

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.:

VERIFIED COMPLAINT

INTRODUCTION

Vermont's foster-care system faces a crisis. There are more needy children than families willing to care for them. Vermont's Department for Children and Families ("DCF" or "the Department") has even had to place some children with unlicensed families, hospitals, and police stations to fill the gap. But, with this emergent need, the Department recently decided to exclude all families with traditional religious beliefs about human sexuality from fostering or adopting any child. This ideological campaign puts politics above people and gender ideology over children's best interests. It is harmful, unnecessary, and unconstitutional.

Inspired by their faith, two Vermont families answered the State's call to help vulnerable children. Pastor Brian Wuoti and his wife Katy became foster parents in 2014. They have adopted two precious brothers who have become an integral part of their family. Pastor Bryan Gantt and his wife Rebecca decided to foster children in 2016 after their four biological children got older. Bryan and Rebecca have a heart for children exposed to opioids or alcohol while they were still in the womb. They have adopted three beautiful children.

Despite these parents' well-established ability to care for hurting children, the Department recently revoked their foster-care licenses. When the Wuotis tried to renew their license in 2022, one case worker called them "AMAZING" and said she "probably could not hand pick a more wonderful foster family." Their licensor also said he had "no doubt" that they could welcome any child into their home. But when the Wuotis politely shared that they were Christian, and that they could not say or do anything that went against faith-informed views about human sexuality, Vermont revoked their license anyway.

The Gantts share a similar story. In 2023, the Department asked them to take an emergency placement involving a baby about to be born to a woman who was homeless and addicted to drugs. But just before Bryan and Rebecca agreed to

do so, the Department circulated an email explaining that families must accept the State's orthodoxy about gender fluidity "even if the foster parents hold divergent personal opinions or beliefs." The Gantts responded that they would unconditionally love and support any children placed with them, but they would not forsake their religious beliefs that people should value their God-given bodies. The Department refused to let the Gantts take the baby in need and instead revoked their license.

Although the Wuotis and Gantts have adopted five children between them, the Department has determined they are unfit to foster or adopt any child *solely* due to their religiously inspired and widely held belief that girls cannot become boys or vice versa. And Vermont applies this policy categorically—whether applicants want to adopt their grandchild, provide respite care for an infant for just a few hours, or foster a child who shares all of their religious views. Vermont would prefer children have no home than to place them with families of faith with these views.

This policy harms children and hinders their chance to find forever homes. It also violates the First Amendment. It requires parents to speak the State's controversial views, while restricting parents' ability to politely share their common-sense beliefs to any child in any context—categorically excluding disfavored viewpoints from the foster-parent pool entirely. Vermont's regulations also target particular religious views for unequal treatment through an exemption-riddled system of individualized assessments.

Meanwhile, other states take the commonsense and constitutional approach: they eagerly license families like the Wuotis and Gantts to maximize the number of licensed families and simply match families with children best fit for them. Win, win. Just not in Vermont, which mandates its ideological position at the expense of children and some of our "most cherished liberties and part of what keeps our Republic strong." *303 Creative LLC v. Elenis*, 600 U.S. 570, 603 (2023).

JURISDICTION AND VENUE

1. This civil-rights action raises federal questions under the First and Fourteenth Amendments to the United States Constitution and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

2. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343.

3. This Court has authority to award the requested declaratory relief under 28 U.S.C. §§ 2201–02 and Fed. R. Civ. P. 57; the requested injunctive relief under 28 U.S.C. § 1343 and Fed. R. Civ. P. 65; and the requested costs and attorney fees under 42 U.S.C. § 1988 and Fed. R. Civ. P. 54.

4. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(1) and (2) because a substantial part of the events and omissions giving rise to the claims occurred in the District of Vermont; the effects of the challenged statute are felt in this District; and the Defendants can and do perform official duties in this District.

PLAINTIFFS AND DEFENDANTS

5. Brian Wuoti is a United States Citizen who resides in Windham County, Vermont.

6. Kaitlyn (Katy) Wuoti is a United States Citizen who resides in Windham County, Vermont.

7. Michael (Bryan) Gantt is a United States Citizen who resides in Windham County, Vermont.

8. Rebecca Gantt is a United States Citizen who resides in Windham County, Vermont.

9. Defendant Christopher Winters is Commissioner of the Department for Children and Families (“Department”) for the state of Vermont.

10. The Department is responsible for overseeing and administering the Vermont state foster-care program, including licensing foster-care and adoptive

homes, and the promulgation of standards and regulations governing the licensing process. Vt. Stat. Ann. tit. 33, §§ 151, 4903, 4905; Vt. Dep't for Child. and Fams., Fam. Servs. Div., *Family Services Policy Manual*, Policy 220 (Policy 220), <https://perma.cc/83L3-4B73>.

11. Defendant Winters exercises “the powers and perform[s] duties required for effective administration of the Department,” and “shall determine the policies of the Department.” Vt. Stat. Ann. tit. 33, § 105(a).

12. Defendant Winters is ultimately responsible for all policies promulgated by the Department, including those that the Department relied on to revoke the Wuotis' and the Gantts' licenses.

13. Defendant Aryka Radke is Deputy Commissioner of the Family Services Division (“FSD”).

14. Defendant Radke exercises authority over the Family Services Division in accordance with the powers and duties delegated to her by the Commissioner. Vt. Stat. Ann. tit. 33, § 105(f).

15. The Family Services Division provides out-of-home care for children in Department custody in licensed facilities. Vt. Stat. Ann. tit. 33, § 4905; Vt. Dep't for Child. and Fams., Fam. Servs. Div., *Family Services Policy Manual*, Policy 90 (Policy 90), <https://perma.cc/T4VH-FHP9>.

16. As the head of the FSD, Defendant Radke is responsible for carrying out the Department's policies related to out-of-home care for children, including the policies which the Department relied on to revoke the Wuotis' and the Gantts' foster-care licenses.

17. Defendant Stacey Edmunds is the Director of Residential Licensing and Special Investigations (“RLSI”).

18. RLSI “is the designated licensing authority within the Department for Children and Families, Family Services Division.” Policy 220.

19. Defendant Edmunds exercises her authority over RLSI in accordance with the powers and duties delegated to her by the Commissioner. Vt. Stat. Ann. tit. 33, § 105(f).

20. Defendant Edmunds is responsible for carrying out the Department’s policies related to licensing foster homes, including the policies which the Department relied on to revoke the Wuotis’ and the Gantts’ licenses.

21. The Department for Children and Families, along with the Family Services Division and the Residential Licensing and Special Investigations unit will collectively be referred to as “the Department.”

