reduce family placement options for children in the child welfare system, thereby undermining their long-term well-being.**

36. If a private child placement agency, funded by and acting on behalf of the federal government, does not accept a class of prospective families such as same-sex couples, children in the care of that agency may lose out on the family that would have best served their needs and, instead, be placed with a family in the agency's pool of licensed families that meets the qualifications to foster or adopt but is a less appropriate choice for the child for any number of reasons (e.g., not as well-prepared to manage a child's serious emotional or medical issues; lacking in experience to meet the child's special needs; having different expectations regarding

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<sup>35</sup> Brodzinsky, D. & Smith, S. (2019). Commentary: Understanding research, policy, and practice issues in adoption instability. *Research on Social Work Practice*, 29, 85-194; Palacios, J., Rolock, N., Selwyn, J. & Barbosa-Ducharne, M. (2019). Adoption breakdown: Concept, research, & implications. *Research on Social Work Practice*. 29. 130-142; Koback, R., Zajac, K. & Madison, S. (2016). *Attachment disruptions, reparative processes, and psychopathology: Theoretical and clinical implications*. In J. Cassidy & P. Shaver (Eds.), *Handbook of attachment: Theory, research and clinical applications*. (3rd ed.). New York: Guilford Press.

<sup>36</sup> Linowitz, J. & Boothby, N. (1988). Cross-cultural placements. In E. Ressler, N. Boothby, & D. Steinbock (Eds), *Unaccompanied children: Care and protection in wars, natural disasters, and refugee movements* (pp. 181-207). New York: Oxford University Press; Van Holen, F., Trogh, L., Carlier, E., Gypen, L. & Vanderfaellie, J. (2019). Unaccompanied refugee minors and foster care: A narrative literature review. *Child and Family Social Work*, 25, 506-514.

the placement than the youth placed with them; having difficulty understanding and supporting the youth's sexual orientation or gender identity).

37. Eliminating a group of potential applicants from fostering youth placed through the URM and UAC programs, simply because of their sexual orientation and/or gender identity, is inconsistent with research on those factors that correlate with the success of URM and UAC foster care placements. Research suggests that these children do best with foster parents who have realistic expectations about them, are available to form warm and trusting relationships, respect the youth's cultural background and language, support the youth's contact with peers from their own culture, support the youth's cultural identity, are open minded and flexible in their beliefs, are able to adjust to differences the youth brings into the family, and can serve as role models in helping the youth with acculturation.<sup>37</sup> None of these parenting characteristics are found less often in same-sex couples than heterosexual couples.<sup>38</sup> In fact, as noted previously, studies have found sexual minority adoptive parents to be as supportive of contact between their child and the birth family, and at times even more so, as heterosexual adoptive parents.<sup>39</sup> Moreover, they have been shown to be highly motivated and competent in supporting their children's racial/ethnic identity and connection with their birth culture.<sup>40</sup> In short, not accepting LGBTQ applicants as potential foster parents for youth being placed through the URM and UAC programs eliminates a group of individuals who have the very parenting characteristics that are correlated with success of these placements.

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<sup>37</sup> Van Holen et al. (2019) *ibid*

<sup>38</sup> Farr, R.H, Vasquez, C.P., & Patterson, C.J. (2020). *Ibid*; Goldberg, A.E. (2010). *Lesbian and gay parents and their children: Research on the family life cycle*. Washington, D.C.: American Psychological Association

<sup>39</sup> Brodzinsky, D. & Goldberg, A.E. (2016, 2017). *Ibid*; Goldberg, A.E. (2019). *Open adoption and diverse families: Complex relationships in the digital age*. New York: Oxford University Press.

<sup>40</sup> Battalen, A.W., Dow-Fleisner, S.J., Brodzinsky, D.M. & McRoy, R.G.(2019). Lesbian, gay, and heterosexual adoptive parents' attitudes towards racial socialization practices. *Journal of Evidence-Based Social Work*. 16, 178-191

38. In addition, when child placement agencies acting on behalf of the federal government are permitted to exclude same-sex couples regardless of their qualifications, it creates a deterrent to same-sex couples' participation in the foster care and adoption system as a whole. Same-sex couples who are turned away by an agency because of their sexual orientation may be hesitant about approaching another agency in their community for fear of further discrimination. They may not know how receptive another agency will be to sexual minority applicants. Although professional child welfare organizations encourage agencies to state clearly that they welcome same-sex couples,<sup>41</sup> some agencies do not. Furthermore, some same-sex couples who would be interested in fostering or adopting may decline to pursue it altogether if they know that the Federal government sanctions discrimination against sexual minorities by some private placement agencies. Minority stress research shows the significant impact of discrimination on marginalized groups. Individuals who experience discrimination and prejudice because they are members of a minority class, such as those who are LGBTQ, are impacted by significant stress that is psychologically harmful, increases the risk for internalized homophobia, and potentially can deter them from participating in various areas of life out of fear of repeated discrimination and feelings of exclusion and humiliation.<sup>42</sup> Moreover, such stress can also negatively impact their physical and emotional health, undermine identity and self-image, and compromise the pursuit of life goals. Thus, it would be wrong to assume that all same-sex couples who are interested in fostering or adopting a child from the foster care system would move forward in

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<sup>41</sup> [www.nrcdr.org/assets/files/strategies-for-recruiting-LGBT-foster-adoptive-kinship-families.pdf](http://www.nrcdr.org/assets/files/strategies-for-recruiting-LGBT-foster-adoptive-kinship-families.pdf).

<sup>42</sup> Goldberg, A. & Smith, J. (2011). Stigma, social context, and mental health: Lesbian and gay couples across the transition to adoptive parenthood. *Journal of Counseling Psychology*, 58, 139-150; Herek, G., Gillis, J. & Cogan, J. (2009). *Internalized stigma among sexual minority adults: Insights from a social psychological perspective*. *Journal of Counseling Psychology*, 56, 32-43; Meyer, I. (2003). *Prejudice, social stress, and mental health in lesbian, gay, and bisexual populations: Conceptual issues and research evidence*. *Psychological Bulletin*, 129, 674-697; Meyer, I. & Frost, D. (2013). *Minority stress and the health of sexual minorities*. In C. Patterson & A. D'Augelli (Eds.), *Handbook of psychology and sexual orientation*. New York: Oxford University Press.

pursuit of that goal when they know that doing so comes with the risk of facing further discrimination by another agency.

39. Allowing discrimination against any group would create a deterrent, but for LGBTQ people, this is exacerbated by the lingering impact of widespread bias against sexual minority adults in the child welfare field which, until fairly recently, had been a significant obstacle to participation of LGBTQ people in adoption and foster care.<sup>43</sup> Despite greater acceptance of LGBTQ individuals and couples as prospective foster and adoptive parents, especially after the Supreme Court decision in *Obergefell v Hodges*, 576 U.S. 644 (2015)<sup>44</sup>, sexual minority individuals continue to experience delays and disruptions in the foster and adoption process because of prejudicial attitudes of child welfare workers<sup>45</sup>.

40. A growing number of child welfare agencies have worked to overcome the damage of past discrimination by conveying a welcoming message to LGBTQ prospective families and providing appropriate support for their efforts to adopt and foster children.<sup>46,47</sup> Federal sanction

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<sup>43</sup> Appell, A. (2012). *Legal issues in lesbian and gay adoption*. In D. Brodzinsky & A. Pertman (Eds.), *Adoption by lesbians and gay men: A new dimension in family diversity*. New York: Oxford University Press; Pertman, A. & Howard, J. (2012). *Emerging diversity in family life: Adoption by gay and lesbian parents*. In D. Brodzinsky & A. Pertman (Eds.), *Adoption by lesbians and gay men: A new dimension in family diversity*. New York: Oxford University Press.

<sup>44</sup> <https://supreme.justia.com/cases/federal/us/576/14-556/>

<sup>45</sup> Goldberg, A.E., Frost, R.L., Miranda, L. & Kahn, E. (2019). LGBTQ individuals' experiences with delays and disruption in the foster and adoption process. *Children and Youth Service Review*, 106, article 104466.

<sup>46</sup> Brodzinsky, D. (2011). *Expanding resources for children III: Research-based best practices in adoption by gays and lesbians*. New York: Donaldson Adoption Institute; Brodzinsky, D. & Goldberg, A. (2016). *Practice guidelines supporting open adoption in families headed by lesbian and gay male parents: Lessons learned from the Modern Adoptive Families Study*. New York: Donaldson Adoption Institute; Brodzinsky, D. & Pertman, A. (2012) (Eds.), *Adoption by lesbian and gay men: A new dimension in family diversity*. New York: Oxford University Press;

Howard, J. (2006). *Expanding resources for children: Is adoption by gays and lesbians part of the answer for boys and girls who need homes?* New York: Donaldson Adoption Institute; Howard, J. & Freundlich, M. (2008). *Expanding resources for waiting children II: Eliminating legal and practice barriers to gay and lesbian adoption from foster care*. New York: Donaldson Adoption Institute; Human Rights Campaign (2012). *All children, all families: Promising practices in adoption and foster care*, 4th ed. Washington, D.C.: Human Rights Campaign Foundation;

Mallon, G. (2006). *Lesbian and gay foster and adoptive parents: Recruiting, assessing, and supporting an untapped resource for children and youth*. Washington, DC: Child Welfare League of America.

<sup>47</sup> Despite greater participation by sexual minority adults in adoption and foster care in the past decade, they continue to experience perceived bias and prejudice during the adoption process from multiple sources, including child

of discrimination against same-sex couples by private placement agencies directly undermines these nationwide steps toward inclusion by other agencies, and would likely reduce the number of LGBTQ families seeking to adopt or foster children, which, in turn, would lead to further losses in placement options for those boys and girls in need of foster and adoptive parents.

41. In addition to the deterrent effect of discrimination and the stigma it creates, if private child placement agencies administering federal foster care programs are permitted to exclude same-sex couples as prospective foster or adoptive parents, there may not be another agency located nearby that can meet their needs. If a family must travel some distance to find an agency willing to work with them, it could undermine their ability to move forward with the foster care or adoption process. Furthermore, even if they are willing to travel the distance for initial intakes and interviewing, the burden of traveling could jeopardize their availability for ongoing, thorough pre- placement preparation and/or limit the amount of post-placement support they could receive from the agency. Thorough pre-placement preparation and the availability of high-quality post-placement support are strong predictors of placement stability and child/family well-being.<sup>48</sup>

42. If private agencies administering federal foster care programs exclude same-sex couples, even if there are other agencies in their vicinity, there is also no guarantee that any of those agencies will be appropriate for the family's circumstances. Different agencies may offer different training schedules or services and support for families. And some agencies specialize in

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welfare workers, agency support staff, judges, attorneys, and birth families. For example, one study of 158 lesbian and gay adoptive parents noted that nearly 50% of survey respondents reported experiencing bias from one or more sources during the adoption process. Brodzinsky, D. (2011). *Expanding resources for children III: Research-based best practices in adoption by gays and lesbians*. New York: Donaldson Adoption Institute. A state practice of allowing agencies to discriminate against same-sex couples could exacerbate this problem by giving it the state's endorsement.

<sup>48</sup> Smith, S. (2010). *Keeping the promise: The critical need for post-adoption services to enable children and families to succeed*. New York: Donaldson Adoption Institute.

particular types of placements (e.g., older children; medically fragile children; children from racial/ethnic minority groups). Thus, when an agency is authorized to exclude same-sex couples, some families may not be able to work with another agency in their area that would suit their specific foster or adoption preferences or their life circumstances.

**D. Permitting private agencies that administer federal foster care programs to turn away same-sex couples could result in additional negative consequences for LGBTQ youth in the foster care system.**

43. Government sanctioned discrimination against LGBTQ applicants has a disproportionate adverse effect on LGBTQ youth, who are among the most vulnerable in the child welfare system. Research shows that LGBTQ youth are overrepresented in foster care as well as among youth who are homeless.<sup>49</sup> Rejection by family members, abuse, and discrimination are common reasons for these youth to be removed from their homes or to run away.<sup>50</sup> Once in foster care, LGBTQ youth remain at significant risk for ongoing discrimination and violence.<sup>51</sup> Furthermore, LGBTQ youth in foster care are significantly less likely to find a permanent placement through adoption or family reunification than heterosexual youth.<sup>52</sup>

Although no data exist on the number of LGBTQ youth who are placed through the URM and

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<sup>49</sup> Cochran, B., Stewart, A., Ginzler, J., & Cauce, A. (2002). *Challenges faced by homeless sexual minorities: Comparison of gay, lesbian, bisexual, and transgender homeless adolescents with their heterosexual counterparts. American Journal of Public Health, 92*, 773-77; Durso, L. E., & Gates, G. J. (2015). *Serving our youth: Findings from a national survey of service providers working with Lesbian, Gay, Bisexual, and Transgender youth who are homeless or at risk of becoming homeless*. Los Angeles: The Williams Institute. Wilson, B., Cooper, K., Kastanis, A. & Nezhad, S. (2014). *Sexual and gender minority youth in foster care: Assessing disproportionality and disparities in Los Angeles*. Los Angeles: The Williams Institute, UCLA School of Law.

<https://www.hrc.org/blog/new-report-on-youth-homeless-affirms-that-lgbtq-youth-disproportionately-ex>

<sup>50</sup> Ryan, C., Huebner, D., Diaz, R., & Sanchez, J. (2009). Family rejection as a predictor of negative health outcomes in white and Latino lesbian, gay, and bisexual young adults. *Pediatrics, 123*, 346-352; Savin-Williams, R. (1994). Verbal and physical abuse as stressors in the lives of lesbian, gay male, and bisexual youths: Associations with school problems, running away, substance abuse, prostitution, and suicide. *Journal of Consulting and Clinical Psychology, 62*, 261-269.

<sup>51</sup> Love, A. (2014). A room of one's own: Safe placement for transgender youth in foster care. *New York University Law Review, 89*, 2265-2300.

[http://nc.casaforchildren.org/files/public/site/publications/TheConnection/Fall2009/Full\\_Issue.pdf](http://nc.casaforchildren.org/files/public/site/publications/TheConnection/Fall2009/Full_Issue.pdf)<sup>52</sup>

UAC programs, there is every reason to believe that some of these youth have already identified as LGBT or are in the process of questioning their sexual orientation or gender identity. Data analyzed by the Williams Institute indicates that there are approximately 81,000 LGBT Dreamers in the U.S., including 39,000 LGBTQ individuals who have participated in the Deferred Action for Childhood Arrivals (DACA) program since its inception in 2012. Although it is unknown whether these individuals self-identified as LGBTQ when they entered the U.S., it is likely that some who were already adolescent did so.<sup>53</sup> Furthermore, recognition that some of the youth placed through the URM and UAC are LGBTQ is supported by a program that has been developed to help residential care providers meet the needs of LGBTQ youth who enter the U.S. through the Office of Refugee Resettlement.<sup>54</sup> Given the significant psychosocial risk for sexual minority youth in foster care, it is critical that the pool of placement applicants be as large as possible so as to find homes for these vulnerable young people with parents who understand, accept, and support them. Therefore, excluding any group of willing and qualified foster care applicants runs counter to the needs of these young people and society in general.

44. Allowing agencies to exclude same-sex couples as foster care applicants also means a loss of families who are likely to be the preferred placement for many LGBTQ youth. For those youth who have experienced family rejection or violence in their home countries because of their sexual orientation or gender identity, a sexual minority foster family may feel safer and potentially more accepting to them because the foster parents are likely to understand the discrimination, prejudice, marginalization, emotional isolation, and family rejection they have experienced. Placements for unaccompanied refugee minors in foster care are more stable when

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<sup>53</sup> Conron, K.J., Luhur, W. & Brown, T.N.T. (2020). *LGBT Dreamers and Deferred Action for Childhood Arrivals (DACA)*. William Institute, UCLA: Los Angeles.

