

No. 19-123

IN THE
Supreme Court of the United States

SHARONELL FULTON, *ET AL.*,

Petitioners,

v.

CITY OF PHILADELPHIA, *ET AL.*,

Respondents.

*On Writ of Certiorari to the United States
Court of Appeals For The Third Circuit*

**BRIEF OF FOSTERCLUB AND FORMER
FOSTER YOUTH AS *AMICI CURIAE* IN
SUPPORT OF RESPONDENTS**

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**STATEMENT OF INTEREST OF
AMICI CURIAE
FOSTERCLUB AND
FORMER FOSTER YOUTH¹**

Amicus FosterClub is a national network for youth in foster care and formerly in foster care dedicated to empowering those youth to realize their full personal potential and contribute to a better life for their peers. FosterClub believes that young people's experiences in foster care position them to effect change within the system, inform and motivate their peers, build public awareness, and create public will for improved care for abused and neglected children. In particular, FosterClub provides a peer support network for children and youth in foster care, including a significant number of LGBTQ+ youth, to help them secure a brighter future for themselves and the foster care system through advocacy, education, and an extensive support network.

Amici former foster youth are individuals who experienced the foster system across the United States. These individuals were and continue to be immeasurably impacted by the foster care system and the shortage of available families. They are strongly opposed to discrimination in the child welfare system so that youth currently in foster care have the best possible chance of being placed with a

¹ The parties in this case have consented to the filing of this brief. Pursuant to Rule 37.6, *Amici Curiae* state that no counsel for a party has authored this brief, in whole or in part, and no person, other than *Amici* or their counsel, has made a monetary contribution to the preparation or submission of this brief.

family that can support, nurture, and encourage them to thrive.

SUMMARY OF ARGUMENT

Petitioners claim that the Constitution gives government-contracted foster care agencies the right to discriminate against qualified foster families headed by same-sex couples based on their religious objections to such families. The Petitioners' claim, if accepted by the Court, does not end with LGBTQ+ families: it will grant *carte blanche* to religiously-affiliated foster agencies to discriminate against any family on the basis of not just LGBTQ+ status, but also race, religion, or any other otherwise prohibited ground of discrimination if they have a religious objection to working with such families.

Amici know firsthand the consequences of the already insufficient pool of families needed for children in foster care. The Court should not sanction such discrimination, which is antithetical to the needs of youth in the system — including, but not limited to, LGBTQ+ youth themselves, who often have a harder time finding an accepting, supportive placement — who need loving, stable homes. Where tens of thousands of youth “age out” of the foster care system every year without ever finding a supportive family, the foster system is already facing serious challenges securing enough homes. Petitioners' request for an exemption to general non-discrimination requirements is a request to turn away applicants from a system where the rejection of any qualified family is one too many.

Amici's stories illustrate the significant and long-lasting harms caused by an insufficient pool of families to care for foster youth, which would only be exacerbated if this Court were to accept Petitioners' position and hold that government-contracted foster care agencies have a free exercise right to exclude families that do not meet their religious requirements.

The Court should affirm the decision of the Third Circuit.

ARGUMENT

As the experiences of *Amici* recounted below demonstrate, the license to discriminate sought by Petitioners for government-contracted foster care agencies will directly harm the very youth those agencies are supposed to be serving by limiting foster youth's chances for an appropriate, loving, and supportive family placement.

I. ALLOWING FOSTER CARE AGENCIES TO DISCRIMINATE AGAINST LGBTQ+ FAMILIES HARMS FOSTER YOUTH BY LIMITING THE AVAILABILITY OF FOSTER HOMES

There is nothing hypothetical about the harms faced by foster youth from discrimination against loving families who are qualified to foster but turned away solely because they are headed by same-sex couples or otherwise do not meet an agency's religious requirements. Every qualified family turned away or delayed from fostering harms the

children relying upon that system, as the stories of *Amici* below make abundantly clear.

Where same-sex couples are six to seven times more likely than different-sex couples to foster or adopt, discrimination against LGBTQ+ families unfortunately has a uniquely outsized effect. See Frank J. Bewkes, et al., *Welcoming All Families: Discrimination Against LGBTQ Foster and Adoptive Parents Hurts Children*, CENTER FOR AM. PROGRESS (Nov. 20, 2018) [hereinafter “Bewkes”], <https://www.americanprogress.org/issues/lgbtq-rights/reports/2018/11/20/461199/welcoming-all-families/>. Discrimination against LGBTQ+ families is also already prevalent in the United States and, in the context of the foster and adoption systems, is growing. See Julie Moreau, *Anti-LGBTQ adoption bills ‘snowballing’ in state legislatures, rights group says*, NBCNEWS (Apr. 4, 2019), <https://www.nbcnews.com/feature/nbc-out/anti-lgbtq-adoption-bills-snowballing-state-legislatures-rights-group-says-n991156>.