22. This lawsuit names all Defendants in their official capacities.

FACTUAL BACKGROUND

The need for foster families

23. During the last quarter of 2022, there were 1,067 children in DCF custody.¹

24. In 2023, there were 985 children in DCF custody.²

25. Department officials admit this is “a large number for such a small state.”³

26. Unfortunately, the number of licensed foster homes fell from 1,429 in 2020 to only 834 in 2023.⁴

¹ Building Bright Futures, *The State of Vermont’s Children: 2023 Year in Review* at 15 (2023 Year in Review) (2024), <https://perma.cc/A457-YL6P>; see also 2022 AFCARS Report, <https://perma.cc/P6TP-6RWH>.

² 2023 Year in Review, *supra* n.1, at 15.

³ Lucy Caile, *DCF encourages families to become foster homes*, WCAX, July 19, 2023, <https://perma.cc/8LFX-E6DT>.

⁴ 2023 Year in Review, *supra* n.1, at 15.

27. In 2022, 126 children were in residential placements, such as group homes, rather than living in community-based foster homes.⁵

28. In 2023, the Department stated that there is a “critical need to place children.”⁶

29. Because of the foster-parent shortage, the State sometimes seeks out unlicensed families to take in children immediately.

30. Even though these families have not gone through the licensing process, the Department has said they would ensure safety by “checking in with the family to make sure children are going to a safe, appropriate home.”⁷

31. At other times, the Department places children in unlicensed police departments or emergency rooms until the Department can find a more permanent placement with kin or a foster family.⁸

32. One Department employee told the Burlington Free Press, “there was already an urgent need for more caregivers and foster parents in Vermont” before COVID, but the need only increased when “the pandemic caused people to focus inward on their own needs.”⁹

33. In fact, one Vermont foster parent said she received emails every single day from the Department saying foster homes were needed and a new child needed an emergency placement.¹⁰

⁵ Vt. Dep’t for Child. and Fams., Fam. Servs. Div., *# of children in residential placements*, <https://perma.cc/5735-ML5C>.

⁶ April Barton, *Children in state care need a home, assistance after flooding. Here’s how you can help*, Burlington Free Press, July 20, 2023, <https://perma.cc/4A6Q-XN76>.

⁷ *Id.*

⁸ Melissa Cooney, *Vermont in need of more foster parents*, WCAX, May 30, 2023, <https://perma.cc/S4BR-NJUX>.

⁹ Barton, *supra* n.6.

¹⁰ Caile, *supra* n.3.

34. On December 19, 2023, an email went out to all foster families with the subject line “Desperate need for Emergency Foster Homes.” Ex. A.

35. The email said: “We need you! Family Services is in a crisis beyond what we have seen before.”

36. On February 5, 2024, the Department sent out another email to foster families with the subject line “Foster Homes Needed!” Ex. B.

37. The email said the Department needed “homes for teenagers or pre-teens” and requested families contact the Department “as soon as possible” if they could help.

38. On February 14, 2024, the Department sent another email describing the Department’s “immediate need for a foster home for a youth with uncontrolled type 1 diabetes.” The Department stated that “[i]nterested parties do not need to be current foster parents, we will district approve any appropriate interested individuals.” Ex. C.

39. As the emails above show, the Department has a desperate need for more parents willing and able to care for children in Vermont’s foster-care system.

The Wuotis and the Gantts

The Wuotis

40. Brian and Katy Wuoti answered Vermont’s urgent need for families willing to care for vulnerable children.

41. The Wuotis have been married for over 14 years.

42. Brian works as a high school math teacher, while Katy homeschools their five children, three biological and two adopted from Vermont’s foster care system.

43. The Wuotis were inspired to pursue foster care and eventually adoption because of their Christian faith.

44. For over ten years, Brian has been the pastor of a church that they regularly attend with their children.

45. Katy leads a bi-weekly women's Bible study.

46. Both lead a bi-weekly Life Group Bible study.

47. In 2014, the Wuotis became licensed foster parents through the Department.

48. While they hoped to eventually adopt, the Wuotis' primary goal was to care for and love any child they received while doing everything they could to promote reunification with the birth family.

49. In November 2014, a four-month-old boy was placed with the Wuotis.

50. Once it became clear that reunification was not possible, the Wuotis decided to adopt this foster child as their son.

51. This first adoption was finalized in August of 2015.

52. In 2017, a fifteen-month-old boy, who was a half-brother to their first adopted son, was placed in the Wuoti home.

53. Reunification was again not possible. So Brian and Katy decided to adopt their second foster son as well.

54. This second adoption was finalized in April 2019.

55. The Wuotis treat children placed with them as if they were their own by including them in family events, showing them love and respect, and treating them as part of their natural family.

56. Today, the Wuotis see no difference between their biological children and their adopted children.

57. The Wuotis are eager to continue serving vulnerable children as foster parents.

58. The Wuotis never had any issues working with the Department and the Department never raised any concerns to the Wuotis about their parenting until Vermont put them to a choice between serving vulnerable children and staying true to their faith.

The Gantts

59. Like the Wuotis, Bryan and Rebecca Gantt answered the biblical call to care for the fatherless.

60. The Gantts have been married for over 25 years.

61. Bryan is the lead pastor of a church, while Rebecca raises their seven children—four of whom are biological and three of whom are adopted from Vermont’s foster care system.

62. The Gantts were inspired to pursue foster care and adoption because of their Christian faith.

63. After having four biological children, the Gantts were unable to have more children and felt led to foster and adopt.

64. The Gantts felt God called them to care for infants and young children who were impacted by maternal alcohol and drug use.

65. These children are often difficult to place due to physical and mental health impacts.

66. The Gantts contacted the Department to inquire about foster care and adoption in April 2016.

67. Right away, the Department offered to place a four-month-old boy with them before they were even licensed foster parents. This child was born with neonatal abstinence syndrome due to being exposed to opioids in the womb.

68. The Gantts said yes and took in the baby immediately.

69. The Gantts became licensed approximately two months after the baby was placed with them.

70. During the initial licensure process, the licensing case worker said, “I hope we continue to find more families like yours.”

71. They adopted their first son whose adoption was finalized in August 2019.

72. Exactly two years after they took in their first adopted son, the Department called about another boy who needed to be fostered in April 2018.

73. The Gantts adopted this boy as their second son in July 2022.

74. In 2021, the Department called about a newborn baby girl who was exposed to drugs in the womb and needed a family.

75. The Gantts adopted this child as their own in June 2023.

76. The Gantts have also cared for another child who eventually left their home to be reunified with family.

77. The Gantts have a tight-knit family of seven children who love each other, and the Gantts always treat all their children equally, with love and respect, whether they are their biological or adopted children.

