No. 25-678

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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

Plaintiffs-Appellants

v.

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.

BRIEF OF PROFESSORS MARK REGNERUS, LOREN MARKS, CATHERINE PAKALUK, AND JOSEPH PRICE AS AMICI CURIAE IN SUPPORT OF PLAINTIFFS-APPELLANT AND REVERSAL

Denis A. Kitchen
DENIS A. KITCHEN, P.C.
8899 Main Street
Williamsville, NY 14221
716-631-5661
denis@kitchenlaw.com

Counsel for Amici Curiae

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Rules

Other Authorities

INTEREST OF AMICI CURIAE[1]

Amici are highly-esteemed social-science scholars who have researched and written extensively about family and human sexuality, as well as parental and household distinctions and their association with developmental outcomes in children. Their expertise in these fields will assist the Court's consideration of the issues presented by this case. *Amici* include the following scholars:

- Mark D. Regnerus (Ph.D., Sociology, University of North Carolina) is a Professor of Sociology at the University of Texas at Austin.
- Loren D. Marks (Ph.D., Family Studies, University of Delaware) is a Professor at the School of Family Life, College of Family, Home, and Social Sciences, at Brigham Young University.
- Catherine R. Pakaluk (Ph.D., Economics, Harvard University) is an Associate Professor of Social Research and Economic Thought at the Busch School of Business at the Catholic University of America.
- Joseph Price (Ph.D., Economics, Cornell University) is a Professor of Economics at Brigham Young University.

[1] *Amici* state that no counsel for a party authored this brief in whole or in part and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

SUMMARY OF THE ARGUMENT

The Vermont Department for Children and Families ("VDCF" or the "State") is enforcing an overreaching eligibility policy for foster care licensure that—in the name of reducing the potential risk of children feeling rejected over their potential sexual or gender self-identity—demands that many Christian and other religious parents change or suppress their longstanding reasonable belief systems in service to a new norm.[2] The State derives its claims of risk from dated and empirically-challenged research, rooted in biased samples and measures. Policies deserve better empirical foundations than that.

As a result of this ill-founded policy, Christian parents—who have long exhibited elevated interest in the adoption of children—are now forced to choose between their religious freedom and their laudable desire to open their households to children in need of loving homes. This choice is as gut-wrenching as it is unconstitutional,[3] and it rests on faulty social science that *Amici* here repudiate.

[2] Licensing Rules for Foster Homes in Vermont (LRFHV) reasonably require applicants to have a home visit to certify "the safety and adequacy of the home for the care of children, the personal characteristics and social relationships of the foster parent(s)," and so forth. (LRFHV, 010), https://outside.vermont.gov/dept/DCF/Shared%20Documents/FSD/Rules/Licensing-Rules-Foster-Care.pdf.

[3] *Brown v. Entertainment Merchants Assn.*, 564 U.S. 786, (2011).

ARGUMENT

I. The VDCF Is Overreaching By Enforcing Rules About Cultural Norms That Have No Empirical Basis In Social Science Research.

The lower court denied Plaintiffs' request for a preliminary injunction regarding the LGBTQ Policy that resulted in the VDCF revoking their foster care licenses. This is because while the Wuotis and Gantts insist that they will love and accept any child placed with them—a fact which seems congruent with both couples' years of experience serving the children of Vermont as foster parents and adopting five of those same children between—they maintain that they would not be able to support demands the State now makes that they respond in particular ways to possible LGBTQ self-identity claims that might be made at some point by a child placed with them. Thus, the State ruled that they are no longer fit for placement certification because of *possible* future harm produced by *potential* future conflict should a child placed with them self-identify as LGBTQ and feel rejected as a result. After years of serving the needs of children, the Wuotis were ruled to be out of compliance "with Section 201.2, which required the Wuotis to demonstrate "[k]knowledge of child development and the needs of children."[4] Similarly, Mr. Gantt stated that he could "unconditionally love and support any child in my care," but confirmed that he could not "in good conscious[sic] affirm behaviors, beliefs,

[4] Defs.' Mem. Opp'n Prelim. Inj. [16], ECF No. 26.