That means that the families most likely to foster or adopt — those headed by same-sex couples — are also more likely to be discriminated against and turned away. Allowing agencies to reject qualified families as a matter of course thus limits the availability of homes within the foster care system. See Bewkes (“Turning qualified prospective parents away only stresses an already stressed system, and LGBTQ people represent an important subgroup of potential parents.”).

It has been clear for decades that families headed by same-sex couples can provide a loving home for children.² Given the large number of youth waiting for families, turning away qualified families harms children, like *Amici*, who are otherwise likely to remain in congregate care or age out. And turning away qualified LGBTQ+ families creates serious stigma and psychic harm not just for those families, but also LGBTQ+ foster youth. That signals to LGBTQ+ youth that there is something wrong, or deficient, with families headed by people like them. Being told that, essentially, they are better off with no family than a family headed by a same-sex couple is wide-ranging harm.

As Respondents and other *amici* point out, discrimination against families headed by same-sex couples can delay them from becoming foster families or can deter and prevent them from participating in the foster care system entirely. See Brief for *Amicus Curiae* Family Equality Council, *Fulton v. City of Philadelphia*, No. 19-123 (U.S. Aug. 20, 2020). Indeed, some LGBTQ+ families who are turned away

² See *Obergefell v. Hodges*, 135 S. Ct. 2584, 2600 (2015) (“[A]ll parties agree, many same-sex couples provide loving and nurturing homes to their children, whether biological or adopted.”); Bewkes (“Numerous studies have also shown that children of gay or lesbian parents fare as well as children of different-sex parents; they are also just as healthy, both emotionally and physically.”); Wendy D. Manning, et al., *Child Well-Being in Same-Sex Parent Families*, 33(4) POPULATION RESEARCH & POLICY REV. 485, 486 (2014) (discussing the “clear” “consensus in the social science literature”); see also Ken W. Knight et al., *The kids are OK: it is discrimination, not same-sex parents, that harms children*, 207(9) MED. J. AUSTRALIA (Oct. 2017).

for being LGBTQ+ abandon their pursuit of fostering. *See id.* Where 20,000 foster youth age out of the foster care system every year, every potential foster family matters and every rejection of an otherwise qualified foster family hurts the youth in the foster care system.

As *Amici*'s stories below demonstrate, there are not enough families to give every child in foster care a loving, supportive placement meeting their unique needs, and that has profound consequences for these youth. Discriminatory barriers to fostering harm not only the families headed by same-sex couples seeking to foster, but also the youth the foster care system is supposed to protect and place in loving homes. Petitioners ask the Court to sanction very real harm to the foster care system's ability to provide for the youth in its care. The Court should not hand government-contracted foster care agencies such a license to discriminate.

**II. AMICI'S EXPERIENCES
DEMONSTRATE THE HARM CAUSED
BY THE SHORTAGE OF FOSTER
FAMILIES FOR FOSTER YOUTH
GENERALLY AND LGBTQ+ YOUTH
SPECIFICALLY**

Discriminatory policies that exclude prospective foster parents in same-sex couples and other families harm all foster youth, both LGBTQ+ and not. Former foster youth who shared their stories in support of Petitioners fortunately found loving homes, but there are so many others that have

not.³ It is not the successful foster situations of Petitioners' *amici* that are at stake in this case: it is the ability of all other foster youth to be placed in a loving, safe, and permanent home.

As *Amici* explain, the deck is already often stacked against LGBTQ+ youth, who make up a disproportionate number of foster and adoptive youth, often because their birth families abandon them due to their sexual orientation or gender identity. Enabling discriminatory policies in the foster care system will only exacerbate the harms to these vulnerable youth. The foster care system's goals should be ensuring that as many qualified homes as possible are available so that no foster youth ages out of the system without finding the love and support of a "forever" family. Granting Petitioners the relief sought will have the opposite effect, effectively ensuring that there are substantially fewer homes available.

A. There are not enough foster homes available to meet the need, and every time a qualified family is turned away, it harms foster youth

The nationwide shortage of foster homes means that tens of thousands of youth age out of foster care without finding a family each year. Turning away qualified families, whether due to

³ See Brief of *Amici Curiae* Former Foster Children and Foster/Adoptive Parents and the Catholic Association Foundation in Support of Petitioners, *Fulton v. City of Philadelphia*, No. 19-123 (U.S. June 3, 2020).

their LGBTQ+ status, or based on race, religion, or any other reason that has nothing to do with caregiving ability, deals a serious blow to the children relying on the foster care system.