78. Bryan and Rebecca have had a close and fruitful relationship with the Department for eight years.

79. In fact, the Department asked the Gantts to represent foster parents on The Today Show to talk about how the baby formula shortage in 2022 was impacting foster families.

80. The Gantts also partnered with another local church in 2016 to host a Foster Awareness Night and were able to help eleven families sign up to foster children in one evening.

81. The Department renewed the Gantts' foster license in 2022 and raised no concerns about their ability to foster or adopt at that time.

82. Like the Wuotis, the Gantts are eager to continue serving their community, which has been devastated by the opioid epidemic, through respite care and foster care.

83. Should the opportunity present itself, and a child in their home cannot be reunified with his or her family, the Gantts would likely desire to adopt another child into their family.

84. Like the Wuotis, the Gantts never had any issues working with the Department and the Department never raised any concern about the Gantts until the Department put them to a choice between serving children in need or staying true to their faith.

The Department's licensing and placement process

Application and evaluation process

85. The state of Vermont must license foster-care providers if the placement exceeds 15 days unless an exemption applies. *See* Vt. Stat. Ann. tit. 33, § 4905; Policy 90.

86. The initial licensure process takes approximately 120 days from application to completion. Vt. Dep't for Child. and Fams., Fam. Servs. Div., *Family Services Policy Manual*, Policy 221 (Policy 221), <https://perma.cc/5EBF-85CM>.

87. To begin the process, an applicant must complete an application and various background checks. *Id.* at 6–7.

88. If the applicant passes the background checks, a family services worker will be assigned to evaluate their license request. This evaluation includes:

- “Educating the applicant on the licensing process and foster care regulations;

- Visiting and inspecting the family foster care home and premises;
- Interviewing applicant foster parents and other household members deemed necessary by RLSI;
- Assessing the applicant’s compliance with each regulation;
- Discussing areas of non-compliance and steps to achieve compliance;
- Reviewing areas of concern indicated on the application and in the background checks as noted above;
- Collecting third-party references as appropriate; and
- Completion of a licensing evaluation report and recommendation.”

Id. at 8.

89. Rather than apply directly with the Department, applicants can also apply for or renew their license from a private child-placing agency.

90. A child-placing agency is “an organization established for the purpose of providing or arranging placement for children in foster homes, residential childcare facilities or adoptive homes.” Vt. Dep’t for Child. and Fams., Fam. Servs. Div., *Licensing Regulations for Child-Placing Agencies in Vermont* at 29 (Child-Placing Agency Regulations), <https://perma.cc/E54N-A6VJ>.

91. An applicant who applies for a license through a child-placing agency must still meet all licensing regulations applicable to foster homes. *Id.* at 21.

92. A license is valid for up to three years and can be renewed. Policy 221 at 13.

93. The Department may limit a family’s foster-care license due to individual circumstances by “age, gender, and developmental needs of children able to be placed in the home.” Policy 221 at 8.

94. If the Department determines that an applicant does not qualify, the certifier, in consultation with the certifier’s supervisor, will recommend the denial

to the director of the Residential Licensing. *Id.* at 10; Vt. Dep’t for Child. and Fams., Fam. Servs. Div., *Family Services Policy Manual*, Policy 222 (Policy 222), <https://perma.cc/BFJ9-T4SM>.

Individualized assessments

95. Not every foster home is an appropriate placement for every child.

96. Rather, some foster homes are better suited to care for certain children based on shared cultural, religious, or other beliefs and practices.

97. Federal spending-clause statutes applicable to Vermont require that child-welfare agencies place children “in a safe setting that is the least restrictive (most family like) and most appropriate setting available and in close proximity to the parents’ home, consistent with the best interest and special needs of the child[.]” 42 U.S.C. § 675 (5)(A).

98. When Vermont considers whether to place a child in a specific home, it “shall emphasize the suitability of the family and the child for each other.” Child-placing agency regulations at 25.

99. In other words, placement decisions are based on an individualized evaluation of the family and the best interests of the specific child under consideration.

100. One of the ways the Department accomplishes this is by placing children according to certain hierarchies of preferred placements.

101. The Department prioritizes kinship foster parents when possible. Vt. Dep’t for Child. and Fams., Fam. Serv. Div., *A Guide for Foster & Kinship Foster Families in Vermont* (Foster Parent Guide) at 5, <https://perma.cc/76L2-4Q8N>.

102. If a kinship placement is not possible, the Department will turn to licensed caregivers like the Wuotis or the Gantts. *Id.*

103. When choosing among non-kinship foster homes, the Department will still seek to preserve family ties by placing sibling groups together or placing children with families who are close to the birth parents or other relatives. *Id.*

104. To make individualized placements, the Department seeks to recruit and retain a wide variety of diverse families so that it can place children according to each family's unique strengths, interests, or other characteristics.

105. For example, the Department seeks "to recruit, train, support, and retain foster families who are LGBTQ affirming and supporting" because "LGBTQ children ... will be placed in an LGBTQ affirming" home. Vt. Dep't for Child. and Fams., Fam. Servs. Div., *Family Services Policy Manual*, Policy 76 (Policy 76), <https://perma.cc/4CG9-DE68>; see also *infra* ¶¶ 138—147 [describing Policy 76's requirements].

106. According to the Department: "We might have a family that's willing to take a child but it might not be a good match. Thinking about how many families we actually need in order to say, 'Sarah just came into custody, let's explore these 10 families. This one's in her school district. This one is into soccer...' You know, all of the things that really make up a family[.]"¹¹

107. In other words, the Department does not blindly place children in the first available home that opens up.

108. Sometimes it can "take[] time to find the correct match."¹²

109. Foster parents also have a say in identifying a good match.

110. The Department provides prospective foster families with information about a child before placement so that they can determine whether the child is a good fit.

¹¹ Cooney, *supra* n.8.

¹² *Id.*

111. For example, before accepting a placement, the Department recommends that prospective foster families consider: “Could your family care for children who may come from different backgrounds, have a different religion, identify as LGBTQ, have a disability, etc?” Foster Parent Guide at 8.

112. Similarly, the Department tells families to reflect on whether there are “behaviors that would make you feel uncomfortable” or whether there is “a particular age group or special need you feel most able to handle[.]” *Id.*

113. When prospective foster parents are contacted with a potential match, the Department encourages them to ask questions and carefully “decide whether it’s a good match.” *Id.* at 9.