<sup>54</sup> Portman, S. & Weyl, D. (2013). *Creating an inclusive environment for LGBTQ UAC in ORR-DCS custody and care: A curriculum for residential care providers*. Chicago: Heartland Alliance International

authorities and foster parents take into account the youth's needs and wishes.<sup>55</sup> In short, allowing agencies to exclude sexual minority families as foster and adoption applicants reduces the likelihood that LGBTQ youth in foster care will be placed with the type of family with whom they wish to live; and specifically, one that is uniquely prepared to help them learn how to cope with all they have gone through.

45. Allowing private child placement agencies acting on behalf of the federal government to exclude same-sex couples also sends the damaging and stigmatizing message to LGBTQ youth in the care of those agencies that the people responsible for their welfare deem them to be deviant and unsuitable to be parents when they grow up. Such a message would likely be extremely hurtful to these vulnerable youth, undermining their already fragile identity and self-esteem<sup>56</sup>.

**E. Enforcing nondiscrimination provisions in Federally-funded contracts with or grants to private child placement agencies would not reduce the availability of families for children in the foster care system.**

46. Based upon my professional experience, knowledge of the child welfare literature, and consultations with foster care and adoption organizations and agencies across the country, I am aware of no evidence suggesting that when child placement agencies have chosen to discontinue their foster care and adoption services because they had religious objections to complying with nondiscrimination requirements to accept all qualified families, this caused a reduction in the number of families available for children in the foster care system or otherwise impaired the government's ability to meet the needs of children in its care.

47. Given that professional child welfare standards call for the acceptance of all qualified

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<sup>55</sup> Chase, E., Knight, A. & Statham, J. (2008). *The emotional well-being of unaccompanied young people seeking asylum in the UK*. London: British Association for Adoption and Fostering.

<sup>56</sup> Goldberg, A. & Smith, J. (2011). *ibid*; Herek, G. et al (2009). *ibid*; Meyer, I. (2003). *ibid*

families and the fact that agencies, both secular and faith-based, generally adhere to these professional standards, there would be no basis to expect that requiring private agencies to accept all qualified families when acting on the government's behalf would compromise the Federal government's ability to find agencies to recruit families for children in need. There are numerous faith-based and secular agencies willing to accept all qualified families, including those headed by same-sex couples.<sup>57</sup> In my professional opinion, requiring private agencies administering federal foster care programs to accept all qualified families would serve the interests of all children placed through the URM and UAC programs, as well as the interests of society in general.



David Brodzinsky, Ph.D.

August 24, 2020

Corrected: November 19, 2020

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<sup>57</sup> Brodzinsky, D. (2012). Adoption by lesbians and gay men: A national survey of adoption agency policies and practices. In D. Brodzinsky & A. Pertman (Eds), *Adoption by lesbians and gay men: A new dimension in family diversity* (pp. 62-84). New York: Oxford University Press.

# **Exhibit B**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

- - - - -X

FATMA MAROUF, et al., :  
Plaintiffs, : Case No.

vs. : 1:18-cv-378 (APM)

ALEX AZAR, in his official :  
capacity as Secretary of the :  
UNITED STATES DEPARTMENT OF :  
HEALTH AND HUMAN SERVICES, :  
et al., :  
Defendants. :

- - - - -X

Remote Videotape Deposition Of JALLYN N. SUALOG

Wednesday, August 26, 2020

9:05 a.m. (EDT)

Job No. 314851

Pages: 1 - 269

Reported by: Dana C. Ryan, RPR, CRR

1 assuming that is the case sometimes so that foster  
2 placement -- a grantee has already, you know,  
3 sufficient amount of foster homes and need not  
4 recruit any more or -- but I -- I don't know  
5 specifically.

6 Q Are there more foster -- more available  
7 foster families than there are children in need of  
8 a foster family?

9 A Speaking specifically for the UAC  
10 program only, I will say that we have -- we have  
11 more capacity for foster placement than we have  
12 children that need foster -- long-term foster  
13 placement.

14 Q Has that always been the case?

15 A Historically, probably not.

16 Q Do you know when that changed?

17 A It probably changed about five, six  
18 years ago when -- when ORR's UAC program increased  
19 our capacity for foster placements.

20 Q How did ORR increase its capacity for  
21 foster placements?

22 A ORR just bought more foster home --  
23 foster care place -- capacity. We increased the  
24 funding and increased the number of providers  
25 for -- for -- specific to foster placements.

Page

1 THE WITNESS: Grantees do not make  
2 placement decisions. Placement of children into  
3 their program, that is ORR's decision.

4 BY MR. GENDALL:

5 Q Sorry. I meant do -- is the  
6 nondiscrimination policy applicable to grantees  
7 making decisions about where to place -- strike  
8 that.

9 Grantees make decisions about which  
10 foster homes to place unaccompanied alien children  
11 into; correct?

12 A Grantees determine that they have a  
13 foster placement appropriate for that child --  
14 particular child, and then ORR makes the placement  
15 into that program.

16 Q So does ORR's nondiscrimination policy  
17 apply to grantees' determination regarding foster  
18 placement?

19 MR. POWERS: Object to form.

20 MR. CELLIER: Object to form.

21 THE WITNESS: I don't quite understand  
22 the question.

23 BY MR. GENDALL:

24 Q Are grantees allowed to discriminate  
25 when determining foster placement?

Page  
1 documents -- assessment documents and summaries of  
2 the child's case with -- you know, highlight what  
3 the specific factors are for consideration for  
4 that -- that's needed for that particular child's  
5 placement.

6 And that goes out into the long-term  
7 foster care referral network, and each provider  
8 will look at it and make the determination whether  
9 they have an appropriate home, a very appropriate  
10 specific home -- foster home that meets that  
11 particular child's needs.

12 And then the -- and then the team --  
13 the ultimate decision-making regarding where that  
14 child should be placed will -- is ORR's decision.  
15 Specifically, it's the decision of the federal  
16 field specialist with recommendations from all  
17 those other players.

18 Q Thank you for clarifying that.

19 So the grantee, to be clear, is not  
20 making the actual placement decision?

21 A They're not. They are just identifying  
22 appropriate placement within their network.

23 Q So does the grantee recommend a  
24 particular foster home as a good fit?

25 A They just will identify it. So they'll

Page

1 let me test my understanding.

2 There's a particular unaccompanied  
3 alien child in need of foster placement.

4 A Uh-huh.

5 Q Might it be the case that USCCB comes  
6 forward and says, here's one possible foster  
7 family and Lutheran Services comes forward and  
8 says here's another possible foster family?

9 A Uh-huh.

10 Q That's correct?

11 A Yeah.

12 Q That happens?

13 MR. CELLIER: Object to form.

14 BY MR. GENDALL:

15 Q And then how does ORR make a  
16 determination about which foster family to place  
17 the child with?

18 A So there might be other considerations  
19 including if the child has any relatives closer to  
20 one home versus the other, if the child has any  
21 medical needs and one home is located in a place  
22 that is -- or more, you know, medical care for  
23 that specific child is available, whether -- if  
24 they have educational needs and whether the school  
25 system in one area has more to offer than the



# **Exhibit C**



1 like -- let me just count.

2 A So of the replacement designees, North  
3 Dakota -- North Dakota and Texas have URM Programs.

4 Q So just Texas and North Dakota have  
5 replacement designees that operate URM Programs?

6 A Correct. Although -- so North Dakota --  
7 some of the -- some of the replacement designees,  
8 the states have opted to maybe maintain one part of  
9 the program. So they may have opted out on maybe  
10 just refugee cash assistance, but they're providing  
11 medical services.

12 So it -- sometimes it's not the whole  
13 package, like Texas, which is the whole package.

14 Q Uh-huh.

15 A North Dakota, the program -- the -- the  
16 foster care program or the URM Program, I believe,  
17 is actually administered directly by the State, even  
18 though part of that program is a replacement  
19 designee. I --

20 Q So then --

21 A That's my -- that's my understanding. I  
22 probably would need to clarify that. But, yes.

23 Q So -- so then it seems like -- is it  
24 Texas that's really the only State where the State  
25 is not administering the foster care sort of side of

1 it?

2 A Yes.

3 Q Okay. So could you walk me through how  
4 unaccompanied refugee minors themselves, the  
5 children, arrive to the U.S. and then end up in the  
6 care of a State or a replacement designee?

7 A So I -- so that we -- so that there are  
8 the two streams. So one stream would be the direct  
9 referral from State Department working with the two  
10 designated URM national providers, who would make  
11 the referral directly to their affiliates, and then  
12 work with the providers on the ground to sort of  
13 identify the -- the placement or secure -- assure  
14 the placement within that URM Program.

15 The other track would be those who are  
16 identified as eligible within the U -- sorry, I'm  
17 tapping -- within the UAC Program. And usually once  
18 they're -- they receive some type of eligibility  
19 which would make them eligible for the URM Program,  
20 there's a consultation certainly with the -- the  
21 shelter that's hosting them and the UAC field  
22 specialist to kind of determine what would be the  
23 next possible appropriate level for care.

24 If it's decided that the URM Program  
25 would be a viable direction based on that

1 foster families?

2 A There -- it could be, but we've -- I've  
3 never had an indication that we did not have enough  
4 foster care families available.

5 Q But it could just as equally also be the  
6 case where you would not have enough foster families  
7 available; correct?

8 MR. LYNCH: Object to form.

9 MR. CELLIER: Object to form as  
10 well.

11 A It's possible.

12 BY MR. QUINN:

13 Q So hadn't CCF been -- CCFW been a URM  
14 provider prior to 2017 as well?

15 A They were in direct --

16 MR. LYNCH: Object to form.

17 THE WITNESS: I'm sorry.

18 A -- in direct contact with the State.

19 BY MR. QUINN:

20 Q Okay.

21 And then this continuity of services was  
22 one of the reasons ORR picked USCCB as the  
23 replacement designee for Texas?

24 A Yes.

25 Q But ORR did not know, before receiving

1 capacity.

2 BY MR. CELLIER:

3 Q Is it fair to say that if USCCB were  
4 excluded, there would be a substantial loss in  
5 family placement options by eliminating USCCB's  
6 foster family pool?

7 MR. QUINN: Object to form.

8 A I would say that's fair to say.

9 BY MR. CELLIER:

10 Q Are you aware of what percent of  
11 foster -- foster parent applications in the URM  
12 Program are from same-sex couples?

13 A No.

14 Q Other than the incident that is the  
15 subject of this litigation, are you aware of any  
16 other case in which willing same-sex foster parents  
17 were excluded from being foster parents through the  
18 URM Program basis on the basis of a grantee or a  
19 sub-grantee's religious beliefs?

20 A This was the first case that was brought  
21 to our attention.

22 Q Are you aware of any case in the URM  
23 Program where opposite-sex foster parents have  
24 failed to provide an adequate home for an LGBTQ  
25 child?

# **Exhibit D**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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FATMA MAROUF, et al.,

Case No.  
Plaintiffs, 1:18-CV-378(APM)

- v. -

ALEX AZAR, in his official capacity as Secretary  
of the UNITED STATES DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, et al.,

Defendants.

-----X

DEPOSITION VIA ZOOM VIDEOCONFERENCING

OF

KRYSTIN PECK

Friday, October 2, 2020

Reported By:

LINDA J. GREENSTEIN

JOB NO. 319575

1 KRYSTIN PECK

2 MR. GENDALL: Object to the form.

3 A. That's correct.

4 Q. Pardon me. You can answer, Ms. Peck.

5 A. Yes, the children were the clients of  
6 USCCB and its subrecipients.

7 Q. During your time at USCCB, did the  
8 URM or UAC programs experience a shortage of  
9 qualified foster parents?

10 A. Not to my knowledge.

11 Often what I recall is that we at  
12 USCCB were aware of -- of populations of more  
13 unaccompanied refugee minor populations or more  
14 unaccompanied migrating children, that we believed  
15 that our programs and our country could serve and  
16 support, and that we were consistently advocating  
17 for more.

18 So we believed that we could always  
19 serve more, and that there were certainly many  
20 more children in need who were not referred for  
21 the services than we have capacity to serve. We  
22 certainly had more capacity than kids being  
23 referred.

24 Q. That was going to be my next  
25 question.

# **Exhibit E**

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CALIFORNIA

FATMA MAROUF,

Plaintiff,

vs.

CASE NO.  
1:18-cv-00378-APM

ALEX AZAR, et al.,

Defendants.

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VIDEOCONFERENCE DEPOSITION DAVID BRODZINSKY, Ph.D.

APPEARING REMOTELY FROM

LOS ANGELES, CALIFORNIA

November 20, 2020

9:03 a.m.

Reported By:

Brandi Celestino

CSR No. 13640

APPEARING REMOTELY FROM ANAHEIM, CALIFORNIA

1           A     526 Monarch Ridge Drive, Walnut Creek,  
2 California 94597.

3           Q     You understand you are under oath today?

4           A     I do.

5           Q     Is there any reason such as medication or  
6 medical condition that might impair your ability to  
7 understand or answer my questions truthfully and  
8 accurately today?

9           A     No.

10          Q     Let me ask you a few questions about a corrected  
11 report. Last night at 6:46 p.m. Eastern time, we  
12 received a corrected expert report.

13                   Are you aware of that?

14          A     Yes. I brought that to the attorneys'  
15 attention, I believe, yesterday.

16          Q     Got it.

17                   What changes did you make to your expert  
18 report?

19          A     I made one -- I'm sorry. Please, I started  
20 speaking. I don't know if you asked the question fully.

21                   Could you repeat?

22          Q     That's okay. Sure.

23                   Could you please tell us what changes you made  
24 in the corrected addition?

25          A     On page 14 there was one sentence in the middle

1 of the page that was poorly worded in the original  
2 document. Originally, it reads "In Texas between 2013 to  
3 2017, nearly 68 percent of youth who entered foster care  
4 beyond the age of 12 years exited foster care through  
5 emancipation or aging out."

6 That really misrepresents what I meant to say.  
7 What I meant to say is what's in the corrected version is  
8 that "Of those who exited foster care through  
9 emancipation or aging out, 68 percent of those have been  
10 placed at 12 years or beyond 12 years."

11 So that's what I meant to say when I worded it.  
12 It was worded poorly. I didn't catch that until I was  
13 reviewing the report again, if not yesterday, the day  
14 before. And then I brought the error of wording to the  
15 attorneys' attention yesterday, and we agreed to submit a  
16 -- before today, to submit the correction.

17 Q Got it. Thank you.

18 Are there any other corrections that you made in  
19 your report?

20 A No.

21 Q Does the correction affect any of your opinions  
22 as stated in your report?

23 A I'm sorry. I'm not hearing you clearly enough.  
24 Your voice seems low to me.

25 Q I'll try to do better.

1 August 13, 2020; is that correct?

2 A Correct.

3 Q Does the invoice reflect all of your work that  
4 you spent preparing for this case between the 3rd of July  
5 and August 13th?

6 A No.

7 Q Tell me what else you did.

8 A I mean, I did more of the same. And what I did  
9 was to provide what I would consider to be a reasonable  
10 bill, but it certainly does not represent the expanse of  
11 hours I put in in reviewing and reading articles, et  
12 cetera, et cetera.

13 I almost never bill for the full amount of time  
14 in any of these cases, especially report writing. I'm  
15 very -- if you pardon the word -- anal in the way I  
16 write, and I write very slowly. There's a point where I  
17 say, you know, this is as much as I feel comfortable  
18 billing.

