

No. 25-678

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Brian Wuoti, *et al.*,

Plaintiffs-Appellants,

v.

Christopher Winters, *et al.*,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Vermont
Case No. 2:24-cr-00614-WKS

**BRIEF *AMICUS CURIAE* OF THE FOUNDATION FOR MORAL
LAW IN SUPPORT OF PLAINTIFFS-APPELLANTS AND
REVERSAL**

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June 6th, A.D. 2025

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INTEREST OF THE *AMICUS*¹

Amicus curiae Foundation for Moral Law (“the Foundation”) is a 501(c)(3) non-profit, national public interest organization based in Alabama, dedicated to defending religious liberty, God’s moral foundation upon which this country was founded, and the strict interpretation of the Constitution as intended by its Framers who sought to enshrine both. To those ends, the Foundation directly assists or files amicus briefs in cases concerning religious freedom, the sanctity of life, and other issues that implicate the God-given freedoms enshrined in our Bill of Rights.

The Foundation has an interest in this case because it believes that foster parents serve a critical role in the community, and, while they may not have the full scope of parental rights that biological or adoptive parents have, they do not give up their right to free exercise of religion as the State of Vermont is demanding foster parents to do so in this case.

¹ All parties have consented to the filing of this brief. No party or party’s counsel authored this brief in whole or in part, or contributed money that was intended to fund its preparation or submission; and no person other than the *amicus curiae*, its members, or its counsel, contributed money that was intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

The Wuoti and Gantt families were licensed foster parents for many years in the state of Vermont, providing loving and caring homes for a total of five children between them. In 2020, Vermont began to screen foster parents for willingness and commitment to promote gender identity ideology within their homes. Vermont now requires foster families to be “fully embracing and holistically affirming and supporting” of a child’s sexual or gender identity, regardless of whether the foster parents hold “divergent personal opinions or beliefs.” *See* Joint Appendix (“JA”) at 071. When the Wuotis and Gantts sought to renew their licenses, Vermont denied them because they would not pledge fealty to the regime of gender identity ideology. *See* JA217-18.

Vermont’s actions are severe violations of the constitution that cannot stand. As a matter of constitutional law, foster parents cannot be made to surrender their rights to free exercise of religion and freedom of speech to participate in public foster programs. As a practical matter, religious foster families are the bedrock of foster care programs. And, far from protecting children, Vermont’s requirement of gender identity ideology being promoted to children is tantamount to reckless child endangerment when one considers

the full scope of medical risks associated with gender identity affirmation and its natural development of medical intervention.

ARGUMENT

I. Foster parents do not surrender their free exercise rights by becoming foster parents.

A private citizen does not give up their constitutional rights when they participate in public life. *Perry v. Sindermann*, 408 U.S. 593, 597 (1972) (“For at least a quarter-century, this Court has made clear that even though a person has no ‘right’ to a valuable governmental benefit... he may not be denied the benefit on a basis that infringes his constitutionally protected interests...”). Likewise, a state cannot require private families to give up their constitutional rights, including their right to free exercise of religion, in order to become foster parents. While states may require reasonable health and safety standards, such as protecting children from abuse or neglect, excluding families because they adhere to traditional religious beliefs and practices regarding human sexuality and gender violates the constitution.

Vermont’s foster care licensing regime crosses that constitutional line. Rather than simply requiring foster parents to avoid discrimination, Vermont requires ideological affirmation. The state demands that religious foster parents must speak and act contrary to their faith. Vermont declares that religious foster parents must: use pronouns they believe are incorrect as a

matter of biological reality, endorse social transitioning that they believe is harmful, and pledge full support for gender identity ideology which their faith instructs is a falsehood. Refusal to do so disqualifies them from being licensed as foster parents, even when they are otherwise loving, experienced, and capable caregivers.

This is precisely the kind of government coercion that the Free Exercise Clause prevents.