114. The Department encourages parents to ask about a child’s religion, ethnic, and cultural practices to determine if it is a good match. *Id.* at 10.

115. Caregivers can decline a placement for many reasons.

116. The Department reassures prospective foster parents that they “HAVE THE RIGHT TO SAY NO” and should “[not] feel pressured into situations that make [the foster parent] uncomfortable.” *Id.* at 10.

117. In fact, saying no is encouraged as “[t]he ability to say no is one of the most important skills you can have as a foster parent.” *Id.* at 10.

118. A parent may also reject a placement because of safety concerns, the potential impact on other children in the home, or their desire to take a child of a specific gender or age. *Id.* at 10.

119. On the one hand, one Department policy (Rule 200) forbids “any form of discrimination” but another policy (Rule 200.1) quickly clarifies that “applicants shall not be denied a license solely based on inability to care for children of a certain age or children with special needs.”

120. Parents may decline a placement based on protected characteristics like disability status without jeopardizing their license.

121. While “[a]ll foster parents are prohibited from engaging in any form of discrimination against a foster child based on race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability,” applicants “shall not be denied a license solely based on inability to care for children of a certain age or children with special needs.” Vt. Dep’t for Child. And Fams., Fam. Servs. Div., *Licensing Rules for Foster Homes in Vermont* at 8 (Licensing Rules), <https://perma.cc/VZ7U-ZCLD>.

122. Caregivers may also decline to take children based on sex.

123. Caregivers may decline to take children based on age.

124. Caregivers may decline to take children based on other characteristics as well and can set limits on the types of activities they are willing to engage in.

125. For example, caregivers need not agree to support religious or cultural beliefs and practices in a way that requires the caregivers to deny their own beliefs.

126. Rather, families must agree to “respect the religious beliefs and cultural heritage of foster children” and “not interfere with the reasonable practice of a foster child’s religious beliefs.” *Licensing Rules* at 14.

127. Child-placing agencies must also “respect the right of an applicant to refuse a placement without prejudice.” *Child-Placing Agency Regulations* at 19.

128. In short, the Department aims to match children with families that can—consistent with the child’s best interests—promote permanency in an environment that supports the child’s unique identity, cultural heritage, and religious practices.

129. Similarly, the United States Department of Health and Human Services recently published a final rule designed to “ensure LGBTQI+ children have

access to specially designated placements that are prepared to meet their unique needs and create a supportive environment.” *Designated Placement Requirements Under Titles IV-E and IV-B for LGBTQI+ Children*, 89 Fed. Reg. 34818, 34,819 (April 30, 2024).

Variances

130. The Department may grant an exemption from licensing requirements at its discretion. *See* Licensing Rules at 4; Policy 221 at 9.

131. The Department must approve a variance. *See* Vt. Dep’t for Childs. & Fams., Fam. Servs. Div., *Family Services Policy Manual*, Policy 233 (Policy 233) at 1, <https://perma.cc/D87E-2PHN>.

132. The Department encourages granting variances for non-safety-related issues for limited, child-specific kinship care situations. Examples include variances for sleeping arrangements, financial means, health, placements in excess of the home’s capacity, and minor background check concerns. Policy 221 at 9, 11.

133. The Department also grants variances for entire child-placing agencies.

134. A child-placing agency “shall comply with all applicable requirements unless a variance for specific requirements has been granted through a prior written agreement with the state licensing authority.” Child-Placing Agency Regulations at 8.

135. The Department states that, “[u]nder no circumstances will the state licensing authority grant a variance from rules 200, 201, or 315.” Licensing Rules at 4.

136. These regulations are part of the Department’s new “SOGIE Mandate” used to exclude loving parents like the Wuotis and the Gantts.

The Department's SOGIE Mandate

Policy 76

137. The Department enacted the most recent version of Policy 76—“Supporting and Affirming LGBTQ Children & Youth”—on February 27, 2020.

138. Policy 76 provides internal guidance for Department staff on placing children who express an LGBT identity, and training foster families on how to support the child's sexual orientation, gender identity, and gender expression (“SOGIE”).

139. The policy states the Department is committed to meeting children's “unique needs, regardless of whether these needs are related to their sexual orientation, gender identity or gender expression.” *Id.* at 1.

140. The policy emphasizes that “[n]o single approach, accommodation, or plan will apply in all circumstances” and staff “must determine the appropriate resources and supports for LGBTQ children and youth on a case-by-case basis, informed by the individual child's needs.” *Id.* at 4.

141. For example, the policy states that the Department will place children who “identify as transgender” in homes “consistent with their individualized needs and preferences (which may be based on their stated gender identity)” and “will be reassessed at least monthly.” *Id.* at 6.

142. The Department is also “committed to making ongoing efforts to recruit, train, support, and retain foster families who are LGBTQ affirming and supporting.” *Id.* at 6.

143. Under a section titled “Practice Guidance,” the policy suggests staff can provide “informational documents” and “educational materials” to parents who are not sufficiently “supportive.” *Id.* at 9.

144. The policy also says: “Parents, family members, and resource families should be encouraged to:

- “Support children’s identities even if it feels uncomfortable;”
- “Bring young people to LGBTQ organizations and events in the community;”
- “Support young people’s gender expression;”
- “Believe that youth can have a happy future as an LGBTQ adult.”

Id.

145. It also instructs that caregivers should use “appropriate pronouns, preferred name” to promote a child’s “Cognitive and Social-Emotional Competence.”

Id. at 10.

146. Sometime after 2018, the Department began requiring all applicants to abide by Policy 76’s terms, including its guidance on supporting a child’s SOGIE.

Rules 201, 301, and 315

147. In accordance with Policy 76, the Department began to reinterpret what its existing regulations require of foster parents.¹³

148. This includes Rule 201.2, which requires foster parents to exhibit “[k]nowledge of child and adolescent development and the needs of children.”

149. It also includes Rule 301, which requires foster parents to “meet the physical, emotional, developmental and educational needs of each foster child, in accordance with the child’s case plan.”

150. In 2022, the Department also proposed new regulations to further enforce its views on SOGIE issues, which became effective sometime in 2023.

151. This includes Rule 315, which requires foster parents to “support children in wearing hairstyles, clothing, and accessories affirming of the child’s racial, cultural, tribal, religious, or gender identity.”

¹³ These regulations are officially indexed in Lexis Nexis. See 13-162-007 Vt. Code R. §§ 3, 20, 30. They appear in different locations in West Law. See 12-3-501 Vt. Code R. §§ 3, 20, 30.

152. It also includes Rule 035, which states that “[u]nder no circumstances will the state licensing authority grant a variance from regulations 200, 201, or 315.”

