

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

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BRIAN WUOTI, KAITLYN WUOTI, MICHAEL  
GANTT, REBECCA GANTT,

*Plaintiffs-Appellants,*                      No. 25-678

CHRISTOPHER WINTERS, in his official  
capacity as Commissioner of Vermont  
Department of Children and Families;  
ARYKA RADKE, in her official capacity as  
Deputy Commissioner of the Family  
Services Division; STACEY EDMUNDS, in  
her official capacity as Director of  
Residential Licensing & Special  
Investigations,

*Defendants-Appellees.*

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**JOINT STIPULATION OF DISMISSAL AND PLAINTIFF-  
APPELLANTS' UNOPPOSED MOTION TO VACATE THE  
DISTRICT COURT JUDGMENT**

Pursuant to Federal Rule of Appellate Procedure 42(b)(1), the Parties hereby stipulate to dismiss this appeal. Plaintiff-Appellants move to vacate the district court's preliminary-injunction Order (Dkt. 59). Defendant-Appellees do not oppose vacatur.

**Background**

This case arises from a prior Vermont Department for Children and Families' ("the Department") policy requiring foster parents to be "holistically affirming and supporting" of a child's sexual orientation, gender identity, and gender expression. Joint App. ("JA") 070–71. This

policy led the Department to revoke Appellants' foster-care licenses. JA217–19, 221–24. Appellants then sued Department officials and sought a preliminary injunction against Vermont's policy. JA017, 073. The district court denied that motion, and Appellants filed this appeal. *See* SA001–30, JA663.

On February 18, the Department issued new guidance for licensing foster parents. Ex. A at 1. Under this guidance, an “[a]pplicants’ sincerely held personal, cultural, religious, moral, or philosophical beliefs shall not be considered in the licensing process” *Id.* at 3. Further, the Department does not require “endorsement or affirmation of specific identities,” *id.* at 5, or the “use of particular vocabulary, prescribed language, or preferred pronouns related to gender identity, sexual orientation, or identity expression,” *id.* Appellees have also represented that the Department will rescind the decision to revoke Appellants’ foster-care licenses, that Appellants may freely reapply for their licenses, and that the previous grounds for revocation will no longer operate to exclude Plaintiffs. The parties have now agreed to a settlement reflecting Vermont’s commitment to carry out these policy changes. This settlement is contained in the attached Stipulated Order and Proposed Final Judgment that the parties will file after this appeal is dismissed and the case is remanded to the district court. Ex. B at 1. The parties agree that each party shall bear their own costs and fees. In light of the Department’s new guidance and the

parties' settlement, the parties agree that this appeal is now moot and should be dismissed.

### **Motion**

When an appeal becomes moot, “[t]he established practice ... is to reverse or vacate the judgment below.” *United States v. Munsingwear*, 340 U.S. 36, 39 & n.2 (1950). “In the ordinary run of cases ... courts have been liberal in granting vacatur.” *Russman v. Bd. of Educ. of Enlarged City Sch. Dist. of City of Watervliet*, 260 F.3d 114, 121 (2d Cir. 2001). Courts will routinely vacate preliminary judgments that have become moot too. *E.g.*, *Azar v. Garza*, 584 U.S. 726, 729–30 (2018) (per curiam) (vacating grant of temporary restraining order); *Harper ex rel. Harper v. Poway Unified Sch. Dist.*, 549 U.S. 1262 (2007) (vacating denial of preliminary injunction).

This liberal rule applies with even more force “when mootness occurs through ... the unilateral action of the party who prevailed in the lower court.” *Azar*, 584 U.S. at 729–30 (citation modified). Because vacatur is “rooted in equity,” it would be unfair to let an adverse judgment stand because of circumstances beyond the appellant’s control. *Id.* at 729. So vacatur is appropriate when the government repeals a challenged policy thereby mooting the plaintiffs’ request for relief. *Chrysafis v. Marks*, 15 F.4th 208, 211 (2d Cir. 2021) (vacating dismissal and denial of preliminary injunction because “mootness [was] attributable to a change in the legal framework”) (citation modified); *see*

*also Coll. Standard Mag. v. Student Ass'n of State of Univ. of N.Y. at Albany*, 610 F.3d 33, 35 (2d Cir. 2010) (per curiam) (vacating district court's judgment because school's repeal of challenged policy mooted the case).