A. Vermont’s licensing scheme is not generally applicable under *Fulton*.

The Constitution prohibits government policies that “prohibit religious conduct while permitting secular conduct that undermines the government’s asserted interests in a similar way.” *Fulton v. City of Philadelphia*, 593 U.S. 522, 534 (2021). In *Fulton*, the Supreme Court held that Philadelphia’s foster care policies requiring agencies to certify married same-sex couples were not generally applicable because they allowed for discretionary exemptions, thus triggering strict scrutiny when applied to religious objectors. *Id.* at 533-534.

Vermont’s foster licensing regime contains precisely the sort of discretionary features condemned in *Fulton*. The licensing process involves caseworkers making individualized judgments about whether applicants are sufficiently “affirming” and “supportive” of LGBTQ identities. *See* JA070-

71. Those judgments are necessarily subjective, vary across cases, and take into account the applicant’s personal statements, tone, and willingness to attend or facilitate ideologically charged activities like Pride parades. Indeed, Vermont has explicitly stated that it will evaluate a foster parent’s “attitude and behavior” toward gender identity and require them to affirm the child’s self-conception, even if it contradicts the family’s religious beliefs. *See* JA162.

Such an individualized and ideologically filtered process is the hallmark of a non-neutral, non-generally applicable policy under *Fulton*. It is not a neutral health or safety regulation. It is an ideological purity test.

B. The state cannot condition a public program or public benefit on religious conformity.

The Supreme Court has repeatedly affirmed that the government may not condition participation in public programs or receipt of public benefits on renouncing religious belief or practice. In *Trinity Lutheran Church v. Comer*, 582 U.S. 449 (2017), the Court held that excluding a church from a public grant program solely because of its religious identity violated the Free Exercise Clause. Similarly, in *Espinoza v. Montana Department of Revenue*, 591 U.S. 91 (2020), the Court struck down a state law barring religious schools from participating in a scholarship program.

What Vermont has done here is no different. It has created a public licensing program—inviting private families to participate in the foster care system—but bars religious families unless they are willing to affirm state ideology about gender. That is unconstitutional.

Vermont’s policies do not simply regulate conduct (e.g., prohibiting abuse or neglect). They explicitly regulate beliefs and conscience. Families are rejected not for how they treat children, but for how they speak and think about contested issues of identity. That is impermissible under the First Amendment.

C. Vermont’s policy impermissibly compels ideological speech and affirmation.

In addition to burdening religious exercise, Vermont’s policy compels families to speak messages they reject. Families are disqualified unless they commit to using pronouns inconsistent with their beliefs, describing children in terms they believe are false, and participating in affirming events like Pride parades.

But the First Amendment “guards against the government compelling individuals to mouth support for views they find objectionable.” *Janus v. AFSCME*, 585 U.S. 878, 893 (2018); *see also West Virginia Bd. of Educ. v.*

Barnette, 319 U.S. 624, 642 (1943) (the government may not compel a person “to utter what is not in [their] mind”).

This principle applies even in regulated or licensed contexts. In *NIFLA v. Becerra*, 585 U.S. 755 (2018), the Court held that the government could not compel pro-life pregnancy centers to promote abortion services, even though they were participating in a regulated industry. As the Court emphasized, “[s]peech is not unprotected merely because it is uttered by professionals.” *Id.* at 767.

So too here. Foster parents do not surrender their rights to conscience and free expression by choosing to help vulnerable children. To require religious families to affirm concepts of gender that violate their beliefs is to compel speech in violation of the First Amendment.

II. Religious foster families are indispensable to the foster care system.

Contemporary foster care as we know it would not exist without a lineage of religious charity that stretches back centuries. Today, foster care in America depends on the voluntary service of private families, many of whom are motivated by religious conviction. Vermont’s exclusion of families like the Wuotis and Gantts, solely because they cannot endorse the state’s ideology on gender and sexuality, not only violates constitutional rights—it also undermines the very goals of the foster system. The State’s policy shrinks the

available pool of foster homes at a time of nationwide shortage and sends a chilling message that traditional religious believers need not apply.