153. Through these regulations, the Department incorporates Policy 76 to apply to all foster parents (combined, the “SOGIE Mandate” or “Mandate”).

154. According to the Department, to meet the “needs of *each* foster child” under Rule 301 (emphasized), *all* parents must demonstrate that they can support *any* hypothetical child’s SOGIE.

155. *All* foster families must show that they can abide by Policy 76’s guidance.

156. *All* foster families must show that they will support what are—in the Department’s eyes—a child’s “needs” (Rule 301) related to their gender identity or expression.

157. *All* foster families must show that they will unconditionally support and affirm a child’s desire to dress, cut their hair, or wear accessories to express their stated gender identity (Rule 315).

158. One way in which the Department enforces this policy is to ask all parents to rate from one to five how “supportive of an LGBTQ foster child” they perceive themselves to be.

159. When the Wuotis rated themselves as a “3,” for example (because they understood that this might include speech or actions that went against their faith), this prompted the Department to investigate whether they were sufficiently “supportive” under the new Mandate. *Infra* ¶¶ 188–97.

160. Then, on September 8, 2023, the Department sent an email to all foster families entitled “Important Foster/Kinship Regulation Changes- Please Read.”
Ex. D.

161. The email states that the “Eligibility for licensure is dependent on foster parents and applicants being able to support youth who identify as lesbian, gay, bisexual, transgender, questioning, or another diverse identity (LGBTQI+) even if the foster parents hold divergent personal opinions or beliefs.” Ex. D.

162. Whereas Policy 76 focused on matching children who claim LGBTQ identities with “affirming” families, the new Mandate *requires* that “all children and youth will reside in a home with caregivers who are committed to fully embracing and holistically affirming and supporting them regardless of their sexual orientation or gender identity.”

163. The Mandate even applies to kinship placements.

164. The email concludes with the bolded warning that “[t]his topic will be explored as part of the standard licensing and renewal process.”

165. So under the Mandate, every foster family must “fully embrac[e] and holistically affirm[]” a child’s ideas about their sexual orientation and gender identity to receive a foster-care license regardless of the foster family’s fit for a particular child under other criteria.

The Department denies the Wuotis’ license because of their religious beliefs.

The Wuotis’ religious beliefs

166. As Christians, Brian and Katy believe the Bible is the ultimate arbiter of human nature and identity.

167. Brian and Katy take to heart the Bible’s teachings that God created humans as male and female and that a person’s sex is binary and fixed by God at conception.

168. Brian and Katy believe that God creates all humans in His image, male and female, and all people deserve respect and love.

169. Brian and Katy believe that persons should not suggest by word or deed that they should be, act, or identify as a different sex.

170. Katy previously struggled with gender dysphoria as a child, which fills her with compassion for children going through the same thing.

171. Working in education, Brian has taught and mentored many students of different sexual orientations and gender identities, treating them the same as any other student, and often acting as a confidant for them because they felt comfortable and supported in his classroom.

172. The Wuotis always approach these conversations from a spirit of love, compassion, and acceptance of differing beliefs. They have never forced their religious beliefs or even a discussion of their beliefs on any of their children.

173. Due to their Christian beliefs, Brian and Katy cannot say or do anything that contradicts their faith.

174. For example, the Wuotis cannot speak or in any way suggest that someone can be a different sex, no sex, or that a person should act or identify contrary to their sex.

175. The Wuotis cannot attend, associate with, or participate in events like pride parades because they convey a message about human sexuality that goes against their faith.

176. Things came to a head when they revealed these religious beliefs to the Department.

The denial

177. During the six years the Wuotis were licensed foster-care providers, the Department never raised any concern over the Wuotis' ability to care for children.

178. They renewed their license in 2018 without any issues.

179. This occurred before the Department passed its new regulations.

180. They sought to renew their license again when it was set to expire on May 31, 2021.

181. At that time the Wuotis were, and still remain, well qualified to renew their foster-care license. Nothing substantial had changed in the Wuotis' personal circumstances, apart from welcoming their daughter, since the last time they renewed their license in 2018.

182. But when they sought to renew their license, the Department excluded them because of their religious beliefs.

183. The Wuotis submitted their license renewal application in May 2021, but due to a backlog in the Department, it was not delivered to Department employee Christopher Murphy to review until August 5, 2021.

184. By that time, Katy had just given birth to their daughter, so they requested to delay the renewal process so she could recover and they could adjust to life with five children. The Department had no concerns with this delay.

185. Murphy then reached out to the local district to request feedback on the Wuotis and received positive feedback.

186. One Department supervisor said the Wuotis were "AMAZING" and she "could not hand pick a more wonderful foster family."

187. Murphy then conducted a home visit on February 28, 2022, and had no concerns with the Wuotis' home.

188. Following the visit, the Wuotis were asked to complete a form asking them to rate on a scale from one to five whether they felt equipped to care for children with certain characteristics.

189. One of the statements read: "My family would be accepting and supportive of an LGBTQ foster child."

190. The Wuotis chose a “three.” They felt they were a five in terms of loving and supporting any child regardless of SOGIE, but did not write “five” for fear that the Department would interpret it to mean that they would support anything a child said or believed about their sexual or gender identity.

191. The Wuotis emailed the grid back to Murphy after their home visit on February 28th.

192. Later that day, Murphy responded via email, asking why the Wuotis put down a three and “what might be needed to increase that answer to a 4 or 5.”

193. Katy responded that while she and her husband considered themselves a five, they realized that some people might mischaracterize their religious views as not sufficiently accepting.

194. Katy went on to share her personal experience with same-sex attraction and gender dysphoria, and how she was thankful her family did not treat her like the opposite sex because she eventually grew out of her discomfort.

195. Katy explained they would never force their faith on any foster child but that their faith was an integral part of their family.

196. When Murphy responded to the Wuotis email on March 3rd, he said, “I have no doubt that you would be welcoming to a child in your home; but if you are unable to encourage and support children in their sexual and gender identity, that essentially makes you ineligible for renewal of your foster parent license.”

197. On March 30, 2022, Murphy once again emailed the Wuotis to inform them that their “foster care license is being reviewed for possible revocation.”

198. On April 20, 2022, the Wuotis received a “Notice of Decision” officially recommending their license for revocation for failing to “Satisfy the requirements of the Licensing Regulations for Foster Homes in Vermont.”

199. The notice stated they failed to comply with Section 201.2 “Knowledge of child development and the needs of children,” and Section 301, which requires foster parents to “meet the physical, emotional, developmental and educational needs of each foster child.”