As illustrated below, youth who age out of the foster care system without a supportive family find themselves on their own, often struggling with homelessness, unemployment, and the trauma from the multiple placements they cycled through during care. Preventing LGBTQ+ families and other qualified families from fostering children means more children are likely to end up in congregate care or find themselves alone and unsupported after foster care.

Joseph DeBiew, Buffalo, New York

Joseph, pictured below, now lives in Buffalo, New York.



Joseph was placed in state custody at age 13, and spent seven years “bouncing around between five different group homes” because of the lack of foster families.

Joseph recalls that “[t]he lack of available homes meant that I spent seven years in a jail-like setting purely because there weren’t any other housing options available.” While these homes provided for his basic needs and he did not suffer abuse, he, like many youth in group settings, “grew up feeling like there were no adults in my life who really cared about me.”

The unfortunate outcome for many youth in these situations “normalizes the super-structured, non-family life for young people” where “youth learn to adapt to a prison-like lifestyle, making it easier to follow in the foster care-to-prison pipeline.” Joseph believes that congregate care settings “deprive[] [youth] of space to grow and develop in a healthy, family-like setting, where they can learn boundaries, healthy-risk taking, and have a support network to rely on.” He has seen “facilities where discrimination is the practice, even if it’s not in policy” and staff do not “step in to protect or correct instances where others were trans- or homophobic and harassing other youth.”

Joseph wishes that there were enough families to provide foster youth — particularly those in congregate care or group homes — with loving and supportive homes. He thinks “growing up in a foster home would have been a lot different ... I could not have cared less about the sexual orientation or

gender identity of [my] foster parents, I just wanted a family and a supportive place to call home.”

It is obvious to Joseph that “allowing all qualified parents to be foster parents would mean that fewer youth have to grow up in congregate care facilities like I did.” He believes diversity among foster families is critical: “Ensuring that LGBTQ+ potential parents, people of different religious beliefs (or no faith), and others who wish to become foster parents to provide a home for young people in care would provide more options to young people to find a family who will provide love and support as they navigate their journey.”

Elbert Wilson, Lexington, Kentucky

Elbert, pictured below, is now 29 years old, and lives in Lexington, Kentucky.



After his birth mother's struggle with addiction, Elbert and his three siblings were placed in foster care, which made him feel like "an inmate who was falsely convicted and sentenced to another family." Elbert "was shuffled through foster homes, new schools, different counties, and different mental health diagnoses."

Elbert hoped that would change when, at age 12, he was placed in a home with his siblings, but "[t]he forever family we dreamed of became a 4 year nightmare along with trauma that will last a lifetime." After suffering physical abuse, Elbert and his siblings were removed and returned to another foster care placement.

Later, Elbert, then aged 16, and his siblings were sent to live with a religious older couple, who had them "baptized involuntarily and forced [them] to attend mandatory services." Elbert and his siblings were "labeled as defiant because of our opposition" to abandoning their own faiths for that of their foster family. After the trauma of their first placement, the next placement also failed. Elbert felt that they were simply thrown away: "We were taken to the local [state agency] and dropped off and our clothes were brought to us later in black garbage bags. Our only belongings stuffed in bags meant for garbage." The siblings were soon split up. Elbert, given his age, entered a group program and his two youngest brothers were separated from his sister.

At age 21, Elbert aged out of the foster system without permanency. He observes that "no child should emancipate from state care without a family

or support system in place.” Too often, “young people are becom[ing] victims of a system that fails them” for many reasons, when it should be “keeping the best interest of the young person first.”

Elbert wants to see a foster system that cares for the needs of every youth. He understands, firsthand, that there is “a shortage of homes and families,” and discrimination will only make that shortage worse: “The requirements to adopt an individual are already a barrier and the additional restriction will reduce the number of people who are already desperately needed.” Elbert believes that “fit and willing individuals who are qualified should not be denied” from fostering because there are “many deserving young people desperately wanting a forever family and seeking the beauty of belonging” and the “best interest of the young person” should not be overridden by discriminatory views of the agency.

Dameon Caldwell, Toledo, Ohio

Dameon is now 25 years old, and lives in Toledo, Ohio. Dameon spent over 12 years in foster care before aging out at 18, and then spent four years in a post-emancipation program for those who exit the system without a supportive family. Dameon was placed in seven different foster families and three different group homes. When he tried to come out as gay, his caseworker said he was confused and forced him into therapy. When he came out to one set of foster parents, he was “treated like trash,” and another foster parent “beat [him] and told [him he] was an abomination and to stay away from their child.” Dameon’s last foster family told his

caseworker that they would kick him out after he turned 18, and kept their word. The day after Dameon aged out, “my foster family took me to the University of Toledo, where I would begin college, with all my stuff and dropped me outside the dorms and I never saw them again. I was left to begin college and adulthood without a support system.”