19 Q On this invoice that we have in front of us,  
20 what did your time spent on research involve?

21 A It involved library research, looking for  
22 articles that I didn't have copies of that I was aware  
23 of, reviewing articles that I had in my files, looking  
24 for what we know about different issues related to this  
25 particular case. So it really was about library

1 research, which, obviously, involves not just finding  
2 articles, but reviewing them.

3 Q Anything else other than the category of  
4 research?

5 A No, not at that point.

6 Q And I see here the bill reflects time spent for  
7 some tele consulting with immigration --

8 A I'm sorry. Say that again.

9 Q I see that this invoice that's in front of us,  
10 page 1 of Exhibit 1, contains time for a few  
11 tele consults.

12 Do you see that?

13 A Correct. One with attorneys, one with someone  
14 at the Immigration Equality Organization.

15 Q Can you tell me about those tele consults?

16 MS. TAYLOR: Objection. Objection to the extent  
17 that it calls for privileged information.

18 BY MR. GOETZ:

19 Q Well, I'll have the answer to the question.

20 A Okay.

21 I mean, the consult with the attorneys in  
22 general was about progress being made and questions that  
23 I might have had for them to answer. I will not go into  
24 any more detail about that unless my attorney gives me --

25 MS. TAYLOR: I renew my objection.

1 Q Is it fair to say that, when you did your  
2 research, you put it right into your actual report?

3 A Yes. I mean, the -- library research was about  
4 gathering information that I felt was going to be  
5 necessary. The report that I wrote, I had a previous  
6 report that addressed some of the same issues, many of  
7 the same issues, which was then useful for me to review  
8 so that I could have an outline of how I wanted to  
9 approach the report in the current case.

10 Q Tell me what case that previous report was from.

11 A Dumont in Michigan.

12 Q Where was Dumont? Dumont was pending in  
13 Michigan?

14 A Yes. Following the same-sex marriage trial and  
15 the Supreme Court ruling.

16 Q And who were you working with in that case, the  
17 Dumont case?

18 A ACLU.

19 Q When was that report prepared?

20 A I would have to go back into my files to let you  
21 know, but it was, I believe, 2015. I could be wrong  
22 about that. It could be '14 or '16 -- no, it wouldn't be  
23 '14. It could be '16 or '17. I'm not sure. If you want  
24 a specific, I can open up a file and find it.

25 Q As we sit here today, is your work on the case

1 completed for this case up till now that we've not  
2 already addressed?

3 A Are you saying up to now, meaning to today?

4 Q Yes.

5 A Well, I've alluded to the fact that since the  
6 report was released, I continued to review different  
7 articles. I've gone online and tried to do a little bit  
8 more of a deep dive into these statistics and AFCARS that  
9 are relevant, I think, to the argument in this kind of a  
10 case.

11 I've looked for information and found some  
12 information about the number of LGBTQ individuals --  
13 LGBTQ youth that are part of the Texas system that report  
14 from CASA, Texas provides that. And, you know, those  
15 things bolster my opinion, but I didn't rely upon them at  
16 the time that I wrote the report.

17 And if I'm asked by counsel to provide an  
18 amended report, then some of that information certainly  
19 will be in there. And if you were asking for me to  
20 provide information about this material subsequent to  
21 this deposition, I'll be glad to do that.

22 Q Thank you.

23 These additional materials that you've just  
24 described for me, did you take notes on them when you  
25 were reviewing them?

1 Q And other than what we already covered in terms  
2 of your research, library research, tele conversations,  
3 et cetera, is there anything else that you've done for  
4 purposes of this case?

5 A Nothing pops into my head, but if it does as we  
6 continue talking, I'll let you know.

7 Q Have you ever discussed the case with Ms. Marouf  
8 or Ms. Esplin?

9 A No. I've never talked to them.

10 COURT REPORTER: Ms. Marouf and Ms. who?

11 THE WITNESS: Ms. Esplin, E-s-p-l-i-n.

12 BY MR. GOETZ:

13 Q In preparing your report that we have in front  
14 of us as Deposition Exhibit 2, did you review any case  
15 materials?

16 A I believe the plaintiff's brief, I believe. I'm  
17 not sure what else. I can't remember.

18 Q Let me give you a couple of examples, and you  
19 can tell me whether you reviewed them or not.

20 Have you reviewed the complaint in the case?

21 A Plaintiff's complaint?

22 Q Yes.

23 A I believe so. I believe that was forwarded to  
24 me, but I honestly don't remember.

25 Q How about the answers?

1 A I'm sorry?

2 Q How about the answers that were filed in  
3 response to the complaint?

4 A I don't think I've read those.

5 Q Have you reviewed any depositions that have been  
6 taken in this case?

7 A Not to my knowledge.

8 Q Did you get any summaries of those depositions?

9 A No.

10 Q Did you review any interrogatory responses?

11 A No.

12 Q Did you review any contract between --

13 A No.

14 Q -- the USCCB and the federal government in this  
15 case in preparing your report?

16 A No.

17 Q Did you review any contract between the USCCB  
18 and Catholic Charities of Fort Worth in preparing your  
19 report?

20 A No.

21 Q Did you review any of these materials that I've  
22 just described to you in my questions in preparing for  
23 today's deposition?

24 A Repeat that again. I missed the first part of  
25 your question.

1 all the materials that you relied upon in reaching the  
2 opinions that are reflected in the report?

3 A Correct.

4 Q And the only amendment -- strike that.

5 The only correction that you've made to your  
6 report since August 13 of -- August 24, 2020, was the one  
7 that we received last night at 6:46 p.m.; true?

8 A Since when? Since the report was released, you  
9 mean?

10 Q Yes.

11 A Yes. I believe that's the case. You know, it's  
12 possible that there were typos picked up after the report  
13 was released. If there was any changes after the report  
14 was released to counsel -- not to you, but to counsel,  
15 there would have been typos and things like that, but  
16 nothing of substance was changed.

17 Q Thank you.

18 A And nothing was changed once the report was  
19 released to you other than this last-minute change when I  
20 found the wording misrepresentation.

21 Q Thank you for making that clear to me. I  
22 appreciate it.

23 In preparing your report in this case, did you  
24 conduct any research regarding USCCB, my client?

25 A No.

1 Q Have you cited any peer-reviewed literature  
2 regarding the USCCB URM program?

3 A I cited research that draws upon those children  
4 or children like them, and I certainly have cited  
5 information from the Office of Refugee -- Resettlement  
6 Offices having to do with the nature of those programs  
7 and so forth. Those aren't peer reviewed, but they are,  
8 you know, documents that reflect, you know, the mission  
9 statement and other information having to do with numbers  
10 of children and so forth.

11 Q Did they refer to USCCB's program specifically?

12 A No. That was the first part of the program.  
13 You asked two questions, and my thought was -- my  
14 interpretation of your second question had to do with  
15 peer-reviewed research on the UAC or URM programs.

16 Q Generally. Generally, you mean?

17 A Yeah. Generally, I mean, you know, there are --  
18 I referred to online documents from the Office of  
19 Refugees Settlements specifically around the UAC and URM  
20 programs and some of the research that has been done and  
21 is cited comes from that general population of children.

22 Q In connection with your work on this case, have  
23 you conducted any research regarding any Catholic  
24 Charities organization?

25 A Only after the fact. Research is more library

1 research, so to speak, or reviewing documents that  
2 provided a little bit more detail about what happened  
3 either in Illinois, Boston, or Washington D.C., after the  
4 decision by Catholic Charities to close their fostering  
5 or adoption programs. Some of that was cited in the ACLU  
6 brief in Fulton or the State's Amicus in Fulton.

7           It was also cited in information that was  
8 provided to me by a colleague having to do with emerging  
9 scholarly research by the two legal scholars who I  
10 referred to before, Nelson Tebbe, T-e-b-b-e; and  
11 Netta Barack-Corren, N-e-t-t-a, hyphenated last name is  
12 Barack-Corren, B-a-r-a-c-k, hyphen, Corren, C-o-r-r-e-n.  
13 And Professor Tebbe is at Cornell Law School and  
14 Professor Barack-Corren is at Hebrew University in  
15 Israel.

16           Q     In your report that we've marked as Exhibit 2,  
17 have you cited any peer-reviewed literature regarding  
18 Catholic Charities' foster care programs?

19           A     No.

20           Q     In connection with your work on this case, have  
21 you conducted any research regarding Catholic Charities  
22 of Fort Worth?

23           A     No.

24           Q     Have you cited any peer-reviewed literature  
25 regarding Catholic Charities of Fort Worth's foster care

1 programs?

2 A No. I'm unaware of any peer reviewed.

3 Q That is the same answer for Catholic Charities  
4 of Fort Worth's participation in the UAC and URM  
5 programs; is that correct?

6 A Say that again.

7 Q That is the same answer -- let me ask it again,  
8 and I apologize for the Zoom environment today. It's all  
9 the circumstances we're all living in.

10 Let me ask it again.

11 Have you cited any peer-reviewed literature  
12 regarding Catholic Charities' participation in the UAC  
13 and URM programs?

14 A I think I've already answered that. No, there's  
15 nothing. Let me -- let me add that subsequent to the  
16 report as part of my ongoing keeping abreast, I did come  
17 across a 2012 fairly extensive report from -- on the  
18 USCCB program dealing with UAC and URM kids.

19 It was a report that detailed the demographics  
20 and the circumstances of these children. That's 2012.  
21 That's the only specific article that I reviewed that in  
22 any way describes the -- the programs that they are --  
23 the programs that they're involved in.

24 Q Do you remember --

25 A Excuse me. It's not cited in my report, and

1 Dallas-Fort Worth area?

2 A That's correct. I'm unaware of any such  
3 studies.

4 Q In your report that we've marked as Exhibit 2,  
5 did you cite to any peer-reviewed studies that addressed  
6 the adverse impact that would result from the elimination  
7 of faith-based organizations that are unable to work with  
8 same-sex couples based on their religious beliefs?

9 MS. TAYLOR: Objection. Vague. Form.  
10 Confusing.

11 BY MR. GOETZ:

12 Q You can answer.

13 A To the best of my knowledge, there are no  
14 peer-reviewed studies that address the question that  
15 you're asking.

16 Q For example, you don't know, sitting here today,  
17 how many foster families or children in need would fail  
18 to be recruited if faith-based organizations were  
19 eliminated from the foster program?

20 A Well, your question makes an assumption that  
21 there would be a failure to recruit families. That's not  
22 my understanding of what happens or what has happened in  
23 the past when other agencies have closed down.

24 There's been a relatively smooth transition in  
25 Illinois and Boston from the, you know, qualitative

1 placements or willingness to make placements with  
2 same-sex couples.

3 Q Do you know which foster care agencies were  
4 operating in the Dallas-Fort Worth area in 2017?

5 A No, I don't.

6 Q Okay.

7 Did any of your materials cited in the report  
8 that we've marked as Exhibit 2 reflect any foster  
9 agencies in Dallas-Fort Worth that were operating in  
10 2017?

11 A No. The report makes no mention of specific  
12 agencies.

13 Q Okay.

14 MR. GOETZ: Let me turn your attention to Tab 5  
15 in our zip file, which we'll mark as Deposition  
16 Exhibit 5. Just take a few minutes to look at this  
17 exhibit.

18 THE WITNESS: Okay.

19 (Exhibit 5 marked.)

20 BY MR. GOETZ:

21 Q Let me know when you're ready to proceed.

22 A I'm fine.

23 Q This is a list that I'll represent to you that  
24 we created from the Texas Department of Family and  
25 Protective Services from their website in February 2017.

1 any of these organizations might have been providing in  
2 February of 2017 --

3 A No.

4 Q -- In connection with your work on this case?

5 A No. I think I've already said -- I don't know  
6 if repeating it will quicken the question asking. I have  
7 not reviewed or researched or made reference to any  
8 specific adoption agencies programs, whether fostering or  
9 adoption.

10 Q Including in the Dallas-Fort Worth area;  
11 correct?

12 A Including in -- yes. Including in  
13 Dallas-Fort Worth for purposes of my report.

14 Q Do you know for purposes of your work on this  
15 case whether the plaintiffs contacted any of these  
16 agencies to express interest at becoming foster parents?

17 A Well, I believe they did. I can't remember  
18 which specific agency they contacted originally, but they  
19 contacted one and was turned away. I think that became  
20 the basis for the suit. I don't know if they went on to  
21 contact others. I can't remember.

22 MR. GOETZ: Okay.

23 We've been going for about an hour and ten  
24 minutes, so why don't we take a ten-minute break, if we  
25 could.

1 THE WITNESS: U.S. Conference of Catholic  
2 Bishops. I'm not sure that's -- that's not necessarily  
3 the specific agency that refused. I can't remember the  
4 name of the specific agency. It's -- you know, it may be  
5 Catholic Charities or some version of that name.

6 BY MR. GOETZ:

7 Q And if I understand your testimony from before  
8 the break, you do not know where else the plaintiffs  
9 applied to be foster parents; is that correct?

10 A I can't, off the top of my head, remember. You  
11 know, it was in the materials that I did review, but I  
12 haven't reviewed them for the deposition, so I don't have  
13 a memory of it.

14 Q Have you conducted any research for purposes of  
15 your work on this case related to child welfare outcomes  
16 of refugee children placed in foster homes through a  
17 faith-based organization?

18 A Specific to faith-based organizations, the  
19 peer-reviewed research doesn't address at all on those  
20 lines. It's outcomes for kids in these programs. It  
21 doesn't identify which agencies that they were processed  
22 through, so I can't -- I have no memory specifically of  
23 any peer-reviewed research that addresses these kids who  
24 come from faith-based organizations.

25 Q Apart from the peer-reviewed literature, you,

1 yourself, did not conduct any research on that topic;  
2 correct?

3 A That is correct.

4 Q Let me ask you a few follow-up questions on that  
5 same topic, if I could.

6 Have you conducted any research for purposes of  
7 this case relating to the child welfare outcomes of LGBTQ  
8 children placed in homes through a faith-based  
9 organization?

10 A I'm not sure I understand the question. Could  
11 you repeat it?

12 Q Sure. Sure.

13 For purposes of your work on the case, did you  
14 conduct any research relating to the child welfare  
15 outcomes of LGBTQ children specifically who were placed  
16 in homes through a faith-based organization?

17 A The answer is no. The research doesn't break it  
18 down in terms of the children's sexual orientation.

19 Q There's no peer-reviewed studies topics cited in  
20 that report, obviously?

21 A There's none in the report, no.

22 Q Let me ask you a subpart to that previous  
23 question.

24 Have you conducted any research on the child  
25 welfare outcomes of LGBTQ children who were placed in

1 faith-based organizations that are unable to work with  
2 same-sex couples?

3 A To the best of my knowledge, there is no  
4 research on that topic.

5 Q If I understand your previous testimony, you've  
6 not found any research relating to the child welfare  
7 outcomes of LGBTQ children placed in the  
8 Dallas-Fort Worth area; correct?

9 A Through this program you mean?

10 Q Through this program or any other program.

11 A No. I mean, I have found, not specific to the  
12 Dallas-Fort Worth, as I indicated earlier, subsequent to  
13 the report I got some information from Texas council that  
14 indicated that, you know, from their estimates there are  
15 over 11,000 LGBTQ youth in the foster system in Texas,  
16 but I didn't address specifically the counties.

17 There was another report that I reviewed that in  
18 Harris County one in four homeless children are LGBTQ,  
19 and these are kids who often end up in the foster system  
20 or have left the foster system, run away.