or ideas that go against my religious convictions (like using any identified pronoun a child wants us to)."[5] The State points out how the plaintiffs' religious beliefs were anticipated to be in conflict with its policy on requiring applicants to "commit to being supportive and affirming of an individual child in their care (for example, by respecting the child's wishes about the use of pronouns, allowing the child to attend events and join supportive organizations supportive of LGBTQ issues, allowing a child to dress and groom in a manner consistent with their identity, etc.)."[6]

At the same time, the State is entirely unreflective about their own guidelines, which are themselves the product of unempirical claims about such things as the power of "preferred pronouns," the emotional states somehow fostered by seeing flags in various color schemes, and the endorsement of the purported ability to change one's dimorphic sex via invasive medical treatments in the pursuit of calming gender dysphoria.[7] Rather than make an empirical case, the State repeats borrowed notions that the performance of particular acts is what affirms, and hence soothes, a child's (paramount) identity concerns rather than love, attention, and

[5] *Id* at 17.
[6] *Id* at 10.
[7] *Id* at 18.

embeddedness within the life of a family.[8] Until perhaps a decade ago (or less), talk of personal pronouns was largely unheard of. How can it so quickly become essential? Only by an ideological move rather than studied practice.

But both the State and the District Court fail to acknowledge that capable adoptive parents vary widely in how exactly they have supported their children. Parental support has long been understood to be the ample provision of material support, physical security, love, and a commitment to the provision of education and ample socialization. Yet now the State purports to add to these fundamentals an ideological component in which parents must abide by what the child asserts.

It is widely acknowledged that adopted children tend to have more difficulties than children living with their biological families. Even among children adopted as infants, mental health and behavioral disorders can manifest at double the rates of nonadopted children.[9] From depression, anxiety, and psychiatric needs[10] to

[8] *Id* at 34; *Bates*, 2023 U.S. Dist. LEXIS 203533 at *21. See also *58–73(finding that the State had a compelling interest in requiring parents to "affirm" a child's self-selected gender identity, based primarily on social science cited by the State).
[9] Keyes, M. A., Sharma, A., Elkins, I. J., Iacono, W. G., & McGue, M. (2008). The mental health of US adolescents adopted in infancy. *Archives of pediatrics & adolescent medicine*, *162*(5), 419-425.
[10] Melero, S., & Sánchez-Sandoval, Y. (2017). Mental health and psychological adjustment in adults who were adopted during their childhood: A systematic review. *Children and Youth Services Review, 77,* 188-196. https://doi.org/10.1016/j.childyouth.2017.05.006.

behavioral disorders and substance abuse disorders,[11] adoptees tend to experience greater challenges and risks than the non-adopted—even a higher risk of suicidality exists among adoptees.[12] While children adopted out of foster care commonly experience socioeconomic benefits and greater parental investment in the provision of needs (*e.g.*, medical, educational, etc.), their experience of increased health and behavioral difficulties are often not attenuated by their adoption.[13]

Given these longstanding associations, how could the State ever isolate causal effects on (suboptimal) child outcomes from the absence of a narrow range of parental affirmations? It cannot. Put differently, testing any hypothesis requires maximal controlled variables and minimal changed variables so one can determine what change caused what result, and the State here cannot determine causation because there are too many changing variables for which it must account.

---

[11] Sánchez-Sandoval, Y., & Melero, S. (2019). Psychological adjustment in Spanish young adult domestic adoptees: Mental health and licit substance consumption. *American Journal of Orthopsychiatry, 89*(6), 640-653. https://doi.org/10.1037/ort0000324.

[12] Keyes, M. A., Malone, S. M., Sharma, A., Iacono, W. G., & McGue, M. (2013). Risk of suicide attempt in adopted and nonadopted offspring. *Pediatrics*, *132*(4), 639–646. https://doi.org/10.1542/peds.2012-3251.

[13] Zill, N., & Bramlett, M. D. (2014). Health and well-being of children adopted from foster care. *Children and Youth Services Review*, *40*, 29-40.