History, data, and common sense confirm a simple truth: religious families are not outliers in foster care—they are the backbone of it. The categorical exclusion of these families harms not only the caregivers, but the vulnerable children the system exists to serve.

A. Religious belief is a primary motivator for foster parenting.

Religious commitment is one of the strongest predictors of willingness to foster or adopt. A 2023 poll commissioned by the Bipartisan Policy Center, reported that “people for whom religion plays a major role in life are nearly 50% more likely than those with minimal religious commitments to be familiar with the child welfare system.” Bipartisan Policy Ctr., *New BPC-Harris Polling Data on Religion and Child Welfare* (Oct. 26, 2023), <https://bipartisanpolicy.org/blog/new-bpc-harris-polling-data-on-religion-and-child-welfare/>.

The reason is theological as well as cultural: care for orphans and vulnerable children is deeply embedded in Christian and Jewish moral teaching. From the early Church to contemporary Protestant and Catholic foster ministries, believers have consistently responded to the call of James

1:27: “Religion that is pure and undefiled before God... is this: to visit orphans and widows in their affliction.”

That religious motivation has real-world effects. States consistently rely on faith-based organizations and networks to recruit, train, and support foster families—particularly for children who are older, have special needs, or are part of sibling groups. For decades, faith-based organizations like Catholic Charities, Bethany Christian Services, Lutheran Social Services, Jewish Family Services, and many more have been instrumental in placing thousands of children into stable homes. *See, e.g., Our Why: Changing the World Through Family, Bethany Christian Services*, <https://bethany.org/resources/our-why-changing-the-world-through-family> (last visited June 3, 2025); *History of LSS, Lutheran Social Service of Minnesota*, <https://www.lssmn.org/about-lss/history> (last visited June 3, 2025); *Our History, Catholic Charities Bureau*, <https://www.ccbdosa.org/our-history> (last visited June 3, 2025); *Centuries of Pioneering, Jewish Family and Children’s Services*, <https://www.jfcs.org/about/history/jfcs-centuries-of-pioneering> (last visited June 3, 2025).

B. Excluding religious foster families shrinks the pool of available homes.

The Vermont Department for Children and Families (DCF) argues that excluding non-affirming families protects children. But that logic is inverted. The State's policy creates an artificial shortage of loving homes by categorically excluding qualified families based on viewpoint. Even when religious foster parents have extensive experience, pass all safety checks, and are willing to love and support any child, they are barred from participation if they cannot promise to affirm a child's gender identity and use specific pronouns.

This has broad consequences. Nationally, foster care systems already face a chronic shortage of placements, particularly for children affected by the opioid epidemic, abuse, or neglect. Vermont is no exception. In 2023, Vermont DCF publicly acknowledged a need for more foster families, especially for infants and children with complex needs. *See* JA064.

Children are harmed when they are warehoused in shelters, separated from siblings, or subjected to multiple failed placements due to the lack of stable homes. Excluding loving families over ideological litmus tests worsens these outcomes.

The Supreme Court has warned against such harms. In *Fulton*, the Court emphasized that the government has a compelling interest in

maximizing the number of foster families, not limiting them: “The City has no compelling interest in refusing to contract with CSS to provide foster care services, nor does it have a compelling interest in excluding religious foster parents from the system.” 593 U.S. at 541.

III. Gender identity ideology and social transitioning are harmful to children.

Vermont’s foster care policy mandates not only tolerance of LGBTQ-identifying children, but the active affirmation of gender identity claims and social transitioning. This goes far beyond the state’s interest in protecting children from abuse or neglect. It imposes an unproven, ideologically driven framework that is increasingly questioned by leading medical authorities worldwide. Foster families who express religious or scientific reservations about gender ideology are excluded, not because they pose a risk to children, but because they dissent from a contested belief system.

Amicus believes that every child has dignity and worth as a creation of God. And it is precisely because children deserve thoughtful, evidence-based care that the State must not compel families to adopt ideologically loaded practices like pronoun mandates, cross-gender expression, or unconditional affirmation—especially when those practices may steer vulnerable children toward irreversible harm.