21 So we know that there's a sizable percentage of  
22 LGBTQ in the foster system who are in need of foster care  
23 or in need of other services in Texas in general, as in  
24 every state.

25 Q The research that you just articulated to me

1 homeless, leaving foster care or, you know, perhaps  
2 eventually entering through a homeless condition, are  
3 quite similar in the most major metropolitan areas around  
4 the country.

5           And we know that children in foster care who are  
6 LGBTQ youth are significantly overrepresented in foster  
7 care, and the CASA Texas document indicates that they are  
8 2.5 times more likely to be in foster care than  
9 heterosexual youth. I see no reason why something  
10 comparable wouldn't apply to the broad Fort Worth-Dallas  
11 metropolitan area.

12 BY MR. GOETZ:

13           Q     I see.

14                     Is there any data cited in your report that  
15 specifically references Dallas and Fort Worth?

16           A     No.

17           Q     Let's talk about the URM and UAC programs  
18 generally.

19           A     Okay.

20           Q     Did you conduct any research for purposes of  
21 this case on the number of LGBTQ youth who were placed  
22 through the URM and UAC programs?

23           A     That information is not available. They do  
24 not -- the Immigration Services apparently does not  
25 identify or quantify the number of LGBTQ youth who come

1 are coming into the United States because of violence in  
2 their home countries often are resistant to sharing this  
3 information because they've been the subject of violence.  
4 They've been the subject of discrimination. They've been  
5 the subject of family rejection. And so they require an  
6 environment that's supportive before they are going to  
7 open up about who they are.

8 BY MR. GOETZ:

9 Q So just so I understand your testimony, you're  
10 unaware of any data regarding the number of LGBTQ youth  
11 who have been placed through the URM and UAC programs  
12 generally; correct?

13 A That is correct. Those -- that information is  
14 not captured in the UAC, URM data that's distributed  
15 online.

16 Q Is there any data relating to the family  
17 placement references of LGBTQ youth in the URM or UAC  
18 programs?

19 A Not specifically. There is research that  
20 generally talks about -- that one of the factors related  
21 to placement stability versus instability is that the  
22 authorities listen and take into account the youth's  
23 desires and preferences, but we don't have any  
24 information about whether the authorities who are  
25 processing UAC and URM applicants even ask about sexual

1 orientation or gender identity.

2 Q Okay.

3 So no data on that topic is cited in your  
4 report; correct?

5 A No data is cited in the report. An assumption  
6 is made in the report. I think an assumption based upon  
7 both existing literature on the prevalence of LGBTQ youth  
8 in populations, on some levels on logic, based upon  
9 logic, that a certain, but unknown percentage of the  
10 youth coming through these programs have already begun to  
11 either self-identify or are in the stage of question with  
12 regard to their sexual orientation or their gender  
13 identity.

14 Q What you just stated is an assumption;  
15 correct?

16 A It is an assumption based upon other data.

17 Q But no data exists for LGBTQ youth for the URM  
18 or the UAC programs?

19 A That is correct based upon my knowledge.

20 Q Is there any research that you have come across  
21 for purposes of this case that addresses the willingness  
22 of prospective same-sex foster parents who work with a  
23 different provider when a faith-based provider was unable  
24 to license them?

25 A There is research that -- I cited some of the

1 investigate whether the UAC program had enough foster  
2 families to meet its needs in 2017?

3 A I don't know if it indicated in any of those  
4 reports that that was the case.

5 Q But you don't -- you don't know one way or the  
6 other.

7 Is that fair?

8 A I think it's fair to say that's the case. I do  
9 know that the children who went through this program,  
10 some of them were in family foster care, some of them  
11 were in group care, some of them were institutions, some  
12 of them were in independent living for purposes of  
13 emancipation. In other words, there was a lot of  
14 different kinds of placements, but that's the best in  
15 terms of the data that was provided on these programs.

16 Q Okay.

17 Just so I understand your answer, you did not  
18 find any research on whether the UAC program had enough  
19 foster families to meet its needs in 2017?

20 A No. I do know -- and I can't remember if I  
21 cited it or not, certainly it's in material that I found  
22 since then, you know, that generally there's a shortage  
23 of foster homes across the country in general. And I  
24 can't specifically say what's happening in  
25 Dallas-Fort Worth.

1 Q Or the UAC program generally; correct?

2 A Correct. You know, that information wasn't  
3 addressed in any of the documents that I reviewed, so the  
4 answer is, you know, yes.

5 Q So I asked you about 2017. Let me ask you about  
6 2020.

7 Do you know whether the UAC program has enough  
8 foster families to meet its needs today in 2020?

9 A I have no idea. I'm not sure any data on 2020  
10 is out yet, or if it is, it's, obviously, incomplete  
11 since we're still in 2020.

12 Q Okay.

13 How about since 2017 to now, is there any data  
14 available on the UAC program?

15 A There's data --

16 MS. TAYLOR: Objection. Vague.

17 MR. GOETZ: All right.

18 Let me -- let me rephrase that so we can resolve  
19 counsel's objection.

20 BY MR. GOETZ:

21 Q Did you investigate whether the UAC program had  
22 enough foster families to meet its needs during the time  
23 period of 2017 up to the present time?

24 A I haven't seen anything that addresses that  
25 specific question. I've seen statistics, although I

1 can't cite them to you right now because I don't remember  
2 the number of children that have come through the program  
3 in the last few years. I do know that since 2012 the  
4 number of children going through these programs has gone  
5 up significantly.

6 Q Is that all the data that you have on that topic  
7 about the number of children that have gone through the  
8 program, the UAC program?

9 A I'm not sure what you mean by is that all I  
10 have. Ask me something more specific and I --

11 Q Yeah. I'm not sure I understand your answer, so  
12 let me ask it again.

13 Do you have any research about whether the UAC  
14 program had enough foster families to meet its needs in  
15 2017 to the present?

16 A The answer is I don't have any information on  
17 that. What I was referring to was that, you know, I've  
18 seen data on the number of kids going through the program  
19 from before 2012, I think it was, and then following  
20 2012. And the numbers went up quite dramatically in the  
21 last -- call it the last almost decade.

22 Q Do you have that data cited in your report?

23 A No. I haven't put it in that form.

24 Q Is it part of your file in the case?

25 A It may be in some of the documents that I

1 Q Is there any research that you're aware of  
2 regarding whether the URM program had enough foster  
3 families to meet its needs in 2017?

4 A Again, the answer is, to the best of my  
5 knowledge, no. When I answered earlier, I was answering  
6 both for the UAC and URM programs.

7 Q Okay.

8 And that's -- your answer would be the same for  
9 the time period of 2017 to the present; correct?

10 A I see no data or reports that indicate whether  
11 there's enough or not enough families specific for these  
12 kids. Again, I've seen reports generally about the  
13 foster care housing crisis. Nationally, it's broken down  
14 in a report by states or quoted in the report -- that's  
15 not in my report.

16 Although, I reference the document quoting the  
17 report by the Stakeholders in Texas indicating that there  
18 is an insufficient number of foster homes in the state to  
19 meet the needs of the children.

20 Q Let me ask you where -- excuse me.

21 I don't want to interrupt you. Go ahead.

22 A That was a 2017 report, so I don't know whether  
23 it still applies because we're a couple of years out of  
24 it.

25 Q Thank you.

1           Is that 2017 report that you just testified to  
2           cited in your report?

3           A     It is. Let me see if I can find it. It's a  
4           website -- I'm having trouble locating it. It is a  
5           document from the "Chronicle of Social Change" entitled  
6           "The Foster Care Housing Crisis." And I -- it is cited  
7           in here. Although, the quote that I just referred to  
8           before, I did not put in the article -- sorry; not the  
9           article, the report.

10           Okay. It's Footnote 14.

11           Q     And the statement in your report on page 10  
12           notes, a recent report by the "'Chronicle of Social  
13           Change' communicates that at least half of the states in  
14           the U.S. have seen foster care capacity decrease between  
15           2012 and 2017."

16           A     I'm sorry. Where are you reading?

17           Q     It's on page 10.

18           A     Okay.

19           Q     The sentence that is supported by Footnote 14.

20                   Do you see that?

21           A     Yes.

22           Q     That sentence in the text of your report refers  
23           to the "Chronicle of Social Change"?

24           A     Correct.

25           Q     In this sentence for the cite, Footnote 14, it

1 homes or UAC or URM-related homes.

2 Q Understood. Thank you.

3 Do you know whether the foster care agency at  
4 issue in this case that dealt with the plaintiffs had  
5 enough families to meet their needs in 2017?

6 A Since I wasn't provided any information about  
7 that, and I didn't see any reports on it, the answer is  
8 no, I don't have any information about that.

9 Q Do you know whether USCCB had enough families to  
10 meet their foster care needs in 2017?

11 A In Texas or elsewhere or what?

12 Q Let's start in Texas.

13 A The answer to both is no. I don't know. Again,  
14 I've not seen any reports on that specifically. The only  
15 report that I was able to find post submission of my  
16 report was that 2012 article by the USCCB, but it's,  
17 again, 2012.

18 Q When did the plaintiffs have their experience  
19 with the USCCB sub-grantee?

20 A I think a couple of years ago. I'm not exactly  
21 sure what the date was.

22 Q Do you know what the specific date was?

23 A I do not. Again, I read that in earlier. I  
24 haven't reviewed that since.

25 Q You can't recall today; correct?

1           A       I can't recall today.

2           Q       You don't have any data or information about any  
3 specific LGBTQ child that was in the care of the foster  
4 agency at issue in this case; correct?

5           A       No. No personal information about any  
6 individual child.

7           Q       And so because you have no personal information  
8 on any individual child, you're not prepared to testify  
9 today that the foster care agency at issue in this case  
10 undermined the long-term well-being of any individual  
11 child in its placement decisions; is that correct?

12          A       No. What I am prepared to do is to talk about  
13 the impact of being exempt from the antidiscrimination  
14 provisions on the system in general, on children who are  
15 likely LGBTQ themselves who are going through the UAC and  
16 URM programs, and that -- those opinions are based upon  
17 both broad knowledge of the field and also information  
18 from research that has to do with what -- how -- what  
19 circumstances impact families and how they respond to  
20 things like, you know, prejudice, discrimination,  
21 bullying, and so forth.

22          Q       Your report deals with the system in general.  
23                   Is that fair?

24          A       Yes. The system in general -- but specifically  
25 what happens -- yeah, we're talking about the system, but

1 Q Let me rephrase that.

2 You don't have any specific data relating to my  
3 client USCCB; is that correct?

4 MS. TAYLOR: Objection. Vague.

5 THE WITNESS: The only data I have specific to  
6 them is what's in the -- you know, the pleading, which  
7 I've read in terms of their position or at least how it's  
8 represented as well as that 2012 report which gave a very  
9 detailed account of the kids in the program that they  
10 were managing -- all kinds of demographics, but without  
11 any attempts to determine one way or another whether  
12 anyone was LGBTQ. So they could have said there was no  
13 problem in our program, and they just didn't discuss it.

14 BY MR. GOETZ:

15 Q Any other data that you have specific to my  
16 client USCCB other than what you've testified to?

17 A I don't think so.

18 Q And you reference the pleading. That's the  
19 complaint that the plaintiffs filed in this case; is that  
20 correct?

21 A Yeah. Pardon me for using inappropriate terms.  
22 I'm not a lawyer.

23 Q I just want to make sure I understand what  
24 document you're referencing.

25 So the materials that you have specific to my

1 client are two: the complaint that the plaintiffs filed  
2 in the case and the 2012 study that you referenced for  
3 me; correct?

4 A I believe that's correct, yes.

5 Q Okay. Thank you.

6 And if I've understood your prior testimony, you  
7 don't have any data regarding the USCCB sub-grantee that  
8 was operating in Dallas-Fort Worth?

9 A No. I do not. I think if one of them is  
10 Lutheran Services, they were mentioned in some document  
11 that I reviewed, but I don't remember any other names.

12 In fact, let me just add, I'm not sure that it  
13 was specific to the Dallas-Fort Worth area as opposed to  
14 when I was reviewing the UAC, URM programs, it talked  
15 about contracts with USCCB, and I believe some --  
16 Lutheran Services in a general sense -- I don't know what  
17 the actual formal name is. It may not have been specific  
18 to the Dallas-Fort Worth area.

19 Q Understood.

20 THE VIDEOGRAPHER: Counsel, pardon my  
21 interruption. It's the videographer. I wanted to let  
22 you know we have two-hour limits for our video files now.  
23 I'm about a couple of minutes away from approaching that  
24 limit. I wanted to just let you know that in the next  
25 minute or so, if we could go off the record.

1 MR. GOETZ: Why don't we take a ten-minute break  
2 and allow you to reload your video.

3 THE VIDEOGRAPHER: Okay. Thank you very much,  
4 Counsel.

5 MR. GOETZ: Sure. We'll come back at 20 past  
6 the hour. Okay? Thank you.

7 THE VIDEOGRAPHER: Okay. Thank you.

8 Off the record at 11:08. Thank you.

9 (Recess taken.)

10 THE VIDEOGRAPHER: We're now back on the record.  
11 The time is 11:24 a.m. Pacific.

12 You may proceed.

13 MR. GOETZ: Thank you everyone from coming back  
14 from break.

15 BY MR. GOETZ:

16 Q Doctor, as I understand your opinions, they do  
17 not relate to any specific child in the care of USCCB; is  
18 that correct?

19 A That is correct. It deals with the issues,  
20 generally.

21 Q Your opinions do not relate to any specific  
22 child in the care of USCCB sub-grantee in  
23 Dallas-Fort Worth; is that correct?

24 A That is correct.

25 Q Your report does not address the issue of

1 whether USCCB caused any harm to any specific child in  
2 its care, regardless of the sexual orientation of that  
3 child?

4 A That's correct. It deals with the potential  
5 harm if any faith-based agency is given the exemption  
6 from antidiscrimination provisions.

7 Q I see.

8 But no opinions about USCCB causing any harm to  
9 any child in its care; correct?

10 MS. TAYLOR: Objection. Vague.

11 THE WITNESS: The answer is no, no specific  
12 child. This was not done on a case analysis basis.

13 BY MR. GOETZ:

14 Q And I think you testified earlier that you do  
15 not dispute that USCCB ran the refugee child programs  
16 consistent with its sincerely-held religious beliefs?

17 A I have no basis to question that. I'm not  
18 questioning the sincerity of their beliefs.

19 What I'm questioning is the implications of  
20 following that sincerity of beliefs in terms of its  
21 impact on the child welfare system in general and on  
22 these children who are coming through the UAC and URM  
23 programs who themselves may be LGBTQ, but not religious  
24 sincerity.

25 Q Just to close the loop, you do not dispute that

1 Do you know when the federal government  
2 contracted with USCCB to provide services to refugee  
3 children in Texas?

4 A I don't think I've seen information on that, or  
5 if I have, I've forgotten. So the answer is I don't  
6 know. Certainly, they were doing it back in 2012, and  
7 how much earlier than that, perhaps it's in that  
8 document, but I don't remember.

9 Q Okay.

10 Is that the only document you have that relates  
11 to specifics about when the government may have  
12 contracted with USCCB to provide services to refugee  
13 children in Texas?

14 A It's the only -- well, it's the only document  
15 that I have about USCCB that deals with their involvement  
16 in the UAC/URM program. That document is not specific to  
17 Texas, though.

18 Q Got it.

19 A At least I don't believe. I don't think it was,  
20 no.

21 Q I'll have to check. I don't know.

22 Have you seen any documents regarding USCCB's  
23 sub-grantee precluding practices of foster parents in the  
24 Dallas-Fort Worth area?