This is just such a case. Vermont (commendably) changed the challenged policy to ensure that “[a]pplicants shall not be excluded based on [their religious] beliefs nor on an intent to live, parent, and make day-to-day caregiving decisions consistent with those beliefs.” Ex. A at 3. By abandoning the previous policy that Plaintiffs sought to enjoin, the State’s “unilateral action” mooted this appeal. *Azar*, 584 U.S. at 729. And in that case, “a party who seeks review of the merits of an adverse ruling, but is frustrated by the vagaries of circumstance, ought not in fairness be forced to acquiesce in the judgment.” *Russman*, 260 F.3d at 121 (citation modified).

Because Vermont has repealed the challenged policy to moot this appeal, and because the parties have reached a settlement, this Court should dismiss this appeal and vacate the lower court’s preliminary injunction order.

Dated: February 20, 2026

Respectfully submitted,

/s/ Johannes Widmalm-Delphonse

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### **Certificate of Service**

I hereby certify that on February 20, 2026, a copy of this motion was filed electronically with the Clerk of the Second Circuit Court of Appeals. Service on counsel for all parties will be accomplished through the Court's electronic filing system.

*s/ Johannes Widmalm-Delphonse*  
Johannes Widmalm-Delphonse  
*Attorney for Appellants*

# **EXHIBIT A**

State of Vermont Agency of Human Services  
Department for Children and Families  
Family Services Division

**Practice Guidance: Supporting Conversations with Foster Care Applicants  
About Caring for LGBTQ+ Youth**

**Policy Information**

**Chapter/Category:**

Residential Licensing and Special  
Investigations (RLSI)

**Supersedes:**

N/A – New Practice Guidance Document

**Effective Date:**

**Related Documents:**

FSD Policy 221: Foster Care Licensing 02/18/2026

**Authorizing Signature:**



Aryka Radke, Deputy Commissioner, Family Services Division

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**Purpose**

The Foster Care Application includes a self-assessment questionnaire designed to help applicants reflect on their caregiving interests, strengths, and placement preferences. Among many questions, applicants are asked to respond to the following:

**“I am open to caring for a lesbian, gay, bisexual, transgender, or queer (LGBTQ) child/youth.”**

This question is one of many intended to help the Division understand where caregivers feel most confident, where they may want additional support or training, and how to make informed

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placement decisions later in the process.

This practice guidance supports the Residential Licensing & Special Investigations (RLSI) Team in having open, neutral, relational conversations with applicants about their experience, comfort level, and readiness to care for LGBTQ+ children and youth. These conversations are not about changing beliefs; rather, they help assess caregiving behaviors, understand strengths and limitations, and support thoughtful, well-aligned future placement matching.

While this guidance offers focused considerations for LGBTQ+ youth, it builds directly on the Division's existing matching philosophy and practices. LGBTQ+-specific guidance is an extension of the work we already do to match children and caregivers across a wide range of identities, needs, interests, behaviors, trauma responses, cultures, and experiences. Over time, this framework will continue to expand to provide even broader, more integrated guidance that supports thoughtful matching for all children and youth.

### **Guiding Principles**

#### **1. Conversations focus on caregiving capacity — not beliefs.**

Applicants bring diverse lived experiences, values, cultures, and comfort levels. Conversations during the licensing process aim to understand caregiving approaches, day-to-day interactions with youth, and the environment a young person would experience in the home. They do not evaluate or interpret an applicant's personal beliefs. The emphasis is on how a caregiver interacts with and cares for youth, not why they hold particular viewpoints.

#### **2. Safety — physical and emotional — is the core licensing focus.**

All licensed caregivers must provide a home free from rejection, shaming, discriminatory behavior, or hostility. This expectation applies to all children and youth, including LGBTQ+ youth. Licensing aims to gather information about whether caregivers can demonstrate safe, supportive, non-judgmental, and non-discriminatory care in their day-to-day interactions and caregiving practices.

Licensing evaluates all aspects of physical and emotional safety. Concerns about safety are addressed through existing licensing processes when there is evidence that a caregiver's actions, responses, or home environment may place a child at danger or risk. Holding or respectfully expressing personal, religious, or moral beliefs alone does not constitute a licensing concern.