Dameon is working hard to ensure that other foster children do not suffer as he did, and founded Rebuilding Hope, a community resource and advocacy group for youth like him. Coming from a place of experience as a foster child, as well as his role as an advocate on behalf of foster youth, Dameon explains “[i]f I had the opportunity or even the option of having a foster or adoptive family that was LGBT like me or even just a supportive family, it would have saved me so much trauma, so much heartbreak, and so much pain.” According to Dameon, allowing discrimination only continues to enable the same harms he suffered: “Persecution and religious beliefs shouldn’t be a factor when finding a child their forever home.”

Terry Scraggins, Boise, Idaho

Terry, now 31 years old, and pictured below, entered the foster care system at 12 years old and remained in care until he aged out at 18.



During those six years, he lived in over 20 different placements, including a stay in congregate care for “at risk youth,” even though he did not fall into that category, because of a lack of other placement options for him. Terry “oftentimes felt rejected and unsupported because of my sexual orientation.” One foster parent told him, “Gay people are sinners who have no direction in life.” When moving placements, Terry’s foster parents would contact his soon-to-be foster parents about his sexuality, “which led to both tension and discrimination even before I arrived at my new destination.” Terry believes that his “[q]uality of life within the child welfare system would have been drastically more positive had there been individuals whom I could turn to in times of need. To feel support

rather than ridicule would have made all the difference in my development as a teenager.”

Terry is grateful to the Casey Family Program, which helped his grandparents become licensed foster parents when he was 16 and “encourages inclusivity as well as the LGBTQ+ community.” Despite his struggles, Terry has “learned to embrace my experiences and use my experience and knowledge to advocate and foster change for current youth in care who do not have a voice.”

Re’Gine Jordan Wells, Ohio

Re’Gine spent five years in foster care in five different placements, none of which supported her. This left Re’Gine feeling that the foster system had failed her. That was the exact opposite of her brother’s experience: he “hit the jackpot when it came to a foster parent — loving, supportive, and always willing to do what needed to be done.” Her brother’s foster parent, who “also happened to be single and gay,” helped him complete college applications, was there when he graduated from high school, moved her brother in to his college dorm, and always kept the door open on holidays and vacations. This love and support continued through and after college, not only for Re’Gine’s brother, but for Re’Gine herself. Re’Gine wishes that she could have found a foster parent with such a positive and instrumental impact on her life.

Re’Gine now works to support foster children and programs, utilizing her firsthand knowledge of the importance of encouraging love and support in a foster home: “Supporting people that are open and

willing to make room in their homes and hearts for youth in care should be top priority ... no matter how they identify.”

Re’Gine perfectly summarizes the problems with the Petitioners’ claimed right to an exemption from the City’s non-discrimination requirement:

Currently, there’s a shortage of foster homes due to the opioid epidemic. Discriminating against homes because of [sexual orientation or gender identity] is not only a disservice to the system, but it is a disservice to the youths that are just looking for a forever home. It’s a disservice to anyone looking for family. Family should not be made to look one way. Family should not be put in a box or discriminated against. Family is a feeling, it’s an action, and it’s something youth in care deserve to feel. Youth in care have a right to family. Discriminati[on]...deprives them of that.

Maven G., Washington

Maven is now 24 years old, and lives in Washington. Maven entered the foster system at age 5 and spent thirteen years in the system, bouncing through over twenty homes and group care facilities before aging out without a supportive family. During these formative years, Maven was subjected to prejudice and homophobia and placed in group homes where staff were often hostile, harassing, and

unaccepting because Maven identified as LGBTQ+. The families Maven was placed with proved no better: foster parents forced Maven to attend church in an attempt to change Maven, and verbally abused and shamed Maven, “going out of their way to make me feel ostracized and alone in their care” because Maven would not conform to their views on LGBTQ+ people. Eventually, this longstanding mistreatment by foster parents unwilling to accept Maven’s gender identity resulted in Maven actively self-harming, and hiding their sexual orientation and gender identity.

The foster system never found Maven an adoptive home or a foster family that would accept Maven, and they experienced homelessness for approximately 3.5 years. Due to Maven’s experiences, Maven recounts that the foster care system was “hands down the most traumatic thing I’ve experienced.”

Maven feels lucky simply to have “made it out” of the system alive and is “very proud of who I’ve become and who I am still striving to be,” even though these “scars” from Maven’s experiences are permanent. Maven is now a published poet and a social justice advocate, and hopes that sharing this story will highlight the importance of ensuring that the foster care system does not discriminate against either LGBTQ+ foster families or LGBTQ+ youth. As Maven puts it, “[h]aving an affirming family that supported me and truly understood who I was would have had such a positive impact” and “would have helped my mental health so much to see myself reflected in the people that surrounded me,” but “a home that met my needs didn’t exist.”