25 A No.

1 Q With regard to the plaintiff's case, these two  
2 plaintiffs, Ms. Marouf and Ms. Esplin, do you know if a  
3 specific child was involved in their discussion with  
4 USCCB sub-grantee in Dallas-Fort Worth?

5 A I don't have a memory of that.

6 Q Have you seen any evidence that any LGBTQ child  
7 is turned away by USCCB sub-grantee in Dallas-Fort Worth  
8 for any reason?

9 A No. I have no information about that. You mean  
10 through the UAC and URM programs?

11 Q Yes.

12 A The answer is no. I have no information about  
13 that.

14 Q Up until this point in time today, you have not  
15 reviewed any case-specific materials; correct?

16 A Other than the complaint, I don't think I have,  
17 no. I tried not dealing with the analysis at a case  
18 level, but really as a broader issue.

19 Q Okay. And along those lines, you don't have any  
20 evidence of faith-based organizations in the  
21 Dallas-Fort Worth area who have discontinued  
22 participation in the refugee children program rather than  
23 violate their religious beliefs; correct?

24 A That's correct.

25 Q Let me ask you a few questions about the

1 the same institution.

2 Q Did you at any point perform a clinical  
3 psychological evaluation of either Ms. Marouf or  
4 Ms. Esplin in this case?

5 A No. As I said before, I've never met them. And  
6 to do so would have been inconsistent with the charge in  
7 the case. This was, again, not a case study analysis or  
8 a question of harm to an individual, per se, but it was  
9 dealing with the broader issues in the case.

10 Q Do you currently have a clinical practice?

11 A I do. It's -- I'm largely retired from my  
12 clinical practice at this point. I still have a few  
13 clients that I -- you know, that I continue to see. I  
14 continue to do my forensic work, and I continue to do  
15 training around the country, actually in Europe as  
16 well -- pre-COVID, let's put it that way. And I continue  
17 to do research.

18 But my -- I largely hold back from ongoing  
19 clinical work because I'm getting a year or two away from  
20 retirement, and, you know, once you establish a clinical  
21 relationship, you know, it's hard to -- you know, for the  
22 individuals when you have to pull out.

23 Q Can you give me an estimate of time in 2020 that  
24 you've spent with patients?

25 A In 2020?

1 Q When did you write this report? Can you recall?

2 A What's the date on it?

3 Q It's dated 12/20/2018.

4 A Then sometime in 2018.

5 Q Okay.

6 And can you remember what your assignment was in  
7 the Dumont case?

8 A Well, it should be specifically listed under the  
9 "Assignment."

10 Q Okay.

11 A Very similar to this particular case. It's one  
12 of the documents I reviewed in preparation for writing  
13 this report, since I knew that many of these points I was  
14 going to make, and at least some of these citations I  
15 would be using were already in this particular document  
16 that provided, at least, a format for me to begin to look  
17 at the issues in this particular case. And I had to  
18 shift from thinking about state-funded programs to  
19 federally funded programs.

20 Q So portions of your report you were able to  
21 incorporate into your work in this case; correct?

22 A At least the ideas, yes.

23 Q Okay.

24 Did you incorporate some of the citations as  
25 well into --

1 a public docket in the Eastern District of Michigan.

2 MS. TAYLOR: Counsel was able to compare this --

3 MR. GOETZ: Let me ask that question.

4 (Cross-talking.)

5 MR. GOETZ: Let me ask my question, if I could.

6 BY MR. GOETZ:

7 Q Are there portions of this report that was filed  
8 of record in the Eastern District of Michigan, Southern  
9 Division, in the Dumont case that we're looking at in  
10 this exhibit, portions of this publicly filed document  
11 incorporated into the expert report that was produced to  
12 us in this case?

13 MS. TAYLOR: Objection on the ground of work  
14 product privilege, and I instruct Dr. Brodzinsky not to  
15 answer.

16 (Witness instructed not to answer.)

17 MR. GOETZ: Well, I want to state for the record  
18 that that objection is ill-taken, and we're going to  
19 leave the deposition open after we get a court ruling on  
20 it.

21 BY MR. GOETZ:

22 Q Dr. Brodzinsky, are you following the  
23 instruction of the lawyer not to answer the question?

24 A I have to.

25 Q I understand.

1 Q In your work for the Dumont case, you did not  
2 focus on any case-specific facts; correct?

3 A That is correct. It was the same kind of  
4 charges in this one, and it was the deal with the general  
5 issues, not case-specific issues or case analysis.

6 Q I see.

7 And if we go to the first page of this expert  
8 report, which is actually page 2 --

9 A Go on.

10 Q -- right here with paragraph 1.

11 A Uh-huh.

12 Q Your assignment.

13 Do you see that?

14 A Yes.

15 Q And just moving down to the third line, it  
16 states, "The impact on children and families that can  
17 result from the state permitted, state-contracted child  
18 placing agency to exclude same-sex couples"; is that  
19 right?

20 A That's true.

21 Q Okay.

22 So we dealt with a system in general and not in  
23 any case-specific facts?

24 A Correct.

25 Q So if we go back to your report in this case,

1 that's Deposition Exhibit 2.

2 THE VIDEOGRAPHER: Go ahead and pull that up?

3 MR. GOETZ: Yes, sir.

4 BY MR. GOETZ:

5 Q Okay.

6 Let's look -- let's look at the assignment  
7 paragraph that you report in this case. And the third  
8 line states, "An impact on children and families that can  
9 result when a private child placement agency that  
10 contracts with or receives grants from the federal  
11 government excludes same-sex couples."

12 Do you see that?

13 A Yes.

14 Q Your assignment was to look at the system in  
15 general, not any case-specific facts; is that right?

16 A Well, it was based upon a specific request for  
17 exclusion -- exemption, excuse me. So it, you know --  
18 but I didn't do any kind of analysis of the agencies  
19 involved or analysis of the plaintiffs in the case or any  
20 children that were or were not evaluated -- excuse me --  
21 were or were not recruited, families that were or were  
22 not recruited by defendant agencies. It was a general  
23 assignment to do with the general issues.

24 Q Thank you.

25 MR. GOETZ: So at this point I think it's 12:30

1 MR. GOETZ: Welcome back everyone. Thanks for  
2 coming back after our break.

3 BY MR. GOETZ:

4 Q Just a few follow-up questions if I could.

5 Doctor, if I understood your previous testimony,  
6 I thought that you said earlier that exempting  
7 faith-based foster care agencies from a requirement to  
8 place children with same-sex couples could encourage  
9 other foster care agencies to similarly refuse to work  
10 with same-sex couples.

11 Did you say that? Did I understand that  
12 correctly?

13 A Yes. And I think I also said it's not just at  
14 the agency level that there could be a disruption, but at  
15 the worker level. There's an important difference  
16 between the policy of the agency and the practice.  
17 Practice gets done at the worker level for the most part.

18 Q So I did remember your testimony correctly?

19 A That is correct. That is the concern.

20 Q Did you cite any data to support that  
21 proposition in your report?

22 A Data, no.

23 Q Did you cite any examples in Texas?

24 A No.

25 Q What about in Dallas-Fort Worth?

1 A No.

2 Q As we sit here today, are you aware of any  
3 circumstance in which a foster care agency with no  
4 religious objection placing children in same-sex couples  
5 decided not to work with those couples because  
6 faith-based organizations were not required to do so?

7 A No. I have experience with families who have  
8 worked with agencies and have experienced discrimination  
9 and other kinds of delays. And I would just call it as  
10 discrimination more at the worker level, as well as, you  
11 know, working with other professionals in their efforts  
12 to either foster or adopt.

13 Q Would any of those --

14 A You know, in my -- in my technical report that I  
15 reference, I think it's the 2011 report, I do talk about  
16 in that report data the different kind of experiences and  
17 the expense of the experience that LGBTQ individuals  
18 report with regard to experiencing some form of  
19 discrimination or bias.

20 And the concern we have is that a lot of the  
21 latent bias -- which I think research would support still  
22 exists around the country. Latent in the sense that it's  
23 not necessarily acted on openly, but given the  
24 appropriate circumstances, it can get acted on.

25 And my concern here in this particular case, as

1 decade or two. You know, culminating, of course, with  
2 the ruling that same-sex marriage is legal.

3 Q Did you cite any data in your report that  
4 supports the testimony --

5 A I can't hear you.

6 Q Sorry.

7 Did you cite any data in your report which  
8 supports your testimony that you just gave?

9 A What I cited was the kinds of delays and  
10 disruptions that LGBTQ individuals have experienced and  
11 continue to experience in the process of applying to  
12 foster and to adopt.

13 We can't cite information that hasn't occurred  
14 yet. This is a can, not definitely will, but there's  
15 good reason to believe that I think -- that when you give  
16 voice in an affirmative way to an underlying prejudice  
17 and when that voice is the federal government, say, okay,  
18 go forward with this anti -- you know, with this  
19 discriminatory bias, there's going to be a lot of people  
20 who are influenced by that. I think, in part, that's  
21 common sense.

22 Q Just so I understand -- understand your  
23 testimony, you did not do any research in the Dallas-Fort  
24 Worth area, is that correct, with regard to your  
25 testimony?

1           A       Yeah. We've gone over that, and I have not done  
2 any research in the Dallas-Fort Worth area.

3           Q       And with any of the agencies involved in the  
4 Dallas-Fort Worth area; correct?

5           A       Exactly. Just to make a clearer point, my  
6 concern and the concern that's represented in my report  
7 is not restricted to the agencies in the  
8 Dallas-Fort Worth area. It's not restricted to the  
9 agencies in Texas. It's a concern about how the system  
10 would be impacted broadly speaking.

11          Q       Okay.

12                   A concern with the system broadly speaking;  
13 correct?

14          A       Correct.

15          Q       Are you aware of any circumstance in Texas in  
16 which a secular --

17                   COURT REPORTER: Counsel, I don't understand  
18 you.

19                   MR. GOETZ: Let's try again.

20 BY MR. GOETZ:

21          Q       Are you aware of any circumstance in Texas in  
22 which a secular foster care agency decided to stop  
23 placing children with the same-sex foster parents because  
24 a faith-based organization was not required to do so?

25          A       I missed the last part of your question. Was

1 impact of cultural dislocation on the children, the  
2 impact of -- in some cases, perhaps, you know, coming  
3 from environments in which their very lives may have been  
4 threatened by gangs and by the civil unrest that they are  
5 exposed to.

6 Most kids in domestic foster care, they  
7 experience abuse sometimes and neglect is the most common  
8 family factor leading to foster placement. Certainly the  
9 kids were exposed to physical abuse, sexual abuse,  
10 domestic violence too. So there are similarities. There  
11 are differences.

12 Q Thank you.

13 I might have asked you this before earlier in  
14 the deposition: Do you know how long the USCCB has  
15 operated a foster care program for the refugee minors?

16 A I think I already answered that, that I do not.  
17 It probably is in the 2012 document that I reviewed  
18 because there's a certain history section in the early  
19 part, but I don't have a memory of if they indicated when  
20 they began their program.

21 Q Do you know how many sub-grantees USCCB has for  
22 its foster care program of refugee minors?

23 A I do not.

24 Q Are you --

25 A By the way, it may be in that document as of

1 explaining that information and being able to translate  
2 that into a family environment in the broad sense and  
3 specific parenting skills is quite another issue. That  
4 requires a lot of training and support post-placement.

5 Q Okay.

6 So you don't think that the fact that the  
7 programs, themselves -- not talking general shortages,  
8 but the UAC and URM programs, themselves, have more  
9 capacity in terms of placement options than they do  
10 children who need to be placed is relevant to your second  
11 opinion?

12 MS. TAYLOR: Objection. Calls for speculation,  
13 and assumes facts not in evidence.

14 You may answer.

15 THE WITNESS: Okay. I was waiting for that.  
16 I'm sorry.

17 I think it doesn't change my opinion because it  
18 doesn't address the issue of the ability of the parents  
19 who are available to understand the reasoning of these  
20 children.

21 They are certified as foster parents in a  
22 general sense. I don't know that they would be families  
23 that would -- how they would manage a child perhaps who  
24 hasn't come out yet, but comes into the home knowing  
25 full-well that they are either questioning or have

1 already identified as LGBT, and how the family would  
2 manage that issue if, in fact, that family hasn't been  
3 prepared as part of the process of a placement to deal  
4 with that kind of an issue.

5 Obviously, you know, not every child, not even a  
6 majority of children coming through are likely to become  
7 LGBTQ, but a certain percentage are. And putting aside  
8 those kids, of course, almost all of these kids  
9 experience trauma in one form or another.

10 And, you know, foster parents are quite  
11 variable, and I'm speaking about foster parents in  
12 general because, again, my knowledge about the specific  
13 population that you're talking about is working with the  
14 USCCB. I don't know that population.

15 But I've worked with foster parents around the  
16 country and, frankly, in Europe as well, and I know the  
17 challenges that they experience in trying to parent  
18 traumatized children. And so, you know, the more -- from  
19 my view, the more, the better, and we begin to, then, do  
20 a fine-tuning match between the specifics of the child  
21 and the specifics of the parents.

22 BY MR. LYNCH:

23 Q Thank you.

24 And can we turn to your third opinion, please,  
25 the one that starts with C as in "Charlie." I believe

1 A Yes.

2 Q Could you clarify for me what nondiscrimination  
3 provisions you're talking about here?

4 A The provision that has to do with the  
5 willingness to work with individuals, regardless of their  
6 sexual orientation. It could apply to any protective  
7 class, but in this particular case, you're talking about,  
8 you know, gay, lesbian, and transgender individuals.

9 Q Okay.

10 I think you told Mr. Goetz -- and maybe more  
11 than once -- that you have not reviewed the contracts,  
12 themselves, between the federal government and the USCCB  
13 and the subcontracts between USCCB and it's sub-grantees;  
14 is that right?

15 A That's correct.

16 Q So have you seen the nondiscrimination  
17 provisions that you're opining on here?

18 COURT REPORTER: Can you say that again,  
19 Counsel?

20 MR. LYNCH: Sure.

21 BY MR. LYNCH:

22 Q Dr. Brodzinsky, have you seen the  
23 nondiscrimination provisions about which you're opining  
24 in your fifth opinion?

25 A Only in the context of the reference to them in

1 the complaint, not the -- I've not reviewed the contract.

2 Q Okay.

3 And were they reproduced in full in the  
4 complaint? Have you read the substance of those  
5 provisions?

6 A You know, that would be in the contract, itself,  
7 I think.

8 Q So is that a no? You haven't read the  
9 provisions, themselves?

10 A I haven't read -- I haven't read the full  
11 contract. I haven't read the contract, period.

12 Q And the text of the provisions, was that in the  
13 pleading that you reviewed?

14 A I believe it was, a reference to it, anyway.

15 Q And am I correct that when you say "enforcing  
16 the nondiscrimination provisions," you mean excluding  
17 USCCB from participating as a grantee in the UAC program  
18 or as a replacement designee under URM?

19 (Cross-talking.)

20 MR. LYNCH: I'm sorry.

21 MS. TAYLOR: Objection. Compound.

22 But you may answer, Doctor.

23 THE WITNESS: That would be one option. Or like  
24 in the Fulton case where Bethany Christian initially  
25 declined to work with individuals, but then subsequently

1 There was a substantial increase in placements.

2 If by the logic that I've heard expressed, you  
3 know, by defendants, not only in this case, but  
4 elsewhere, that we would lose the capacity to make  
5 placements with these children, it's certainly not  
6 supported by any known data that I'm aware of, and, in  
7 fact, the data that I just referred to speaks to the  
8 opposite of what they are suggesting.