200. The letter’s explanation for the denial only addressed one thing: the Department’s belief that the Wuotis were ineligible based on their statements explaining their religious beliefs about the human body and sexual ethics.

201. The notice also contained false statements about the Wuotis’ beliefs that painted the Wuotis in a negative light.

202. On May 3, 2022, the Wuotis filed a notice of appeal with the Human Services Board (“Board”).

203. A hearing was held on December 6, 2022.

204. During that hearing, the Wuotis raised two issues: 1) the letter’s inaccurate description of their religious beliefs, and 2) that the Department had misapplied its regulations (which do not say anything about sexual and gender identities) to exclude the Wuotis.

205. On April 7, 2023, the revocation was upheld.

206. The Board concluded that the Department had reasonably interpreted its regulations to exclude the Wuotis, notwithstanding the fact that the Wuotis were “clearly warm and caring parents who have provided a wonderful home for their family.”

207. According to the Board, the Wuotis were “unable to comply with the Licensing Regulations” due to their inability “to provide acceptance, support and encouragement” about “the children’s feelings and experiences in coming to realizations about their identities and gender expression.”

208. The ruling also stated that the Wuotis could re-apply “in the future should they come to a different understanding of their role as foster care parents and their obligations under the Vermont Foster Care License Regulations.”

209. The Wuotis are well-qualified to serve as foster parents again. The only obstacle is their religious objections to the Department’s SOGIE Mandate.

The Department denies the Gantts’ license because of their religious beliefs.

The Gantts’ religious beliefs

210. Like the Wuotis, Bryan and Rebecca live their life according to the Bible’s teachings. They believe that God created humans as male and female and that a person’s sex is binary and fixed by God at conception.

211. Bryan and Rebecca believe that God creates all people in His image, male and female. Because of this conviction, they believe all persons should endeavor to identify and live consistent with their God-given biological sex.

212. Bryan and Rebecca believe that persons should not attempt to change their sex nor suggest by word or act that gender identity can diverge from a person’s biological sex.

213. Due to their Christian beliefs, Bryan and Rebecca cannot agree to say or do anything to affirm or suggest that someone can be a different sex, no sex, or that a person should act or identify contrary to their sex.

214. For example, the Gantts cannot use female pronouns for a boy or male pronouns for a girl. The Gantts must use pronouns based on someone’s biology, not gender identity.

215. The Gantts cannot attend, associate with, or participate in events like pride parades because they convey a message about human sexuality that goes against their faith.

216. The Gantts always approach these conversations from a spirit of love, compassion, and acceptance of differing beliefs. They have never forced their religious beliefs or even a discussion of their beliefs on any of their children.

The denial

217. Until 2023, the Department never raised any concerns about the Gantts' capacity to care for foster children.

218. But similar to the Wuotis, the new Mandate placed the Gantts in an impossible position of choosing between fostering a young baby in need or staying true to their faith.

219. The Gantts' license lapsed in 2022.

220. The Department was not concerned that their license lapsed for three months.

221. Their licensing agent said, "They really love you at the local office."

222. During the Gantts' license renewal in 2022, they were given the above-referenced form (*supra* ¶ 188) and asked to rate on a scale of one to five how "accepting and supportive" they would be of an LGBTQ child placed in their home.

223. Rebecca answered a five, and Bryan answered a four because they will unconditionally love and accept any child placed with them. They did not interpret the question to mean they must "affirm" ideas or beliefs with which they disagreed.

224. Only months after their third adoption, the Department contacted the Gantts again in September 2023.

225. The Department told Rebecca that they needed a family to foster a baby boy who was about to be born to a homeless woman suffering from drug addiction, and they understood that the baby would likely be up for adoption in the future.

226. The Department wanted a home set up before the child was born, and their resource coordinator said, “The whole department agrees you’re the perfect home and first choice” for this baby.

227. The Gantts asked for a few days to pray about it, as they knew taking this baby in would likely lead them to adopt him. After praying, the Gantts felt called to tell the Department “yes.”

228. Before meeting with their resource coordinator on September 8, 2023, the Gantts received the September 8 email (*supra* ¶ 160) from the Department informing them that their licensure was dependent on affirming a hypothetical child’s gender identity.

229. When they spoke with their resource coordinator a few days later, Bryan started out the conversation by saying, “Our answer is yes. We will take in this baby.”

230. Next, Bryan asked their resource coordinator about the September 8 email, explaining that he and his wife would love, support, and accept any child in their home, even if the child later identified as LGBTQ. He also explained that they could not compromise their biblical beliefs.

231. This answer was not acceptable to the Department.

232. The Gantts spoke with their resource coordinator for an hour and a half.

233. The resource coordinator explained that this new policy was causing trouble for the Department as they couldn’t grant a license to people with beliefs similar to the Gantts.

234. Rebecca asked if they took the baby in now, would the department still revoke their license and remove the baby when they tried to renew in 2024. The

caseworker replied that the Department would pull the child from their home as soon as they learned the Gantts held these religious beliefs.

235. The Gantts were deeply upset. They had begun planning for this new child to join their family, and now they were told they would likely never be permitted to foster or adopt again. They are also concerned that they will soon be beyond the age where they can consider fostering or adopting a baby.

236. Following this meeting, Bryan emailed their resource coordinator to ask whether they still had an active foster license.

237. Murphy then called Bryan.

238. Murphy asked Bryan a series of questions including whether the Gantts would take a child to a pride parade and whether the Gantts would use a child's chosen name or stated pronouns.

239. Bryan answered these questions candidly. While they would love and support any child, they could not use pronouns, attend pride parades, or say or do anything to encourage a child to reject their biological sex and God-given identity.

240. When Murphy asked Bryan about gender-specific haircuts, Bryan responded that he was unsure how to answer. Foster parents are not permitted to change a child's hair without the biological parent's permission.

241. Murphy then told Bryan that he would begin the process of revoking their license.

242. Rebecca, who was not on the phone call, followed up via email to clarify why their license was being revoked, "especially since we were planning to adopt again."

243. Rebecca reaffirmed that they "would love any child we had the privilege of caring for" but said they could not use male pronouns for a girl "because we believe God created two distinct sexes and cannot lie to a child about their God

given identity.” Rebecca ended her email by asking, “I just wanted to clarify that this is still disqualifying?”

244. Murphy replied that he would “still be moving forward in preparing a revocation letter” due to “your and Bryan’s stance regarding the requirement for affirming care” and the fact that they could not “envision any education or intervention that may help to shift [their] perspectives.”

245. On February 6, 2024, the Gantts received a Notice of Decision letter from the Department recommending revocation of their license.