Kristopher Sharp, New York, New York

Kristopher, pictured below, is now 30 years old, and lives in New York, New York.



Kristopher was born in Texas and, at age 9, entered the foster care system. Kristopher recalls that, when he was removed from his birth family, “I thought I would finally have the chance to escape the abuse I had become so accustomed to” but instead “was thrust into a nightmare that was worse than anything I had experienced before.”

Over the next 8 years, Kristopher lived in approximately two dozen different placements, mostly in congregate care or group homes. He recalls that the “abuse [wa]s pervasive in these facilities”

and he experienced physical and sexual violence. Kristopher “was living in a state-sponsored hell, and there was nothing [he] could do about it.”

Kristopher never found a placement because of the severe shortage of foster homes. At age 18, he aged out of the system in Houston and “[l]ike so many youth who age out of foster care, overnight I was homeless, on the streets with no family, no support, and nowhere to turn.” Kristopher spent the next six months on the streets, sleeping on the roof of a shopping strip mall on the north side of Houston.

Kristopher shared his story for this brief in the hope that the Court does not accept a result where any qualified foster family is turned away:

At the heart of the foster care crisis in this country is the simple fact that there are not enough foster and adoptive homes. So, why would anyone think it acceptable to turn away qualified, willing foster parents? At best, allowing child welfare agencies to discriminate based on their religious beliefs creates an atmosphere of confusion and discouragement for families who want to foster or adopt in a state that desperately needs more families to do so. At worst, it robs children of their livelihoods by unduly denying LGBT, single, or non-Christian parents opportunities to save children from the cycle of abuse and neglect they will almost certainly

encounter growing up in the foster care system. No child should have the childhood that I had – especially when there are people who are willing to provide a safe and loving home.

* * * * *

Establishing a constitutional right for agencies to discriminate against prospective foster or adoptive families will harm all of the foster youth who would have found a placement but for qualified families being turned away. The harm is not hypothetical: many youth, and disproportionately LGBTQ+ youth, spend prolonged periods of time in congregate care or group homes, have multiple placements when foster families do not accept their LGBTQ+ identities, and age out of the system without ever having a supportive, loving family.

Fore example, Natalie Clark, pictured below, grew up in Salt Lake City, Utah and learned very quickly to try to hide her sexual orientation from potential foster families. She explains that the foster system is about more than meeting “basic needs” and finding a place “where I was accepted, affirmed, felt safe, and maybe even felt a little bit loved ... would have made an enormous difference,” rather than Natalie’s experience, which resulted in her aging out of the system without “stable family support” that is “especially hard during times like this pandemic I am currently facing alone.”



As the stories of the foregoing *Amici* make clear, the foster system’s goals should be ensuring that as many homes as possible are available so that no foster youth ages out of the system without finding the love and support of a “forever” family, or grows up in congregate care rather than a foster home. Granting Petitioners the relief sought would have the opposite impact, effectively ensuring that there are substantially fewer homes in the system.

In the words of Michael Outrich, pictured below, who was emotionally abused while in foster

care placement then struggled with homelessness after aging out:



Discrimination in care does nothing but further traumatize and oppress children who already have experienced abuse, neglect, and trauma. They need loving, accepting homes that can nurture youth to grow into productive and happy young adults who are healed and whole. Discrimination does nothing but poison their chances at being happy, accepted young adults who can freely pursue their dreams, goals, and aspirations.

B. A diverse and inclusive pool of potential foster parents, including those headed by same-sex couples, is critical for many foster youth, particularly LGBTQ+ foster youth

In addition to maximizing the number of qualified families and homes in the foster system, ensuring a diverse pool of families is of the utmost importance. LGBTQ+ foster parents can be especially well situated to support LGBTQ+ youth, especially those who have been rejected by their families or prior placements because they are LGBTQ+.

This is particularly critical because LGBTQ+ youth are drastically overrepresented in the foster care system.⁴ According to some studies, approximately 30.4% of youth in the foster care system identify as LGBTQ+, nearly triple the proportion in the general population.⁵ It is imperative that the foster system includes families that can support LGBTQ+ youth and give them an accepting and loving home.

⁴ See Laura Baams, et al., *LGBTQ Youth in Unstable Housing and Foster Care*, 143(3) PEDIATRICS (2019).