9 Q Well, the data that you just referred to is the  
10 Illinois example; right?

11 A Yes.

12 Q And what was the agency that withdrew in that  
13 case?

14 A Catholic Charities.

15 Q But you haven't assessed whether if Catholic  
16 Charities withdrew from participation in the  
17 Dallas-Fort Worth area, the smooth transition, as you put  
18 it, would occur there as well?

19 A They haven't withdrawn yet, have they? There  
20 hasn't been an attempt to make a transition, so I can't  
21 opine on something that hasn't occurred.

22 Q Right. Thank you.

23 And you can't opine on removing USCCB nationally  
24 from the program would result in a decline in the foster  
25 placement options, can you?

1           A     I can't. But I can tell you from my own  
2 experience over the years, you know, that I've been aware  
3 of agencies that have closed for various reasons, and not  
4 just because of a court decision, and, generally, there's  
5 been a fairly smooth transition moving the caseload from  
6 the agency that is closing to other agencies.

7                     We have a large number of agencies around the  
8 country, and you've already pointed out the large number  
9 of agencies that are just in the Dallas/Forth Worth area  
10 that are possible. I'm not saying probable. I don't  
11 know what their feelings are with their policies, but  
12 possible grantees, you know, for this type of program, as  
13 well as around the country.

14                    Because I know that this is -- the USCCB has  
15 agencies around the country that are dealing with this,  
16 not just in Texas.

17                   MR. LYNCH: Okay. Thank you.

18                    I don't have any further questions.

19                   THE VIDEOGRAPHER: Counsel, I have about maybe  
20 two minutes before I need to go off. So may we as well  
21 just go off the record now?

22                   MR. GOETZ: Well, I don't have any further  
23 questions, so --

24                   MS. TAYLOR: No questions for this witness  
25 either.

# **Exhibit F**

Anne Mullooly

May 18, 2022

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

- - -

FATMA MAROUF and BRYN : CASE NO.  
ESPLIN, a Married : 1:18-cv-378  
Couple, : (APM)  
Plaintiffs, :

V. :

ALEX AZAR, in his :  
official capacity as :  
Secretary of the :  
UNITED STATES :  
DEPARTMENT OF HEALTH :  
AND HUMAN SERVICES, :  
Defendants. :

- - -

May 18, 2022

- - -

Videoconference deposition of ANNE

MULLOOLY, ORR/URM, (with all parties  
participating remotely), commencing at 9:02  
a.m. on the above date, before Teresa M.  
Beaver, Professional Court Reporter and  
Notary Public.

- - -

US LEGAL SUPPORT  
(877) 479-2484

1 MULLOOLY

2 your deposition in reference to Upbring,  
3 described them as having no children to  
4 offer. I think that was in response to your  
5 testimony that CCD had approximately 50  
6 children as -- in its custody.

7 I'd like you to clarify, when  
8 you say CCD has 50 children in its custody,  
9 do you mean children that are there waiting  
10 for foster parents to come and take them in?

11 A. No. I mean --

12 Q. What do you mean?

13 A. These are children that are  
14 already placed in foster homes and supervised  
15 independent living. They've been accepted  
16 into the program and placed with -- they  
17 already have a placement. They are already  
18 placed with a foster family or another foster  
19 care placement.

20 Q. Is that what you mean when you  
21 refer to custody of URM provider agencies  
22 generally?

23 A. Yes. So there's a federal  
24 requirement for legal responsibility to be  
25 established after the child's arrival to the

1 MULLOOLY

2 program. And in Texas, legal -- that legal  
3 responsibility arrangement is a private  
4 conservatorship where the URM provider goes  
5 to court to petition for conservatorship or  
6 custody, if you want to call it that, of the  
7 children that have been approved to be placed  
8 there.

9 Q. So, while one might characterize  
10 Upbring has having no children to offer, is  
11 that generally true of all URM provider  
12 agencies?

13 A. Correct. They -- how it works  
14 is ORR or the state department, if you are  
15 also talking about the other referral  
16 pipeline, they refer the children to the  
17 national network of URM providers and then  
18 the providers submit what's called a  
19 placement assurance memo, signaling that they  
20 have a foster family that's licensed or  
21 another placement that is available for that  
22 child, that can meet the child's needs and  
23 then the child, if the child is referred by  
24 ORR, we would submit or issue an approval  
25 letter approving that child to enter that URM

1 MULLOOLY

2 program. And then the child arrives to the  
3 program and is placed into the proposed  
4 foster home or proposed foster placement.

5 So, a program doesn't have a  
6 pool of children that are just waiting to be  
7 placed. It's the other way, where they are  
8 licensing foster parents and then those  
9 foster parents are able to review referrals  
10 of children who are in need of placement.

11 Q. And if we back up just a little  
12 bit further, I think you said what you just  
13 described is the second of two paths through  
14 which children enter the URM program. Is  
15 that right?

16 A. There's really two different  
17 paths.

18 Q. And the first has to do with  
19 children that actually come directly from  
20 abroad through the state department. Is that  
21 right?

22 A. Correct.

23 Q. And the second is children that  
24 are already in the United States but would  
25 become eligible for the URM program?

1 MULLOOLY

2 A. Correct.

3 Q. And they enter the URM program  
4 and get placed with a foster family through  
5 the process that you are just now describing?

6 A. Correct.

7 Q. And when you refer to the  
8 placement assurance memos that come from the  
9 URM provider agencies, when are referrals  
10 made, can such a replacement memo come from  
11 any URM provider agency from around the  
12 country?

13 A. Yes.

14 Q. And does that mean that in  
15 effect every licensed foster parents in any  
16 pool of any URM provider agency is eligible  
17 to receive a replacement?

18 A. In theory, yes. It's possible  
19 that not all providers would receive a  
20 referral. There are times when a child asks  
21 to be placed in a particular geographic  
22 location because they may have extended  
23 relatives in that area. For example, they  
24 may have an aunt and uncle that lives in  
25 Richmond, Virginia. They'd like to live

1 MULLOOLY

2 close to them, but the aunt and uncle are not  
3 able to provide care. Therefore, we may just  
4 refer the child to the Richmond, Virginia  
5 program to ensure that that child can be  
6 placed close to their relatives.

7 So, there might be a geographic  
8 restriction, but in general, referrals are  
9 sent out. We cast a wide net. They are sent  
10 out to all URM provider agencies for  
11 consideration.

12 Q. So, absent those sort of case  
13 specific restrictions that you just  
14 mentioned, it's a case that any referral  
15 could go to any licensed foster parent in any  
16 pool of any URM provider agency?

17 A. Correct.

18 Q. Okay. So, with that broader  
19 process in mind, if we zoom back in on the  
20 Dallas-Fort Worth area and stipulate for the  
21 moment that say Upbring has one foster family  
22 in it's pool and CCD has say 50 families in  
23 its pool. Is the sole family in the Upbring  
24 pool any less likely to receive a placement  
25 simply because they are in a smaller pool

1 MULLOOLY

2 than their counterparts in the CCD pool?

3 A. No.

4 Q. Thank you. That clears up the  
5 first topic I wanted to address.

6 The second has to do with  
7 funding which you were discussing with  
8 plaintiff's counsel towards the end there.

9 At the outset, I want to ask,  
10 does the funding drive a URM provider  
11 agencies resource expenditures or do the  
12 resource expenditures drive the department?

13 A. Could you rephrase that?

14 Q. Sure. Sure. I'll back up.  
15 When you were discussing comparative funding  
16 levels say between Upbring and CCD, what  
17 figures are you referring to?

18 A. Well, there's kind of two sets  
19 of figures. USCCB and LIRS submit a budget  
20 estimate to ORR every year that signals to  
21 ORR how much money they think they are going  
22 to need to operate the URM program. That  
23 includes costs associated with the direct  
24 care of the children, foster care maintenance  
25 payments that would go to the foster parents,

# **Exhibit G**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

	)	
FATMA MAROUF, <i>et al.</i> ,	)	
	)	
<i>Plaintiffs,</i>	)	
	)	
v.	)	Case No. 1:18-cv-378 (APM)
	)	
ALEX AZAR, in his official capacity as	)	
Secretary of the UNITED STATES	)	
DEPARTMENT OF HEALTH AND HUMAN	)	
SERVICES, <i>et al.</i> ,	)	
	)	
<i>Defendants.</i>	)	

**FEDERAL DEFENDANTS’ OBJECTIONS AND RESPONSES TO PLAINTIFFS’ FIRST  
REQUESTS FOR ADMISSION**

Defendants United States Department of Health and Human Services (“HHS”); Administration for Children and Families (“ACF”); Office of Refugee Resettlement (“ORR”); Alex Azar, in his official capacity as Secretary of HHS; Lynn Johnson, in her official capacity as Assistant Secretary for ACF; and Jonathan Hayes, in his official capacity as Director of ORR (collectively, “Federal Defendants”), hereby submit their objections and responses to Plaintiffs’ First Requests for Admission.

**OBJECTIONS TO DEFINITIONS**

1. As specifically noted below, Federal Defendants object to Plaintiffs’ definition of “Relevant Period,” set forth in paragraph M of the First Requests For Production. Plaintiffs’ definition extends back to at least 2003. Conducting an inquiry extending back that far—across multiple administrations, numerous personnel changes, and long before the facts alleged in the complaint—is not reasonable or proportional to the needs of this case and it would be unduly

Plaintiffs Marouf and Esplin under the UAC or URM program solely because they did not “mirror the holy family.”

**RESPONSE TO REQUEST NO. 9:**

Admitted that Fatma Marouf emailed ORR on February 22, 2017, stating that during an “initial interview” with CCFW concerning “Refugee Foster Care programs,” she was informed by CCFW that she and her wife, Plaintiff Esplin, “were not eligible because we did not ‘mirror the holy family.’” To the extent the RFA is inconsistent with the foregoing response, denied.

**REQUEST NO. 10:**

Admit that there is no valid basis in social science or child welfare principles for the government categorically to prefer different-sex couples over same-sex couples when considering or approving would-be foster or adoptive parents or making foster or adoptive placement decisions.

**OBJECTIONS TO REQUEST NO. 10:**

Federal Defendants object to this RFA as outside the scope of discovery set forth in Fed. R. Civ. P. 26(b)(1). This request is not “relevant to any party’s claim or defense” or “proportional to the needs of the case” because Federal Defendants agree not to raise any defense in this litigation that there is a “valid basis in social or child welfare principles for the government categorically to prefer different-sex couples over same-sex couples when considering or approving would-be foster or adoptive parents or making foster or adoptive placement decisions.” Federal Defendants further object to this request’s reference to “social science or child welfare principles,” which is vague and ambiguous; Plaintiffs do not specify any sources for the RFA or define or explain what these principles are.

**REQUEST NO. 11:**

Admit that the scientific community has reached consensus that children reared by lesbian or gay parents are just as likely to be well-adjusted as children reared by heterosexual parents.

# **Exhibit H**

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

KRISTY DUMONT; DANA DUMONT;  
ERIN BUSK-SUTTON; and REBECCA  
BUSK-SUTTON,

Plaintiffs,

v.

NICK LYON, in his official capacity as  
the Director of the Michigan Department  
of Health and Human Services; and  
HERMAN MCCALL, in his official  
capacity as the Executive Director of the  
Michigan Children's Services Agency,

Defendants,

and

ST. VINCENT CATHOLIC CHARITIES;  
MELISSA BUCK; CHAD BUCK; and  
SHAMBER FLORE,

Intervenor Defendants.

No. 2:17-cv-13080-PDB-EAS

HON. PAUL D. BORMAN

MAG. ELIZABETH A. STAFFORD

**EXPERT REPORT OF DAVID M.  
BRODZINSKY, PH.D.**

## **EXPERT REPORT OF DAVID M. BRODZINSKY, PH.D.**

I, David M. Brodzinsky, do solemnly attest as follows:

### **I. Assignment**

1. I have been retained by plaintiffs' counsel to prepare a written expert report in this case relating to professional standards for inclusion of qualified families in the child welfare system, and the impact on children and families that can result from a State permitting state-contracted child placing agencies to exclude same-sex couples. The analyses and opinions expressed in this report are my own. I am being compensated at a rate of \$250 per hour. My compensation in this matter is in no way contingent or based on the content of my opinions or the outcome of this matter.

### **II. Professional Qualifications (see attached curriculum vitae for more details)**

2. I received a Ph.D. in developmental psychology from the State University of New York at Buffalo in 1974, as well as additional training as a clinical psychologist during a clinical internship at the Irving Schwartz Institute for Children and Youth in Philadelphia from 1972-1973 and a post-doctoral clinical fellowship at the same institution from 1973-1974.
3. I am a licensed psychologist in the states of California (#21152) and New Jersey (#2014).
4. From 1974 to 2006, I served as an Assistant Professor, Associate Professor, and then Full Professor in the Department of Psychology at Rutgers University, where I taught undergraduate and graduate courses in developmental and clinical psychology,

conducted research, and supervised doctoral students in clinical and school psychology. Currently, I am Professor Emeritus of Clinical and Developmental Psychology at Rutgers University.

Selection of Specific Qualifications Related to Adoption and Foster Care

5. I have nearly 40 years of experience in the fields of adoption and foster care as a researcher, scholar, teacher, clinician, policy analyst, trainer, consultant, and forensic expert. I have over 100 publications, including numerous peer-reviewed journal articles, book chapters, and six books on adoption and foster care, as well as on other topics in developmental and clinical psychology. I have also reviewed hundreds of articles in these areas submitted for publication to the most prestigious professional journals in developmental and clinical psychology, as well as in child welfare, including Children and Youth Services Review, Adoption Quarterly, Journal of Clinical Child Psychology, Developmental Psychology, and Parenting: Science and Practice.
6. From 1986 to 1995, I directed a post-adoption service program under contract from the New Jersey Division of Youth and Family Services (DYFS), now known as the Department of Children and Families. The project provided direct clinical services to adopted children and their families in several northern counties in New Jersey.
7. From 1989 to 2006, I was Director of the Rutgers Foster Care Counseling Project (FCCP), a state-funded training and service program focusing on the clinical needs of foster children and their families in central New Jersey. During this period, I trained

- over 100 doctoral-level psychology students in psychological issues in foster care and adoption, and the project served over 700 foster families.
8. From 1996 to 2006, I was on the Board of Directors of the Donaldson Adoption Institute in New York City, an internationally known non-profit organization focusing on policy analysis, research, education, and advocacy in the fields of adoption and foster care. From 2006 through 2014, I served as Research Director for the Institute. During my time with the Donaldson Adoption Institute, I created the Modern Adoptive Families Project, a nationwide survey of adoptive parents focusing on the experiences and outcomes of different types of adoptive families, including those headed by sexual minority parents. To date, five empirical articles have been published from this dataset, with additional ones in preparation.
  9. I have served or am currently serving on the Editorial Boards of *Adoption Quarterly*, *Developmental Child Welfare*, *Journal of Applied Developmental Psychology*, and *Youth and Society*.
  10. I have been in private practice as a psychologist for 35 years, with the majority of my clinical work focusing on the mental health needs of adopted and foster children and their families. Over this time period, I have worked with several thousand families who have adopted or fostered children.
  11. From 2008 to 2016, I was a clinical supervisor for A Home Within, a non-profit organization in the San Francisco Bay area providing pro bono clinical services to foster children and their families.