246. The letter stated their license was being revoked for the Gantts’ failure to satisfy Rules 301 and 315.

247. The Department declared that the Gantts violated Rule 301, which requires foster parents to “meet the physical, emotional, developmental and education needs of each foster child,” because they cannot “affirm behaviors, beliefs, or ideas that go against” their religious views.

248. The Department cited as examples Bryan and Rebecca’s statements that they could not use inaccurate pronouns or take a child to a “gay pride event.”

249. The Department also indicated that the Gantts failed to satisfy Rule 315, which requires foster parents to “support children in wearing hairstyles, clothing, and accessories affirming of the child’s . . . gender identity.”

250. The letter goes on to reference Policy 76 which states that “exploring one’s sexual orientation, gender identity, and gender expression (SOGIE) is a normal part of human identity development.”

251. The Department goes on to inform the Gantts, “[w]hile you each can meet the needs of some foster children, rule 301 requires licensees to meet the ‘needs of *each* foster child.’ Your statements to DCF staff demonstrate you are

unable to meet the ‘emotional and developmental’ needs of LGBTQ+ youth, as required by licensing rule 301.”

252. The Gantts are well-qualified to serve as foster parents again. The only obstacle is their religious objections to the Department’s SOGIE Mandate.

The Department’s SOGIE Mandate excludes the Wuotis and Gantts

253. The Department’s Mandate requires the Wuotis and the Gantts to say and do several things that violate their faith.

254. *First*, the Wuotis and the Gantts want to stay true to their religious beliefs in thought and action.

255. But the Mandate dictates what the Wuotis and the Gantts must believe about the human body and sexual ethics.

256. The Mandate requires families to “[s]upport children’s identities even if it feels uncomfortable.” Policy 76 at 9.

257. The Department states families like the Wuotis and Gantts should “support youth who identify as lesbian, gay, bisexual, transgender, questioning, or another diverse identity (LGBTQI+) even if the foster parents hold divergent personal opinions or beliefs.” Ex. D.

258. *Second*, the Wuotis and the Gantts want to refrain from saying anything they do not believe and that violates their religious beliefs.

259. But the Mandate requires the Wuotis and the Gantts to speak contrary to their faith and their beliefs about the human body.

260. For example, caregivers must agree to use inaccurate pronouns. Policy 76 at 3, 10.

261. Caregivers must agree to call a male by feminine pronouns, a female by masculine pronouns, or use non-binary “they/them” or “ze/zir” pronouns.

262. Caregivers must agree to support a child's desire to express, identify as, or live out a gender identity different from the child's biological sex using their words and speech.

263. Speaking any of these words would cause the Wuotis and the Gantts to express a message they do not believe in and that contradicts their religious beliefs.

264. *Third*, the Wuotis and the Gantts want to peacefully and politely speak their religious beliefs.

265. But the Mandate silences applicants like the Wuotis and the Gantts from speaking or sharing their religious beliefs about the human body.

266. Caregivers must agree to refrain from speaking or expressing the view that sex is immutable and cannot be changed.

267. Caregivers must agree to refrain from speaking or expressing other views about gender identity, including religiously informed views that people should seek to live and identify consistently with their sex.

268. But the Wuotis and the Gantts want to be free to express these views.

269. For example, the Wuotis and the Gantts express these and other views in their homes and with their children.

270. They want to do so in non-coercive ways, such as sharing their religious views that God created humans male and female over the dinner table if their children are willing to hear them.

271. And they are religiously motivated to share their beliefs about our God-given human nature with their future foster or adopted children—so long as their children are willing to listen.

272. *Fourth*, the Wuotis and the Gantts do not want to attend or associate with expressive events that violate their beliefs.

273. But the Mandate requires the Wuotis and the Gantts to attend events they don't believe in, like gay-pride parades, in violation of their religious beliefs.

274. The Department requires caregivers to facilitate access to other "LGBTQ organizations and events in the community." Policy 76 at 9.

275. Attending these types of events requires the Wuotis and the Gantts to express and associate with views that are contrary to their religious beliefs.

The Wuotis' and the Gantts' desire to help children.

276. The Wuotis and the Gantts are eager for their home to continue to be a refuge for children in need.

277. The Wuotis want to serve their community and children in need and want to be prepared to step in should a member of their congregation or community develop a need for a respite or foster-care provider for their child.

278. The Wuotis stand ready and able to re-apply for their licenses and desire to do so as soon as possible.

279. But the Department's Mandate acts as a categorical bar, preventing the Wuotis from obtaining a license.

280. The Board affirmed that it would be futile for the Wuotis to reapply unless they "come to a different understanding" of their faith and are willing to disregard their faith's teachings about human sexuality.

281. Since their last application, the Department has further clarified that it applies its Mandate, including Policy 76, to all licensing applicants without exception. *Supra* ¶¶ 150–57.

282. Since their last application, the Department has also adopted new regulations, which the Department cited to revoke the Gantts' license.

283. Because of the Mandate, the Wuotis cannot obtain a foster-care license.

284. The Gantts also desire to continue serving as foster parents and are open to adopting another child.

285. The Gantts stand ready and able to re-apply for their licenses and desire to do so as soon as possible.

286. But the Department's Mandate acts as a categorical bar, preventing the Gantts from obtaining a license.

287. Nothing has materially changed in either family's personal circumstances (related to their ability to meet the Department's minimum qualifications) since their last renewals—except for the Department's Mandate.

288. The Department refuses to license the Wuotis and Gantts because they cannot speak or act against their faith according to the Mandate.

289. For this reason, it would be futile for either family to reapply.

290. The Wuotis and the Gantts filed this lawsuit for only one reason: because they seek to help children in need, whether through foster care or adoption.

LEGAL ALLEGATIONS

Claim I

First Amendment Free Speech and Free Association

291. Plaintiffs incorporate by reference paragraphs 1 through 290.

292. The First Amendment forbids any law “abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble.” U.S. Const. amend. I.

293. As applied, the Department’s Mandate requires applicants to agree to speak certain words, like inaccurate pronouns, and to engage in certain expressive activities, like pride parades, that express the Department’s preferred views on human sexuality, as a condition for accessing child-welfare services.

294. As applied, the Department’s Mandate forbids applicants from expressing certain views, like the Plaintiffs’ religious views on human sexuality, and engaging in certain expressive activities, like attending church, as a condition for accessing child-welfare services.

295. Additionally, religious foster children have the right to voluntarily receive information related to their faith from foster parents, which is also a form of protected speech, assembly, and expressive association.

296. Because the Department conditions access to child-welfare services on an applicant’s willingness to speak certain words and engage in certain expressive activities, the Department’s Mandate compels speech.