#### **3. Limitations belong in the placement matching process.**

Applicants may identify comfort levels, preferences, or areas where they feel less prepared. These do not affect licensure. Instead, they help guide later placement decisions, which consider the needs and identities of actual children and youth—not hypothetical situations. Consistent with Division practice, placement decision-making begins with family finding and exploration of kin and fictive kin resources and continues throughout an open case, regardless of current placement, to promote permanency and

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lifelong family connections. Matching is an ongoing process, and a caregiver's strengths, preferences, and limitations are revisited to ensure the best possible fit for each youth. Licensure establishes whether a home is safe; matching supports whether a particular home is the right fit for a specific youth at a specific time.

**4. Caregivers vary in experience, comfort, and readiness—and that is expected.**

Adults naturally differ in their familiarity with identities, cultures, or experiences that may be new to them. Because licensing decisions rely on information gathered during the time-limited applicant interview and site evaluation, the goal is to understand where applicants are beginning—not to anticipate future behaviors or evaluate viewpoints. The information gathered helps guide conversations, not predict or assume caregiver actions. Information gathered is used to guide supportive conversations and placement planning, not to presume future misconduct.

**5. Licensing evaluates behavior, not viewpoints.**

On behalf of the Department and Division, RLSI requires caregivers to maintain a safe, stable, and non-discriminatory home. The foster care application process does not require applicants to adopt, express, or endorse specific beliefs, viewpoints, or language as a condition of approval. This approach honors both child safety and caregiver autonomy while ensuring regulatory compliance.

Applicants' sincerely held personal, cultural, religious, moral, or philosophical beliefs shall not be considered in the licensing process. Applicants shall not be excluded based on any such beliefs nor on an intent to live, parent, and make day-to-day caregiving decisions consistent with those beliefs, so long as required standards of safety, care, non-discrimination, and respect for a child's safety, well-being, and dignity are met.

Licensing decisions are based on observable caregiving behaviors and demonstrated capacity to meet required standards in practice. In evaluating applications, the Division distinguishes between:

- Beliefs or viewpoints, which are not evaluated for licensure;
- Respectful, age-appropriate, and non-coercive communication, which is permitted; and
- Behaviors that cause harm, coercion, exclusion, or discrimination, which are not permitted and may affect licensure.

An applicant's statements of belief or personal conviction during the licensing process may not, by themselves, constitute evidence of risk, harm, or noncompliance.

**Core Behavioral Expectation**

Caregivers must provide a safe home free from rejection, shaming, or discriminatory behavior. This includes the ability to:

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- respond to children and youth in ways that do not cause physical, emotional, or psychological harm
- maintain an environment where youth feel safe expressing themselves
- refrain from behaviors that ridicule, demean, or isolate a youth
- partner with DCF and providers to ensure youth needs are met
- support the youth's hobbies, interests, and passions
- support youth in accessing school or community activities that promote safety and belonging

**Children & Youth's Rights Framework**

Children and youth must always be at the center of the Division's work. While this is not an exhaustive list below, caregivers must uphold the rights of children and youth in foster care, including the right to:

- have their identity, culture, religious, moral, and philosophical beliefs, and lived experiences understood and respected in placement
- maintain meaningful connections with family, kin, and community supports
- participate in decisions about who they live with and what type of caregiver or home environment feels safe
- have their voice and perspective meaningfully included and elevated in case planning and decision-making
- express their personality and identity through clothing, hairstyle, cultural practice, or other forms of self-expression
- be free from shaming, punishment, coercion, or attempts to change who they are
- access supportive environments (e.g., school groups, counseling, peer supports)
- partake in or decline participation in religious activities without consequences, discipline, or retaliation
- experience safety, dignity, and nondiscrimination in their home

These expectations establish the minimum standard of care required for every licensed home and reflect Vermont's responsibility to protect children – not to impose a particular viewpoint on caregivers. A caregiver's failure to use particular language or adopt certain beliefs does not itself violate these rights.

**Areas RLSI Evaluates and May Explore Through Conversation**

RLSI staff may use open-ended, neutral questions to understand:

- the caregiver's comfort supporting youth with diverse identities
- how the caregiver responds when a youth shares something personal or unfamiliar
- their typical approach to providing stability, belonging, and emotional support
- areas where additional training or information may be helpful

These conversations occur during the licensing phase to understand general caregiving capacity. They are not used to determine placement suitability for any specific child, which is addressed separately through the placement matching process.