12. I have also been a practicing forensic psychologist for approximately 30 years.

During this time I have been involved in 600-650 forensic cases, testifying over 100 times in 12 different states. Most of my cases have involved issues related to child custody, juvenile dependency, contested adoption, wrongful adoption, child abuse, and trauma-related personal injury. Approximately 40-45 of these forensic cases involved issues related to adoption, fostering, and/or parenting by lesbian, gay, bisexual, or transgender individuals/couples.

13. I have given hundreds of conference presentations, professional workshops, medical grand rounds presentations, invited university lectures, and community lectures to mental health professionals, child welfare professionals, legal professionals, and/or the public related to adoption and foster care throughout the United States, Europe, and parts of South America.

14. I have been a consultant to hundreds of public and private adoption agencies and child welfare agencies in the United States, Canada, England, Northern Ireland, Wales, Spain, Italy, Holland, Sweden, Norway, and Colombia. Currently, I am a clinical and training consultant for the Center for Adoption Support and Education in Burtonsville, MD and a research and project consultant for the National Center on Adoption and Permanency in Newton, MA.

Selection of Specific Qualifications Related to Adoption, Foster Care, and Parenting by Lesbian and Gay Individuals and Couples

15. I have published a dozen peer-reviewed journal articles, policy papers, book chapters, and an edited book (*Adoption by Lesbians and Gay Men: A New Dimension*

*in Family Diversity*, Oxford University Press, 2012) focusing on adoption and parenting by sexual minority individuals/couples.

16. I have worked clinically with hundreds of families headed by lesbian and gay parents during my career, including those who have adopted or fostered children. Since moving to CA in 2006, approximately 30-40% of my clinical practice has been with sexual minority families. In addition, I have regularly supervised the clinical work of other professionals working with families headed by lesbian and gay parents.
17. From 2009 to 2015, I was a clinical supervisor and consultant to the Pacific Center in Berkeley, CA, a non-profit organization serving the mental health needs of the LGBTQ community.
18. I have been involved in numerous court cases related to adoption, fostering, parenting, and marriage by LGBTQ individuals/couples, for which I have provided expert reports on case issues, evaluated the parties, and/or testified during deposition or at trial. These cases include the same-sex marriage trial in Hawaii in 1996 (*Baehr v. State of Hawaii*); four separate challenges to Florida's ban on adoption by gay people (*Amer v. Johnson* in 1997; *Lofton v. Kearney, et al.* in 2001; *IMO Adoption of JCB* in 2005; *IMO Adoption of XG and NG* in 2008); *Catholic Charities v. State of Illinois* in 2011; and the Michigan same-sex marriage case (*DeBoer v. Snyder* in 2014). In all of these cases where I appeared in court, I was qualified as an expert on issues related to adoption, fostering, and parenting by sexual minority adults.

19. I have made numerous presentations on issues related to LGBTQ adoption, fostering, and parenting to mental health professionals, child welfare professionals, and legal/judicial professionals throughout the United States, Canada, Great Britain, Spain, Italy and Colombia.

### III. Opinions

20. The opinions below are supported by research and scholarly writings in the areas of child development, family psychology, and child welfare, as well as my professional experience. Representative relevant authoritative books, book chapters, journal articles, policy briefs, and technical reports are cited herein in support of my opinions. In addition to these documents, my opinions are based on over 40 years of clinical, consultation, training, and forensic experience in child development, family psychology, and child welfare, as well as my direct clinical involvement and supervisory experience with hundreds of foster and adoptive families, including many headed by sexual minority parents.

#### **A. Professional child welfare standards provide for the inclusion of all qualified foster and adoptive families so as to best serve the needs of children.**

21. Children in foster care are some of the most vulnerable children in our nation. Finding permanent and loving homes for them represents one of the most important responsibilities for public child welfare agencies. To further and fulfill the responsibility to meet that goal, well-established professional standards in the field of child welfare promote practices that welcome all capable prospective foster and adoptive parents regardless of race, religion, marital status, gender, disability, or sexual orientation.

22. The Child Welfare League of America (CWLA), which is the national standard setter in the field of child welfare, has promulgated the well-accepted Standards of Excellence for Child Welfare Services, including Adoption Services. CWLA standards are “goals for the continuing improvement of services for children and their families . . . CWLA standards are directed to all who are concerned with the enhancement of services to children and their families, including parents; public and voluntary child welfare agency governing board members; direct service, supervisory, and administrative staff members; the general public; citizen groups; public officials; courts and judges; legislators; professional groups; organizations serving children and their families; organizations whose functions include the planning and financing of community services; state or local agencies entrusted by law with functions relating to the licensing or supervision of organizations serving children and their families; tribal organizations; advocacy groups; and federations whose membership requirements involve judgments on the nature of services rendered by their member agencies.”(pg. vi)<sup>1</sup>.

23. CWLA standards make it clear that all individuals and families should be considered when applying to adopt or foster children, including those who are sexual minority adults. “Applicants should be assessed on the basis of their abilities to successfully parent a child needing family membership and not on their race, ethnicity or culture, income, age, marital status, religion, appearance, differing life style, or sexual orientation. Applicants should be accepted on the basis of an individual assessment

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<sup>1</sup> CWLA Standards of Excellence for Adoption Services (Rev Ed) (2000). Washington, D.C.

of their capacity to understand and meet the needs of a particular available child at the point of the adoption and in the future.” (pg. 56-57)<sup>2</sup>.

24. The CWLA issued a position statement affirming that sexual minority adults are just as capable of raising children as their heterosexual counterparts and strongly opposing efforts to exclude adoption and foster care applicants based solely on their sexual orientation<sup>3</sup>; several other child welfare organizations, including the Donaldson Adoption Institute, the North American Council on Adoptable Children, and Voice for Adoption, have done the same. Similar policy statements regarding the equal parenting capabilities of sexual minority adults and their suitability as adoptive parents have been issued by virtually all major medical and mental health professional organizations.<sup>4,5</sup>
25. One of the many reasons it is so important in the child welfare field to not exclude from the process those who may represent qualified families is the dramatic shortage of families available to meet the needs of children in the foster care system. The most recent national child welfare statistics on adoption and foster

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<sup>2</sup> Ibid.

<sup>3</sup> [www.cwla.org/wp-content/uploads/2015/04/PositionStatementOnParentingOfChildrenbyLGBT.pdf](http://www.cwla.org/wp-content/uploads/2015/04/PositionStatementOnParentingOfChildrenbyLGBT.pdf).

<sup>4</sup> Pertman, A. & Howard, J. (2012). *Emerging diversity in family life: Adoption by gay and lesbian parents*. In D. Brodzinsky & A. Pertman (Eds.), *Adoption by lesbians and gay men: A new dimension in family diversity*. New York: Oxford University Press. Among the many organizations issuing such statements are: American Psychological Association, American Academy of Child and Adolescent Psychiatry, American Psychiatric Association, American Academy of Pediatrics, and American Medical Association.

<sup>5</sup> Over 30 years of social science research indicates that sexual minority parents are as well-adjusted psychologically and have similar parenting competence as their heterosexual counterparts, and that children growing up in same-sex parent households show no differences in their developmental outcomes compared to children raised in different-sex parent families. These findings have been confirmed not only for sexual minority parents with biological children but also for those with adopted children. See Brodzinsky, D. & Pertman, A. (2012). *Adoption by lesbians and gay men: A new dimension in family diversity*. New York: Oxford University Press; Farr, R., Forsell, S., & Patterson, C. (2010). *Parenting and child development in adoptive families: Does parental sexual orientation matter?* *Applied Developmental Science*, 14, 164-178; Goldberg, A. (2010). *Lesbian and gay parents and their children: Research on the family life cycle*. Washington, D.C.: American Psychological Association.

care are for FY2017 (*i.e.*, October 1, 2016 through September 30, 2017)<sup>6</sup>. During this time period, over 442,000 children resided in foster care, with 123,437 children waiting to be placed for adoption<sup>7</sup>. The inability to find permanent and nurturing homes for these children reflects, in part, the limited number of motivated and qualified families willing to adopt them. If the State permits agencies to exclude any group of qualified applicants, including those who are lesbian or gay, it will reduce the chances of these children finding permanent life-long family connections in a timely manner and increase the risk for long-term adjustment difficulties. Indeed, excluding same-sex couples may have an especially serious impact because research indicates that they are disproportionately more likely to foster and adopt children than their heterosexual peers—specifically, among couples raising children, same-sex couples are four times more likely than different-sex couples to be raising an adopted child and six times more likely to be raising foster children.<sup>8</sup>

26. Not only is the number of children in need of families great but many have circumstances that make it challenging to find families to care for them. A sizable percentage of children in foster care, including those who are waiting to be adopted, are older, have serious medical, developmental or emotional needs, are part of a sibling group, and/or have lingered in care for many years, making it difficult to find families willing to adopt or foster them. In addition, a disproportionate number of these children are from racial/ethnic minority groups. For children waiting to be

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<sup>6</sup> <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport25.pdf>.

<sup>7</sup> *Ibid.*

<sup>8</sup> Gates, G. (2013). *LGBTQ parenting in the United States*. The Williams Institute, Los Angeles.

adopted on September 30, 2017, over 75% were three years or older; over 55% had entered care at three years or older; and over 50% were racial/ethnic minorities.<sup>9</sup> These are some of the most vulnerable children in our country, for whom permanent and loving adoptive homes offer the possibility of a better future. Research indicates that same-sex couples are disproportionately more likely than heterosexual adults to adopt racial minority children, and frequently adopt children with developmental and emotional difficulties.<sup>10</sup> For example, in one national survey of families with adopted children, 47% of children in families headed by same-sex couples were racial minority children, compared to 37% of children in families headed by heterosexual couples.<sup>11</sup> Therefore, excluding sexual minority individuals and couples from adopting or fostering children reduces a pool of applicants who are more likely to be willing to take on the challenges of raising these special needs children, leading to longer stays in foster care and increased risks for long-term adjustment difficulties. In short, child welfare policies and practices that allow the exclusion of families willing and able to foster and adopt these vulnerable children do not serve the interests of these children or society in general.

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<sup>9</sup> <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport25.pdf>

<sup>10</sup> Brooks, D. & Goldberg, S. (2001). Gay and lesbian adoptive and foster care placements: Can they meet the needs of waiting children. *Social Work*, 46, 147-157; Gates, G., Badgett, M., Macomber, J. & Chambers, K. (2007). *Adoption and foster care by gay and lesbian parents in the United States*. Technical report issued jointly by The Williams Institute (Los Angeles) and the Urban Institute (Washington, DC); Goldberg, A. & Smith, J. (2009). Predicting non-African American lesbian and heterosexual preadoptive couples' openness to adopting an African American child. *Family Relations*, 58, 346-360.

<sup>11</sup> Gates et al (2007). *Adoption and foster care by gay and lesbian parents in the United States*. Technical report issued jointly by The Williams Institute (Los Angeles) and the Urban Institute (Washington, D.C.).

27. Even if there were an abundance of families willing to foster and adopt children from the child welfare system, it would still be critical to access every qualified family to ensure that all children can be placed with families that are well-matched to meet their specific needs. Child placements are assessed on a case-by-case basis, with the goal of determining which family is best suited to understand, support, and advocate for the special needs of a specific child. All children have unique needs and families are not fungible. In sum, excluding sexual minority adults from adopting and fostering reduces the pool of families from which to choose when looking for good matches to meet the needs of each child.

28. In addition, research and child welfare practice supports maintaining foster and adopted children's connections to their birth family and birth heritage, whenever possible, because these connections often promote better identity development and healthier emotional well-being<sup>12</sup>. Sexual minority adults have been shown to be very supportive of their children's need for birth family contact<sup>13</sup>. Therefore, excluding sexual minority adults from adopting and fostering reduces the pool of applicants who are likely to be willing to help their children maintain connections with birth family members.

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<sup>12</sup> Brodzinsky, D. (2005). Reconceptualizing openness in adoption: Implications for theory, research and practice. In D. Brodzinsky & J. Palacios (Eds.), *Psychological issues in adoption: Research and practice*. Westport, CT: Praeger; CWLA Standards of Excellence for Adoption Services (Rev Ed) (2000). Washington, D.C.; Grotevant, H. & McRoy, R. (1998). *Openness in adoption: Exploring family connections*. Thousand Oaks, CA: Sage; Neil, E. & Howe, D. (2004). *Contact in adoption and permanent foster care: Research, theory and practice*. London: British Association for Adoption & Fostering.

<sup>13</sup> Brodzinsky, D. & Goldberg, A. (2016). Contact with birth families in adoptive families headed by lesbian, gay male, and heterosexual parents. *Children and Youth Services Review*, 62, 9-17; Brodzinsky, D. & Goldberg, A. (2017). Contact with birth family in intercountry adoptions: Comparing families headed by sexual minority and heterosexual parents. *Children and Youth Services Review*, 74, 117-124.

**B. There is considerable impact on children in the foster care system when there are not enough families to meet their needs.**

29. Without sufficient numbers of motivated and qualified families, children continue to linger in foster care, often moving from home to home over the years. A longer time in foster care and a greater number of moves while in placement directly contributes to adverse developmental outcomes for children because it undermines the development of secure attachment bonds, which are the cornerstone of healthy human functioning<sup>14</sup>. In short, children in the foster care system are impacted negatively when there are not enough families available to foster or adopt.
30. When there are insufficient families available to foster or adopt children, children in the foster care system sometimes end up in group homes or institutional environments. As an example, across the country, for FY2017, 24,472 children in state care (6%) lived in group homes and 29,438 lived in institutional facilities (7%)<sup>15</sup>. These types of care environments cannot offer children the stability, nurturance, safety, life-long family connections and support, and genuine sense of legal, residential, relational and psychological permanence that families can provide<sup>16</sup>.
31. When there are insufficient families available to adopt children or provide other forms of permanence (e.g., guardianship), child welfare agencies often change the

<sup>14</sup> Pecora, P.J. et al. (2009). Mental health services for children placed in foster care: An overview of current challenges. *Child Welfare*, 88, 5-26; Dozier, M. & Rutter, M. (2016). Challenges to the development of attachment relationships faced by young children in foster and adoptive care. In J. Cassidy & P. Shaver (Eds.), *Handbook of attachment: Theory, research and clinical applications* (3<sup>rd</sup> ed.). New York: Guilford Press; Koback, R., Zajac, K. & Madson, S. (2016). Attachment disruptions, reparative processes, and psychopathology: Theoretical and clinical implications. In J. Cassidy & P. Shaver (Eds.), *Handbook of attachment: Theory, research and clinical applications*. (3<sup>rd</sup> ed.). New York: Guilford Press.

<sup>15</sup> <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport25.pdf>.

<sup>16</sup> Brodzinsky, D. & Smith, S. (In Press). Commentary: Understanding research, policy, and practice issues in adoption instability. *Research on Social Work Practice*.

case goal to emancipation (i.e., the youth is no longer a ward of the State) as opposed to adoption or other forms of family permanency. These permanency goal changes are associated with higher chances of multiple placements and institutional placements and lower chances for adoption<sup>17</sup>. From FY2011 through FY2017, between 8% and 11% of youth in care—or roughly 22,347 per year on average—failed to achieve permanency and aged out from foster care<sup>18</sup>. Although some youth maintain connections with their previous foster families and others return to their birth families, many of those who age out from care have no stable, committed, and nurturing relationships they can count on as they transition to adulthood. As a result, these young men and women face tremendous difficulties in areas related to education, employment, housing, physical and mental health, substance abuse, criminality, and early, unplanned parenting<sup>19</sup>. Furthermore, as a result of the many losses they experienced following removal from their families, as well as subsequent multiple moves they experience in foster care, they are likely to have great difficulty in forming trusting and secure relationships as they get older. In fact, emotional support and relationship permanency are two key missing needs identified by “aging out” youth themselves<sup>20</sup>.