A. The scientific basis for mandatory affirmation is weak and deeply contested.

Vermont’s licensing rules rely heavily on the Family Acceptance Project, a research and advocacy initiative that purports to show that affirmation of LGBTQ identity reduces suicide and improves outcomes. But this body of research suffers from profound methodological flaws: small sample sizes, self-reporting biases, lack of control groups, and short-term observational windows. *See e.g.*, Caitlin Ryan, Stephen T. Russell, David Huebner, Rafael Diaz & Jorge Sanchez, *Family Acceptance in Adolescence and the Health of LGBT Young Adults*, 23 J. Child & Adolescent Psychiatric Nursing 205 (2010) (The study had a sample size of a mere 245 people; utilized retrospective self-reporting; had no control group; and all data was collected at one time rather than tracked over a period.) The project’s lead studies are published in advocacy-oriented journals and have not been independently replicated with rigor.

Courts should not defer to such tenuous social science when fundamental rights are at stake. *See Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 590 (1993) (requiring reliability and scientific validity for expert testimony). Vermont has adopted the Family Acceptance Project’s conclusions as if they were settled science—but no national or international

consensus supports mandatory affirmation, especially for children and adolescents.

Indeed, leading European health authorities have come to the opposite conclusion. The Cass Review in the United Kingdom, an independent and comprehensive review of youth gender services, found that there is no reliable evidence that social transitioning improves mental health outcomes for children, and that such interventions may instead set children on a medicalized pathway with lifelong consequences. *See Hilary Cass, The Cass Review: Independent Review of Gender Identity Services for Children and Young People – Final Report* (Apr. 2024), <https://cass.independent-review.uk/publications/final-report/> (“The systemic review showed no clear evidence that social transition in childhood has any positive or negative mental health outcomes. . . However, those who had socially transitioned . . . were more likely to proceed to a medical pathway.”)

Medical transitioning carries serious risks of permanent harm. Sweden, Norway, and other countries have all curtailed or reversed youth gender transitioning protocols, citing a lack of evidence and growing concern over long-term harm. For instance, Sweden's National Board of Health and Welfare updated its guidelines to recommend that puberty blockers, hormones, and mastectomies be used only in “exceptional cases,” emphasizing that the risks

likely outweigh the benefits. Socialstyrelsen [National Board of Health and Welfare, Sweden], *Care of Children and Adolescents with Gender Dysphoria: Summary* (Feb. 2022), https://web.archive.org/web/20230519163625/https://www.socialstyrelsen.se/globalassets/sharepoint-dokument/artikel_katalog/kunskapsstod/2022-3-7799.pdf. Similarly, Norway's Healthcare Investigation Board recommended revising gender transition guidelines due to insufficient research-based knowledge and unknown long-term effects. Jennifer Block, *Norway's guidance on paediatric gender treatment is unsafe, says review*, 380 BMJ 697 (2023), <https://www.bmj.com/content/380/bmj.p697>. Vermont's policy, by contrast, assumes that affirmation is universally beneficial—and punishes families who question it. That approach is not only unconstitutional. It is reckless endangerment of children.

B. Social transitioning often leads to medical transitioning, which carries serious risks.

Mandatory use of cross-sex pronouns and affirmation of a child's declared gender identity are not neutral acts. They are widely understood—even by advocates of gender-affirming care—as the first step on a path toward medical intervention.

The process typically unfolds in stages: (1) social transition (name, pronouns, clothing), (2) puberty blockers, (3) cross-sex hormones, and (4)

surgery. Michelle Cretella, executive director of the American College of Pediatricians, has explained that this psychological treatment frequently leads to further medical intervention including puberty blockers, cross-sex hormones, and physical amputations. I'm a Pediatrician. How Transgender Ideology Has Infiltrated My Field and Produced Large-Scale Child Abuse., DAILY SIGNAL (July 3, 2017), <https://www.dailysignal.com/2017/07/03/im-pediatrician-transgender-ideology-infiltrated-field-produced-large-scale-child-abuse/>. These medical interventions carry significant known risks—infertility, loss of sexual function, bone density loss, cardiovascular complications, and lifelong dependency on synthetic hormones—and do not ultimately aid mental health outcomes. Id. The risks are even worse for children who are unable to consent to such irreversible life-altering procedures and is effective child abuse. Id.