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As part of these conversations, RLSI will explain the regulations caregivers must follow, what types of actions could violate those regulations, and the potential consequences. This supports informed caregiving and clear expectations.

At the same time, RLSI does not assume that an applicant will engage in prohibited conduct simply because of their stated beliefs, values, or identified limitations. Conversations focus on actual caregiving behavior, not possible future violations.

**What RLSI Does Not Evaluate**

Licensing does not require:

- endorsement or affirmation of specific identities
- agreement with certain viewpoints
- changes to personal, cultural, religious, moral, or philosophical beliefs
- use of particular vocabulary, prescribed language, or preferred pronouns related to gender identity, sexual orientation, or identity expression
- answers to certain hypothetical ideological or future-speech scenarios
- discussion of medical decisions that caregivers cannot independently make<sup>1</sup>
- agreement to facilitate medical appointments or procedures related to gender affirming care
- personal agreement with, or adoption of, specific terminology, identity frameworks, or expressive practices as a condition of licensure, so long as the caregiver's conduct remains respectful, non-coercive, and consistent with safety requirements.

**Placement Matching Considerations**

Placement matching is guided by the young person's needs, voice, and sense of belonging. Matching decisions consider:

- the youth's identity, lived experience, and expressed preferences
- their need for a placement where they feel safe, respected, and able to be themselves
- the importance of cultural, familial, and community connections
- the caregiver's strengths, caregiving style, and willingness to learn or seek support
- any limitations that may affect a youth's experience in the home

Expressing limitations or preferences around caring for children and youth with diverse identities,

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<sup>1</sup> When a young person is in DCF custody, caregivers are provided with the Division's Caregiver Authorization Letter. This letter permits caregivers to obtain routine and emergency medical treatment for the child. Caregivers are not the legal medical decision-makers for children in DCF custody. Medical decision-making authority remains with the Department, in consultation with the young person (as age- and developmentally appropriate), medical providers, and parents.

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experiences, or needs—including preferences related to age, behaviors, medical, developmental, or mental health needs, or LGBTQ+ identity—is not inherently discriminatory. These are normal considerations that belong in matching, not licensing. This approach allows caregivers to voluntarily identify the populations they feel most prepared and equipped to support.

**Belonging matters.** Children and youth experience better outcomes when placed with caregivers who can support their identity, culture, and expression—whether related to race, ethnicity, religion, sexual orientation, gender identity, disability, trauma history, or other lived experiences. Caregivers do not need specialized expertise; they need the ability to create a safe environment and a willingness to learn.

**Matching is not about ideology; it is about fit.** A caregiver’s stated preferences or limitations—including those related to caring for LGBTQ+ youth—help the Division identify the best possible match between a youth’s needs and a caregiver’s strengths and readiness.

**Youth voice matters.** Young people may express their preferences regarding placement, identity, connections, and other personal experiences when they feel ready to do so. Youth engagement is central to identifying supportive placements.

Because some youth may not yet be aware of, or ready to share, aspects of their identity, background, trauma history, needs, or other sensitive experiences when entering care, regular contacts by Family Services Workers, attorneys, and GALs serve as important safeguards to ensure youth safety and emotional well-being.

The Division works to ensure that each youth is matched with caregivers who can safely and confidently meet their needs. Youth also have the right to request consultation with the Commissioner’s Committee on LGBTQ Issues if they feel unsafe, unsupported, or discriminated against.

**Discussion Prompts**

The questions below are examples of prompts that may be used to support open, relational conversation. They are not exhaustive, nor is each question required in every discussion.

- “Tell me about your experience supporting young people whose identities or experiences are different from your own.”
- “How comfortable do you feel supporting a young person who identifies as LGBTQ+?”
- “When a youth shares something important about themselves, what does support look like in your home?”
- “How do you create an environment where youth feel safe talking about what is happening in their lives?”
- “Youth sometimes share things that surprise adults. How do you typically respond?”
- “If a young person expressed something personal about their identity or came out to you, how would you respond?”