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<sup>17</sup> Cushing, G. & Greenblatt, S.B. (2009). Vulnerability to foster care drift after the termination of parental rights. *Research in Social Work Practice*, 19, 694-698.

<sup>18</sup> Department of Health and Human Services. *The AFCARS reports #19-25*. Department of Health and Human Services, Children’s Bureau.

<sup>19</sup> Howard, J. & Berzin, S. (2011). *Never too old: Achieving permanency and sustaining connections for older youth in foster care*. New York: Donaldson Adoption Institute; Rebbe, R., Nurius, P.S., Ahrens, K.R., & Courtney, M.E. (2017). Adverse childhood experiences among youth aging out of foster care: A latent class analysis. *Children and Youth Services Review*, 74, 108-116.

<sup>20</sup> Samuels, G. (2009). Ambiguous loss of home: The experience of familial (im)permanence among young adults with foster care backgrounds. *Children and Youth Services Review*, 31, 1229-1239.

32. When the pool of prospective adoptive and foster care families is insufficient, agencies sometimes have no other option but to separate siblings or place children with families that are far from the communities in which they have grown up, resulting in the loss of important relationships (e.g., birth family, friends, teachers, coaches, therapists, etc.) and disrupting educational continuity. Such losses and instability can be traumatic for children and are often poorly understood by the families that end up caring for these boys and girls, leading to increased risk for adjustment difficulties<sup>21</sup>.
33. Reducing the pool of available adoptive or foster families increases the chances that children will be placed with families that are not well-matched for their individual needs, or who do not understand or are unprepared to cope with their special needs. When this happens, the chances of placement disruption or adoption breakdown increases. Regardless of the reason, adoption breakdowns typically lead to increased adjustment difficulties for children, in large part because of disruption to existing attachment relationships and support networks<sup>22</sup>.

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<sup>21</sup> Brodzinsky, D. (2009). The experience of sibling loss in the adjustment of foster and adopted children. In D. Silverstein & S. Smith (Eds.), *Siblings separated by adoption or foster care: Understanding the effects and developing solutions*. Westport, CT: Praeger; Brodzinsky, D. (2011). Children's understanding of adoption: Developmental and clinical implications. *Professional Psychology: Research and Practice*, 42, 200-207; Brodzinsky, D. (2015). Understanding and treating adoptive families. In S. Browning & K. Pasley (Eds.), *Contemporary families: Translating research into practice*. New York: Routledge.

<sup>22</sup> Brodzinsky, D. & Smith, S. (In Press). Commentary: Understanding research, policy, and practice issues in adoption instability. *Research on Social Work Practice*; Palacios, J. (In Press). Adoption breakdown research comes of age: Introduction to the special section. *Research on Social Work Practice*; Koback, R., Zajac, K. & Madson, S. (2016). Attachment disruptions, reparative processes, and psychopathology: Theoretical and clinical implications. In J. Cassidy & P. Shaver (Eds.), *Handbook of attachment: Theory, research and clinical applications*. (3<sup>rd</sup> ed.). New York: Guilford Press.

**C. Permitting State-contracted agencies to turn away same-sex couples can reduce family placement options for children in the child welfare system, thereby undermining their long-term well-being.**

34. If a State-contracted agency does not accept a class of prospective families such as same-sex couples, children in the care of that agency may lose out on the family that would have best served their needs and, instead, be placed with a family in the agency's pool of licensed families that meets the qualifications to foster or adopt but is a less appropriate choice for the child for any number of reasons (e.g., far from the child's school and community; not as well-prepared to manage a child's serious emotional or medical issues).
35. In addition, when State-contracted child placing agencies are permitted to exclude same-sex couples regardless of their qualifications, it creates a deterrent to same-sex couples' participation in the foster care and adoption system as a whole. Same-sex couples who are turned away by an agency because of their sexual orientation may be hesitant about approaching another agency in their community for fear of further discrimination. They may not know how receptive another agency will be to sexual minority applicants. Although professional child welfare organizations encourage agencies to state clearly that they welcome same-sex couples<sup>23</sup>, some agencies do not.
36. Furthermore, some same-sex couples who would be interested in fostering or adopting may decline to pursue it altogether if they know that the State authorizes discrimination against sexual minorities. Minority stress research shows the

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<sup>23</sup> [www.nrcdr.org/\\_assets/files/strategies-for-recruiting-LGBT-foster-adoptive-kinship-families.pdf](http://www.nrcdr.org/_assets/files/strategies-for-recruiting-LGBT-foster-adoptive-kinship-families.pdf).

significant impact of discrimination on marginalized groups. Individuals who experience discrimination and prejudice because they are members of a minority class, such as those who are LGBTQ, are impacted by significant stress that is psychologically harmful, increases the risk for internalized homophobia, and potentially can deter them from participating in various areas of life out of fear of repeated discrimination and feelings of exclusion and humiliation<sup>24</sup>. Moreover, such stress can also negatively impact their physical and emotional health, undermine identity and self-image, and compromise the pursuit of life goals. Thus, it would be wrong to assume that all same-sex couples who are interested in fostering or adopting a child from the foster care system would move forward in pursuit of that goal when they know that doing so comes with the risk of facing discrimination that is permitted by the State.

37. Allowing discrimination against any group would create a deterrent, but for LGBTQ people, this is exacerbated by the lingering impact of widespread discrimination against sexual minority adults in the child welfare field which, until fairly recently, had been an obstacle to participation of LGBTQ people in adoption and foster care<sup>25</sup>.

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<sup>24</sup> Goldberg, A. & Smith, J. (2011). Stigma, social context, and mental health: Lesbian and gay couples across the transition to adoptive parenthood. *Journal of Counseling Psychology*, 58, 139-150; Herek, G., Gillis, J. & Cogan, J. (2009). Internalized stigma among sexual minority adults: Insights from a social psychological perspective. *Journal of Counseling Psychology*, 56, 32-43; Meyer, I. (2003). Prejudice, social stress, and mental health in lesbian, gay, and bisexual populations: Conceptual issues and research evidence. *Psychological Bulletin*, 129, 674-697; Meyer, I. & Frost, D. (2013). Minority stress and the health of sexual minorities. In C. Patterson & A. D'Augelli (Eds.), *Handbook of psychology and sexual orientation*. New York: Oxford University Press.

<sup>25</sup> Appell, A. (2012). Legal issues in lesbian and gay adoption. In D. Brodzinsky & A. Pertman (Eds.), *Adoption by lesbians and gay men: A new dimension in family diversity*. New York: Oxford University Press; Pertman, A. & Howard, J. (2012). Emerging diversity in family life: Adoption by gay and lesbian parents. In D. Brodzinsky & A. Pertman (Eds.), *Adoption by lesbians and gay men: A new dimension in family diversity*. New York: Oxford University Press.

A growing number of State child welfare agencies have worked to overcome the damage of this past discrimination by conveying a welcoming message to LGBTQ prospective families and providing appropriate support for their efforts to adopt and foster children<sup>26,27</sup>. A State's acceptance of discrimination against same-sex couples directly undermines these steps toward inclusion and would likely reduce the number of families seeking to adopt or foster children, which, in turn, would lead to further losses in placement options for those boys and girls in need of foster and adoptive parents.

38. In addition to the deterrent effect of discrimination and the stigma it creates, if State-contracted agencies are permitted to exclude same-sex couples as prospective adoptive or foster parents, there is no guarantee that there will necessarily be another agency located nearby that can meet their needs. If a family must travel some distance to find an agency willing to work with them, it could undermine their

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<sup>26</sup> Brodzinsky, D. (2011). *Expanding resources for children III: Research-based best practices in adoption by gays and lesbians*. New York: Donaldson Adoption Institute; Brodzinsky, D. & Goldberg, A. (2016). *Practice guidelines supporting open adoption in families headed by lesbian and gay male parents: Lessons learned from the Modern Adoptive Families Study*. New York: Donaldson Adoption Institute; Brodzinsky, D. & Pertman, A. (2012) (Eds.), *Adoption by lesbian and gay men: A new dimension in family diversity*. New York: Oxford University Press; Howard, J. (2006). *Expanding resources for children: Is adoption by gays and lesbians part of the answer for boys and girls who need homes?* New York: Donaldson Adoption Institute; Howard, J. & Freundlich, M. (2008). *Expanding resources for waiting children II: Eliminating legal and practice barriers to gay and lesbian adoption from foster care*. New York: Donaldson Adoption Institute; Human Rights Campaign, All Children All Families (2012). *Promising practices in adoption in foster care, 4<sup>th</sup> ed.* Washington, D.C.: Human Rights Campaign Foundation; Mallon, G. (2006). *Lesbian and gay foster and adoptive parents: Recruiting, assessing, and supporting an untapped resource for children and youth*. Washington, DC: Child Welfare League of America.

<sup>27</sup> Despite greater participation by sexual minority adults in adoption and foster care in the past decade, they continue to experience perceived bias and prejudice during the adoption process from multiple sources, including child welfare workers, agency support staff, judges, attorneys, and birth families. For example, one study of 158 lesbian and gay adoptive parents noted that nearly 50% of survey respondents reported experiencing bias from one or more sources during the adoption process. Brodzinsky, D. (2011). *Expanding resources for children III: Research-based best practices in adoption by gays and lesbians*. New York: Donaldson Adoption Institute. A state practice of allowing agencies to discriminate against same-sex couples could exacerbate this problem by giving it the state's endorsement.

ability to move forward with the adoption or foster care process. Furthermore, even if they are willing to travel the distance for initial intakes and interviewing, the burden of traveling could jeopardize their availability for ongoing, thorough pre-placement preparation and/or limit the amount of post-placement support they could receive from the agency. Thorough pre-adoption preparation and the availability of high-quality post-adoption support are strong predictors of placement stability and child/family well-being<sup>28</sup>.

39. If State-contracted agencies exclude same-sex couples, even if there are other agencies in their vicinity, there is also no guarantee that any of those agencies will be appropriate for the family's circumstances. Different agencies may offer different training schedules or services and support for families. And some agencies specialize in particular types of placements (e.g., older children; medically fragile children; children prenatally exposed to drugs or alcohol). Thus, when an agency is authorized to exclude same-sex couples, some families may not be able to work with another agency in their area that would suit their specific foster or adoption preferences or their life circumstances.

**D. Permitting State-contracted agencies to turn away same-sex couples could result in additional negative consequences for LGBTQ youth in the foster care system.**

40. The adverse impact of discriminating against LGBTQ applicants has a disproportionate adverse impact on LGBTQ children, who are among the most

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<sup>28</sup> Smith, S. (2010). *Keeping the promise: The critical need for post-adoption services to enable children and families to succeed*. New York: Donaldson Adoption Institute.

vulnerable in the child welfare system. Research shows that LGBTQ youth are overrepresented in foster care as well as among youth who are homeless<sup>29</sup>. Rejection by family members, abuse, and discrimination are common reasons for these youth to be removed from their homes or to run away<sup>30</sup>. Once in foster care, LGBTQ youth remain at significant risk for ongoing discrimination and violence<sup>31</sup>. Furthermore, LGBTQ youth in foster care are significantly less likely to find a permanent placement through adoption or reunification than heterosexual youth<sup>32</sup>. Given the significant psychosocial risk for sexual minority youth in foster care, it is critical that the pool of adoption applicants be as large as possible so as to find permanent homes for these vulnerable young people with parents who understand, accept, and support them. Excluding any group of willing and qualified adoption applicants runs counter to the needs of these young people and to society in general. Allowing agencies to exclude same-sex couples means a loss of families that are likely to be willing and able to provide a supportive home to LGBTQ youth.

41. In addition, some LGBTQ youth in foster care – particularly those who have experienced family rejection or abuse because of their sexual orientation or gender

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<sup>29</sup> Cochran, B., Stewart, A., Ginzler, J., & Cauce, A. (2002). Challenges faced by homeless sexual minorities: Comparison of gay, lesbian, bisexual, and transgender homeless adolescents with their heterosexual counterparts. *American Journal of Public Health*, 92, 773-777; Wilson, B., Cooper, K., Kastanis, A. & Nezhad, S. (2014). Sexual and gender minority youth in foster care: Assessing disproportionality and disparities in Los Angeles. Los Angeles: The Williams Institute, UCLA School of Law.

<sup>30</sup> Ryan, C., Huebner, D., Diaz, R., & Sanchez, J. (2009). Family rejection as a predictor of negative health outcomes in white and Latino lesbian, gay, and bisexual young adults. *Pediatrics*, 123, 346-352; Savin-Williams, R. (1994). Verbal and physical abuse as stressors in the lives of lesbian, gay male, and bisexual youths: Associations with school problems, running away, substance abuse, prostitution, and suicide. *Journal of Consulting and Clinical Psychology*, 62, 261-269.

<sup>31</sup> Love, A. (2014). A room of one's own: Safe placement for transgender youth in foster care. *New York University Law Review*, 89, 2265-2300.

<sup>32</sup> [http://nc.casaforchildren.org/files/public/site/publications/TheConnection/Fall2009/Full\\_Issue.pdf](http://nc.casaforchildren.org/files/public/site/publications/TheConnection/Fall2009/Full_Issue.pdf).

identity—prefer to live with a sexual minority family, feeling that such a family will understand the discrimination, prejudice, marginalization, emotional isolation, and family rejection they have experienced and therefore be accepting of the child.

Allowing agencies to exclude sexual minority families as foster and adoption applicants reduces the likelihood that LGBTQ youth in foster care will be placed with the type of family they wish to live with; and specifically, one that is uniquely prepared to help them learn how to cope with all they have gone through.

42. Allowing state-contracted agencies to exclude same-sex couples also sends the damaging and stigmatizing message to LGBTQ youth in the care of those agencies that those responsible for their welfare deem them unsuitable to be parents when they grow up. Such a message would likely be extremely hurtful to these vulnerable youth, undermining their already fragile identity and self-esteem.

**E. Enforcing anti-discrimination clauses in State contracts with private agencies would not reduce the availability of families for children in the foster care system.**

43. Based upon my professional experience, knowledge of the child welfare literature, and consultations with adoption organizations and agencies across the country, I am aware of no evidence suggesting that when state-contracted agencies have chosen to discontinue their public foster care and adoption services because they had religious objections to complying with anti-discrimination contractual requirements to accept all qualified families, this caused a reduction in the number of families available for children in the foster care system or otherwise impaired states' ability to meet the needs of children in care.

44. Given that professional child welfare standards call for the acceptance of all qualified families and the fact that agencies—both secular and faith-based—generally adhere to these professional standards, there would be no basis to expect that requiring state-contracted agencies to accept all qualified families would compromise a state’s ability to find agencies to provide families to children in need. There are numerous faith-based and secular agencies that are willing to accept all qualified families, including same-sex couples. In my professional opinion, requiring state-contracted agencies to accept all qualified families would enhance Michigan’s ability to provide families to children in need.

David Brodzinsky Ph.D.

David Brodzinsky, Ph.D.

12-20-18

Dated

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
FATMA MAROUF, <i>et al.</i> ,	)	
	)	
Plaintiffs	)	
	)	Civil Action No. 1:18-cv-00378 APM
v.	)	
	)	
ALEX AZAR, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**[PROPOSED] ORDER**

Defendant U.S. Conference of Catholic Bishop’s Motion to Exclude Expert Report and Testimony of Dr. David M. Brodzinsky is hereby GRANTED.

IT IS SO ORDERED.

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

\_\_\_\_\_  
THE HONORABLE AMIT P. MEHTA  
United States District Judge