⁵ Bianca D.M. Wilson, et al., *Sexual and Gender Minority Youth in Foster Care: Assessing Disproportionality and Disparities in Los Angeles*, WILLIAMS INSTITUTE, UCLA SCHOOL OF LAW (Aug. 31, 2014), https://www.acf.hhs.gov/sites/default/files/cb/pii_rise_lafys_report.pdf.

Indeed, where abuse, neglect, and a refusal to accept them for who they are often leads children to enter the foster care system, LGBTQ+ youth are uniquely at risk for further trauma because of rejection or mistreatment based on their sexual orientation, gender identity, or gender expression. For example, LGBTQ+ youth are more than twice as likely as their non-LGBTQ+ peers to report poor treatment while in foster care.⁶ LGBTQ+ youth have a higher average number of foster care placements and are more likely to live in a group home or congregate care setting.⁷

As the stories below illustrate, the foster care system can and should do better by LGBTQ+ youth by ensuring the existence of a diverse and inclusive foster family pool that includes LGBTQ+ foster parents.

Brittney Barros, Ypsilanti, Michigan

Brittney, pictured below, is now 21 years old and lives in Ypsilanti, Michigan.

⁶ *Information Memorandum on Lesbian, Gay, Bisexual, Transgender and Questioning Youth in Foster Care*, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES ADMINISTRATION ON CHILDREN, YOUTH AND FAMILIES (Apr. 6, 2011), <https://www.acf.hhs.gov/sites/default/files/cb/im1103.pdf>.

⁷ Jill Jacobs & Madelyn Freundlich, *Achieving Permanency for LGBTQ Youth*, 85(2) CHILD WELFARE 299 (2006).



Brittney knew she was bisexual when she was nine years old, but hid this fact from her birth family: they had taught her that being LGBTQ+ was not “natural” and LGBTQ+ people go to hell. Sadly, Brittney was rejected by her birth family after finally gathering the courage to come out. Brittney was placed into foster care shortly thereafter.

While the “turmoil of being ripped away from my family was already enough to scar me for life,” Brittney recalls being hopeful that her foster experience would be more positive and “the reality that I would be living with a whole new family encouraged me to embrace my identity.” Brittney soon felt comfortable enough to come out to her new foster family because they seemed like a loving family to her.

However, when she came out to them “everything changed” and “all of the sudden, my loving foster family became a nightmare — a nightmare I’m still trying to process today at age 21.” Brittney states: “I will never forget the moment where they transitioned from a caring and empathetic family to a cruel and inhumane one. Because of my sexual identity, I wasn’t worth being addressed by my name.” Instead, Brittney was referred to as “thing” and “it.” The family locked her in her room when they had guests because “my foster family was embarrassed by me.”

The emotional abuse became physical. Brittney recalls that her foster family “came into my room one night, with a belt, and forced me to say things that I wasn’t comfortable with or else I would be whipped,” and forced her to “confess” to stereotypes about the LGBTQ+ community. Brittney was forced to call herself derogatory terms for LGBTQ+ people, or call herself a “prostitute” because of her sexual orientation, or to tell herself that she was going to hell. The family “would scream at me as they threatened to whip me with the belt” unless she repeated what they said. She was “ashamed, humiliated, and depressed.”

Fortunately, Brittney was removed from that home after she reported the abuse. However, the scars of losing her birth family and then being abused by her foster family for the same reasons do not heal easily. Brittney was placed with a new foster family with knowledge and acceptance of her LGBTQ+ identity and although “my new foster family was accepting ... the impact of the trauma from the abuse

by my first foster family has had an everlasting impact on my emotional well-being.”

Brittney explains why she shared her story:

I would like to believe that I’m the only person that had to go through this but I know that with LGBTQ+ youth being over-represented in the system, I know that many LGBTQ+ youth face this type of discrimination. More so, there is a new wave of LGBTQ+ families being turned away from agencies because of “religious affiliations.” It was my dream, as I was facing my nightmare, to live with an LGBTQ+ family. I wanted a family that could resonate with my pain and help me to explore my identity more. I believe if LGBTQ+ families were accepted by local and state agencies, the experience of discrimination and abuse would significantly lessen for LGBTQ+ youth and youth in general.

Brittney’s biological family has become more accepting, loving, and sensitive to LGBTQ+ issues in the past two years after her brother came out as gay. Brittney is hopeful that, by sharing her story, she will be able to “express the harm and damage it does when the foster care system discriminates against LGBTQ+ youth and families” and that the Court will consider the very real personal traumas that many foster youth, particularly LGBTQ+ youth, face.

Tim Dennis, Tennessee

Tim, pictured below, lives in Tennessee.