297. Because the Mandate compels applicants to speak and express the Department’s preferred views on human sexuality, while prohibiting speech expressing other views, the Mandate regulates speech based on content and viewpoint.

298. By conditioning the Gantts’ and the Wuotis’ ability to receive a foster-care license on their willingness to give up their First Amendment rights, the

SOGIE Mandate imposes an unconstitutional condition on them in violation of their First Amendment rights.

299. The Department's discriminatory SOGIE Mandate does not serve any valid or compelling interest in a narrowly tailored way as applied to the Wuotis and the Gantts, and there are many less restrictive alternatives to achieving the State's legitimate goals that do not infringe on free-speech and free-association rights.

300. The Department enforced the new Mandate against the Wuotis and the Gantts, making it clear that they can only renew their license if they surrender their constitutionally protected rights to freedom of speech and association.

301. As applied, the Department's SOGIE Mandate violates the Free Speech and Freedom of Assembly Clauses.

Claim II
First Amendment Free Exercise of Religion

302. Plaintiffs incorporate by reference paragraphs 1 through 290.

303. The First Amendment forbids any law prohibiting or penalizing the free exercise of religion. U.S. Const. amend. I.

304. The Wuotis and the Gantts have certain sincerely held religious beliefs about the human body and human sexuality, and they are also religiously motivated to provide foster care and adoption.

305. The Department's SOGIE Mandate conditions Plaintiffs' ability to obtain a foster-care license on their willingness to speak and act contrary to these religious beliefs.

306. This substantially burdens Plaintiffs' religious exercise by forcing them to choose between the opportunity to become foster and adoptive parents and staying true to their religious convictions.

307. By conditioning the Gantts' and the Wuotis' ability to receive a foster-care license on their willingness to give up their First Amendment rights, the

Department's Mandate imposes an unconstitutional condition on them in violation of their First Amendment rights.

308. The Department's Mandate is not neutral nor generally applicable because it imposes special disabilities based on religious beliefs, categorically excludes persons from child welfare services based on religious beliefs, prefers certain religious and secular beliefs over the Plaintiffs' religious beliefs, and provides for categorical and individualized exemptions without extending an exemption to religious persons like the Wuotis and the Gantts.

309. The Department's Mandate is not neutral nor generally applicable because one policy (Policy 76) does not by its terms apply to prospective foster parents, yet the Department applies it to exclude religious families with disfavored views anyway, demonstrating the Department's hostility to these religious beliefs.

310. Because the Department's Mandate compels the Wuotis and the Gantts to violate their faith and because the Department refuses to extend an exemption to either family as religious objectors, the Mandate is also inconsistent with the history and tradition of the Free Exercise Clause.

311. Because the Department's Mandate compels the Wuotis and the Gantts to speak and to engage in expressive activities that violate their religious beliefs, it also burdens free-exercise rights in conjunction with free-speech and free-association rights.

312. The Department's discriminatory SOGIE Mandate does not serve any valid or compelling interest in a narrowly tailored way as applied to the Wuotis' and the Gantts, and there are many less restrictive alternatives to achieving the State's legitimate goals that do not infringe on free-exercise rights.

313. As applied, the Department's Mandate violates the Free Exercise Clause.

Claim III
Fourteenth Amendment Due Process Clause

314. Plaintiffs incorporate by reference paragraphs 1 through 290.

315. The Fourteenth Amendment's Due Process Clause prohibits States from enacting vague laws that fail to provide fair notice of what is prohibited, or that are so standardless that they authorize or encourage discriminatory enforcement.

316. The Department's SOGIE Mandate is unconstitutionally vague as applied to Plaintiffs because they fail to define relevant terms, fail to provide Plaintiffs with fair notice of what is prohibited, and encourage discriminatory enforcement against religious viewpoints.

317. In the Wuotis' revocation letter, the Department cited Rules 201.2 and 301. In the Gantts' revocation letter, the Department cited Rules 301 and 315, along with Policy 76.

318. Rule 201.2 is unconstitutionally vague as applied to the Wuotis as it fails to define how licensees must exhibit "knowledge of child and adolescent development and the needs of children."

319. Rule 301 is unconstitutionally vague as applied to the Wuotis and the Gantts as it fails to define how foster parents "shall meet the physical, emotional, developmental and educational needs of each foster child."

320. Policy 76 is unconstitutionally vague as applied to the Gantts as it does not facially apply to foster families.

321. None of the rules being used to revoke the licenses of religious foster parents mention gender identity.

322. Yet, the Department is reading vague language into Rules 201.2 and 301 to incorporate Policy 76 against foster families.

323. Therefore, the SOGIE Mandate violates the Due Process Clause of the Fourteenth Amendment as applied to Plaintiffs.

Claim IV
Fourteenth Amendment Equal Protection

324. Plaintiffs incorporate by reference paragraphs 1 through 290.

325. The Fourteenth Amendment guarantees “the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

326. The Department’s SOGIE Mandate categorically excludes applicants with religious beliefs the Department disfavors.

327. By categorically excluding the Wuotis and the Gantts from child welfare services because of their religious beliefs, the Mandate invidiously discriminates based on religion and treats the Wuotis and the Gantts worse than similarly situated persons who do not share their religious beliefs.

328. Accordingly, the Mandate violates the Equal Protection Clause.

PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court enter judgment against Defendants and provide Plaintiffs with the following relief:

- a. A declaration that the Department’s SOGIE Mandate (encompassing the Department’s Policy 76, Rule 201.2, Rule 301, and Rule 315) violated and continues to violate Plaintiffs’ constitutionally protected rights to free speech, free association, religious exercise, due process, and equal protection of the law;
- b. A preliminary and permanent injunction to stop Defendants, and any person acting in concert with them, from enforcing the Department’s Mandate to deny Plaintiffs and other similarly situated persons a license to foster or to adopt based on constitutionally protected rights

- to free speech, free association, religious exercise, due process, and equal protection of the law;
- c. That this Court award Plaintiffs' costs and expenses in this action, including reasonable attorney fees in accordance with 42 U.S.C. § 1988;
 - d. That this Court adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter here in controversy so that these declarations shall have the force and effect of a final judgment;
 - e. That this Court retain jurisdiction of this matter for the purpose of enforcing its orders;
 - f. That this Court issue the requested injunctive relief without a condition of bond or other security required of Plaintiffs; and
 - g. That this Court grant any other relief that it deems equitable and just in the circumstances.

Respectfully submitted this 3rd day of June, 2024.

/s/ Gretchen M. Wade

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