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- “Are there areas where you would like more information or support to feel prepared for different types of placements?”
- “When a youth raises questions or experiences that feel new, what helps you learn or find guidance?”
- “It’s completely normal to have areas where you feel more or less confident. Are there particular placement situations where you feel you’d be a strong fit—or not the best fit?”
- “Are there any preferences or limitations you’d like us to keep in mind for matching?”

**Conclusion**

This practice guidance is an early step in strengthening how we engage applicants, understand caregiving capacity, and support thoughtful placement matching. It will continue to grow and evolve as we learn from staff, caregivers, youth, partners, and ongoing implementation efforts. Updates to the Foster Care Application and Renewal Application, along with development of a companion matching tool for district staff are also in development, which will help bridge the licensing and placement phases to ensure alignment with the Division’s broader matching philosophy.

# **EXHIBIT B**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT  
WINDHAM DIVISION**

**BRIAN WUOTI; KAITLYN WUOTI;  
MICHAEL GANTT; and REBECCA  
GANTT,**

*Plaintiffs,*

v.

**CHRISTOPHER WINTERS**, in his  
official capacity as Commissioner of  
the Vermont Department for Children  
and Families, **ARYKA RADKE**, in  
her official capacity as Deputy  
Commissioner of the Family Services  
Division, and **STACEY EDMUNDS**,  
in her official capacity as Director of  
Residential Licensing & Special  
Investigations,

*Defendants.*

Case No.: 2:24-cv-00614

Judge William K. Sessions III

**STIPULATED ORDER AND  
PROPOSED FINAL JUDGMENT**

**BACKGROUND**

This case arises from a now-superseded Vermont Department for Children and Families' ("DCF") policy. This policy led DCF to revoke Plaintiffs Brian and Kaitlyn Wuoti and Michael and Rebecca Gantts' foster-care licenses. On June 4, 2024, Plaintiffs sued DCF officials, arguing that this policy violated their First Amendment rights. On February 18, DCF issued a new Guidance document (the "Guidance") ending the challenged policy (attached below). Under this Guidance, DCF has agreed to rescind the previous revocation decisions and allow Plaintiffs to reapply for their licenses. The parties have now filed a joint motion to enter a stipulated order and final judgment in this case. Consistent with the parties' agreement,

**IT IS HEREBY ORDERED:**

1. Defendants shall rescind the challenged revocation decisions and allow Plaintiffs to reapply for their foster-care licenses under the new Guidance. Going forward, Defendants shall apply the Guidance, or policies that are consistent with Paragraphs 2 through 5 below, to Plaintiffs.

2. Under the Guidance, Defendants are prohibited from taking any adverse action against Plaintiffs because they believe, seek to respectfully and non-coercively express, or intend to live, parent, and make day-to-day caregiving decisions consistent with their sincerely held religious beliefs that sexual activity should only occur within the confines of a marriage between one man and one woman and a person should identify and seek to live consistent with their biological sex.

3. Under the Guidance, Defendants are prohibited from requiring Plaintiffs to agree to the use of particular vocabulary, prescribed language, or preferred pronouns related to gender identity, sexual orientation, or identity expression as a condition of licensure.

4. Under the Guidance, Defendants are prohibited from requiring Plaintiffs to express agreement with any specific terminology, identity frameworks, or expressive practices as a condition of licensure, so long as their conduct remains respectful, non-coercive, and consistent with safety requirements.

5. Under the Guidance, Defendants may, in good faith, consider Plaintiffs' sincerely held religious beliefs on sexual orientation, gender identity, and gender expression to make individual placement decisions based on the best interests of a child who identifies as LGBTQ+ or considers themselves an ally thereof, so long as this consideration does not categorically disqualify Plaintiffs from being considered for any particular placements. The intent of this Order is that Plaintiffs are not excluded or punished merely because of their sincerely held

religious beliefs or because they seek to speak and act consistent with these beliefs, consistent with the updated Guidance document.

6. Each party shall bear their own costs and fees.

7. This Order shall operate as a final judgment of the Court, and the parties agree that it represents a complete resolution of all claims and defenses.

8. The Court retains jurisdiction to enforce the terms of this Order as may be necessary.

9. The Clerk's Office is directed to mark this case as closed.

**APPROVED and SO ORDERED:**

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Judge William K. Sessions III

Date: \_\_\_\_\_

Respectfully submitted this 20th day of February 2026.

/s/ Jonathan T. Rose

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