Tim entered foster care at age 12, and then moved homes “several times because homophobic foster parents were unwilling to have me in their home.” He was also abused by foster families because he was gay. Because the agency could not find Tim a foster family would accept him, he was eventually placed in a congregate care setting, where he fared no better. This facility was run by “a religious organization that is openly against LGBTQ [people]”

and “[w]hile with this organization I felt like I was a prisoner and could not openly be who I was.”

Because Tim was in a rural area, there were limited options and none of the foster families he was placed with would accept him (and neither did his first congregate care placement). Eventually, because he never found a “feeling of safety,” he hid his sexual orientation.

Keeping his identity a secret took “a huge toll” on Tim: he “self-harmed and entertained thoughts of suicide.” When he was finally placed in a congregate care setting with more supportive staff who encouraged him to be himself, being accepted “was definitely a weird feeling for me, because I had been shunned for so many years now that I didn’t know what it was like to be myself. It was a new experience. I no longer had to hide who I was in order to feel safe.”

Tim has served as a case manager who supports LGBTQ+ young people, many of whom have been disowned by their birth families. Tim shared his story because, if he had been placed with a supportive foster family, that “could have provided the stability I needed after entering care. It could have prevented me from entering a facility managed by an openly anti-LGBTQ+ organization, where I experienced even more discrimination.”

Tim is now a foster parent in Tennessee and provide a supportive and loving home for all youth, including LGBTQ+ youth, “so that they know that they have a loving and safe environment.” According to Tim, when LGBTQ+ youth “find a foster parent

who is willing to support and value their identity, whether that parent identifies as LGBTQ+ themselves or not, the young person can finally relax, grow, develop and heal.”

Tristan Torres, Las Vegas, Nevada

Tristan is now 23 years old and lives in Las Vegas, Nevada.

Tristan spent nine months in the foster care system in Nevada, beginning when he was 16 years old. Tristan, like all children, had no choice about which agency or organization managed his case.

Tristan’s foster parents abused him because he was transgender: they locked him in his room, berated him for being transgender, and forbade him from speaking to other children in the home. Tristan asked his caseworker for help, but received none. Instead, his caseworker continued the discrimination by preventing him from seeking any supportive medical services and, in concert with his foster parents, forbidding Tristan from attending support groups for other transgender youth like Tristan.

Tristan’s second set of foster parents were no better. After a family member found out Tristan was transgender, his foster family abused him, even withholding food as punishment. After five months with that family, Tristan was “literally thrown out of their house with my belongings in trash bags.”

Fortunately, despite the discrimination he suffered in the foster system, Tristan found support at The Center, an LGBTQ+ organization in Las

Vegas that “led a push for Nevada to include mandatory LGBTQ+ training for foster parents.” With this support, Tristan was able to get his life back on track and graduated from high school after leaving the foster care system (demonstrating that his inability to succeed at the 7 different high schools he attended while in foster care was directly related to his lack of a supportive environment).

There is a direct connection between Tristan’s experience and a shortage of supportive homes. As Tristan explains: “There are a disproportionate number of LGBTQ+ youth in the system. ... We need affirming placements with parents who can support our needs and who understand how to care for LGBTQ+ foster youth.”

Tristan is worried that allowing agencies to discriminate will lead to a lack of accepting, supportive, and loving homes for youth like him and, unfortunately, more stories like his. As Tristan puts it, “[a]llowing agencies to discriminate against LGBTQ+ parents would mean we have less prospective foster parents. This would shut the door on children and youth needing support. Limiting homes (when there’s already a shortage) would mean children and youth are stuck in temporary placements longer – lingering in limbo for no logical reason. We must do better.”

Orion Olsen, Washington

Orion is now 21 years old and lives in Washington.



Orion’s adoptive family, and four of the five homes in which he spent time while in the foster system, were not accepting of LGBTQ+ people. While Orion initially believed the family he lived with during high school would be supportive and came out as transgender to them, that was unfortunately not the case.

Midway through his senior year of high school, Orion became homeless after his foster family did not accept his gender identity and home “became unsafe” for him. Even though Orion was a straight-A student until then, he was forced to drop out of high school

because he could not attend classes or do his homework while also trying to find enough to eat and a safe place to stay.

Orion eventually found a shelter that was LGBTQ+ friendly, which allowed him to meet his daily needs, and start on a path to healing and graduating from high school. Orion also found a placement with a lesbian couple where he “fe[lt] safe and accepted for who I was.” Orion explains that he “benefitted tremendously from that placement” and “[i]f they had not been allowed to be foster parents because of their sexuality, I do not know where I would be today.” Orion recalls that “[h]aving these women accept me openly and warmly made me feel valued” and, before experiencing that acceptance, he had been contemplating taking his own life.