Yet Vermont's policies push children in that direction by mandating affirmation even in early stages of questioning. Families who wish to pause, inquire, or decline to use pronouns that endorse a false identity are not harming children—they are protecting them. Vermont's exclusion of such families amounts to punishment for caution.

C. The claim that lack of affirmation causes suicide is unfounded and misleading.

Vermont justifies its exclusionary policy by appealing to the claim that failure to affirm gender identity causes transgender youth to commit suicide. That claim is not supported by high-quality evidence and is being used as an emotional appeal to silence critics.

Suicide is complex and multi-faceted. Correlation between non-affirmation and suicidality does not prove causation—particularly when many affirming environments still report high rates of suicide attempts among gender-dysphoric youth. A recent fifteen year study conducted in the Netherlands indicates that adolescent discontent with one’s biological sex has a high likelihood of subsistence in early adulthood without any medical intervention. Pien Rawee, Judith G.M. Rosmalen, Luuk Kalverdiijk, & Sarah M. Burke, Development of Gender Non-Contentedness During Adolescence and Early Adulthood, PubMed, Feb. 27, 2024, <https://pubmed.ncbi.nlm.nih.gov/38413534/>. Another recent study from Finland indicates that gender transition treatments such as drugs or surgeries among adolescents and young adults do not decrease suicidal ideation. Sami-Matti Ruuska, Katinka Tuisku, Timo Holttinen, & Riittakerttu Kaltiala, All-cause and suicide mortalities among adolescents and young adults who contacted specialised gender

identity services in Finland in 1996–2019: a register study, BMJ Mental Health, Jan. 25, 2024, <https://mentalhealth.bmj.com/content/ebmental/27/1/e300940.full.pdf>. This is an important reality because one of the primary driving arguments of gender transitions for children is that it is necessary to prevent them from committing suicide.

The use of suicide statistics as a cudgel to stamp out dissent is not only bad science—it is morally dangerous. It tells parents and caregivers that unless they immediately affirm a child’s declared identity, they are risking the child’s death. That is psychological coercion, not care.

Children experiencing gender distress deserve compassion, support, and careful evaluation. What they do not need is ideological compulsion or accelerated affirmation based on fearmongering.

D. Requiring affirmation violates the state’s obligation to protect children from harm.

The state has a compelling interest in protecting children from abuse, neglect, and psychological harm. But that interest is not furthered—let alone narrowly served—by forcing families to adopt and enforce controversial ideological practices like social transitioning

As Vermont's own documents show, the Wuotis and Gantts were loving, experienced foster parents who had adopted children with special needs and provided stable homes for years. Their licenses were revoked not because of any mistreatment, but solely because they could not commit to ideological affirmation of gender identity claims. That is not child protection—it is ideological exclusion.

If Vermont were truly concerned with the best interests of children, it would allow space for pluralism, discretion, and evidence-based care. Instead, it mandates an approach that international health authorities now reject, and that silences any religious or medical dissent.

CONCLUSION

The Foundation urges this Court to reverse the decision below and uphold the Wuoti and Gantt families' right to free exercise of religion while serving as foster families to children in desperate need of the love and capable care they have proven they can provide.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This document complies with the word limit of Rule 32(a)(7), Fed. R. App. P., because, excluding the parts of the document exempted by Rule 32(f), Fed. R. App. P., this document contains 3,334 words.
2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it was prepared using Microsoft Word in 14-point Times New Roman.

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CERTIFICATE REGARDING SERVICE

I certify that on June 6th, A.D. 2025, a true copy of this document is being filed electronically (via ACMS) and will thereby be served on all counsel of record.

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