Orion’s story illustrates how devastating rejection by a foster or adoptive family can be, and how even a brief time with an accepting, LGBTQ+ foster family can provide LGBTQ+ youth with strength and resilience in the face of adversity, literally meaning the difference between life and death.

Weston Charles-Gallo, Liberty, Missouri

Weston, pictured below, lives in Liberty, Missouri.



Weston entered foster care at age 14 after years of abuse and neglect by his biological parents because of his sexual orientation. Weston's social worker "couldn't find a home that was supportive of me because I was gay," and that "broke my heart because all I wanted was a family that loved me for me." Weston "had to be careful how I presented myself in order to ensure I wouldn't be kicked out of the place I was staying." For two years, Weston's "feelings of hopelessness and despair began to widen."

At 16 years old, Weston “was on the brink of living in the streets, and then everything changed. I found a forever family with two dads and six siblings. I can’t imagine where I would be right now if I hadn’t found them.”

Weston explains that he can now “be the person that I have always wanted to be. When I found my two dads, I knew I finally found family. I felt like someone had finally given me a chance – rather than creating opinions based on the stack of papers in my case file.”

Weston explains: “Family, at the end of the day, is about love. No one should be limited in who their family can be. ... [W]ho you love shouldn’t impact your support system and those who are supposed to help you in life.”

Weston would not have found his forever family if his two dads had not been permitted to foster and adopt. “When you limit families who [can foster or adopt], you leave kids feeling alone or in residential facilities where they don’t have a home. No child should live their childhood in a facility, without a place to call home or without a family.”

* * * * *

Granting Petitioners’ claimed right to discriminate when providing public foster care services would leave already vulnerable LGBTQ+ youth subject to additional harm by limiting the number and diversity of families available to foster them. As the experiences of *Amici* demonstrate, the foster care system currently struggles to provide

loving and supportive homes that respect these LGBTQ+ youth for who they are. Allowing discrimination against LGBTQ+ families who can be uniquely situated to understand of these youth's struggles will only make these challenges more severe.

As *Amici's* experiences show, the harms suffered by LGBTQ+ youth overrepresented in the foster system are far from hypothetical, not just in Philadelphia, but also in cities across America.

For example, Shane R., of Minnesota, pictured below, recalls that, in foster care, youth like Shane get “one family who says they’ll love you no matter what, but the second the door closes behind your social worker they try and hurt you,” in Shane’s case calling Shane an “abomination” because of Shane’s LGBTQ+ identity. Shane shares that, for all foster



youth, including LGBTQ+ foster youth like Shane, “all we want to do is be recognized and not hated,” to “feel like we are normal,” and questions: “Don’t we deserve a family? Don’t we deserve a chance at life?”

Other FosterClub youth report experiences like these: being told there is something wrong with them because they are LGBTQ+. Those experiences cause depression, and all too frequently, suicidal thoughts. Foster parents with experience supporting LGBTQ+ youth, or who are LGBTQ+ themselves, can make all the difference in whether youth remain isolated or are able to flourish and grow.

While the experiences of *Amici* in this brief principally address LGBTQ+ youth in the foster care system, the scope of the Petitioners’ request will not end with LGBTQ+ youth, but rather will affect many other minority groups among foster youth, who have already gone through so much merely by being in the foster care system. FosterClub youth report not just discrimination based on LGBTQ+ status, but also religious discrimination: for example, youth who practice traditional Native American spirituality or are Muslim have been placed with families that do not respect those beliefs. No youth should be forced to abandon their religious beliefs in favor of those of their foster family, nor should their ability to observe their religious practices, such as dietary restrictions, depend on the chance of their placement.

All foster children should be given the opportunity to be supported, loved, and affirmed — an opportunity that so many will be deprived of should Petitioners be granted the relief sought. It is

already happening in this country, with agencies and individuals saying that their religious beliefs prevent them from offering foster services from families that are not the “right” sexual orientation or religion.⁸ The Court should not create a right to discriminate.

CONCLUSION

Amici’s accounts demonstrate that establishing a right to discriminate by government-contracted foster care agencies would have real and significant consequences for the foster care system and the youth it was created to protect. Petitioners’ request should be denied.

For these reasons, *Amici* respectfully urge the Court to affirm the decision of the Third Circuit, in all respects.

⁸ See Meg Kinnard, *In lawsuit, a Catholic mother from Simpsonville alleges discrimination by Miracle Hill*, ASSOCIATED PRESS, Feb. 15, 2019, <https://www.greenvilleonline.com/story/news/2019/02/15/greenville-miracle-hills-ministries-foster-agency-lawsuit/2881913002/> (potential Catholic foster mother was “not the right kind of Christian” for agency that also discriminated against other faiths).

Respectfully submitted,

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August 20, 2020