II. The State Uniquely Privileges Sexual And Gender Identities, Even While Claiming That Authority To Enforce Parenting Norms Across An Entire Spectrum Of Concerns.

The litany of identities, statuses, and expressions listed in the District Court's—and the State's regulation—decision no doubt result in all manner of lived combinations. The State contends that "[t]he LGBTQ policy requires only that Plaintiffs not reject or diminish any aspect of a child's identity, whether that be racial, cultural, sexual, or gender because of the substantial harm that such actions have on children and the state's obligation to ensure that children are placed in safe and supportive homes." [14] And yet the State is suggesting sexual orientation, gender identity, and gender expression rank above the spiritual beliefs and cultural identities of the child. This case is not about race, ethnicity, national origin, immigration status, or cultural status. Does the DCF offer guidance about how to support other identities noted in such a way as to suggest that if parents fail to comply, their child could become anxious, depressed, and even suicidal?

At bottom, there is little consistent empirical evidence about the costs or benefits for children when adoptive parents "respect, accept, and support" a child's identities—which themselves vary in their age-graded uptake. Therefore, it is straightforward to conclude that this is State overreach—not into how parents love,

[14] Defs.' Mem. Opp'n Prelim. Inj. [25], ECF No. 26.

care for, protect, and provide for their foster and adopted children—but into the details of encouraging particular attitudes and behaviors believed to be consonant with particular identities, whether native to the child upon adoption or developing at some later point. Many, if not most, of us were not allowed to "dress, behave, or express"[15] ourselves exactly as we pleased, and it was not considered poor parenting. This level of detail falls outside of the State's proper purview.

As recently as 2012, the U.S. Department of Health and Human Services, Administration on Children, Youth and Families ("ACYF") endorsed a framework that "identifie[d] four basic domains of well being: (a) cognitive functioning, (b) physical health and development, (c) behavioral/emotional functioning, and (d) social functioning. "[16] The focus was both on factors "internal to the child" but also their maturing response to the "ecological environment that encompasses" him.[17]

---

[15] Defs.' Mem. Opp'n Prelim. Inj. [6], ECF No. 26.

[16] Informational Memorandum from U.S. Department of Health and Human Services, Administration on Children, Youth and Families, ACYF-CB-IM-12-04, at p. 2 (Apr. 4, 2024), available at https://www.acf.hhs.gov/sites/default/files/documents/cb/im1204.pdf (hereafter, "ACYF Memo"); Lou, C., Anthony, E. K., Stone, S., Vu, C. M., & Austin, M. J. (2008). Assessing child and youth well-being: Implications for child welfare practice. *Evidence for Child Welfare Practice*, 91-133.

[17] Taussig, H. N., & Raviv, T. (2013). Foster care and child well-being: A promise whose time has come. In *Handbook of child maltreatment* (pp. 393-410). Dordrecht: Springer Netherlands at 396.

Newly proposed (Federal) foster care rules are narrower than the State of Vermont's because the former does not require all foster homes to be judged as an LGBTQ Policy compliant placement, thus allowing for some religious exemptions.[18] However, homes for LGBTQ-identifying children must be deemed "safe" and comply with Policy 76, which states "[e]xploring one's sexual orientation, gender identity, and gender expression (SOGIE) is a normal part of human identity development," and prohibits "discrimination and bias based on a child or youth's real or perceived sexual orientation, gender identity, or gender expression."[19]

Although the ACYF's previous framework was eminently reasonable, the new rules reach beyond this to demanding *beliefs* that affirm a child's sexual orientation or gender identity. This will invariably exclude many capable family providers.

---

[18] *See Safe and Appropriate Foster Care Placement Requirements for Titles IV-E and IV-B*, 88 Fed. Reg. 66752 (proposed Sep. 28, 2023) (to be codified at 45 CFR 1355), available at https://www.federalregister.gov/documents/2023/09/28/2023-21274/safe-and-appropriate-foster-care-placement-requirements-for-titles-iv-e-and-iv-b#:~:text=For%20a%20placement%20to%20be,will%20establish%20an%20environment%20free.

[19] Defs.' Mem. Opp'n Prelim. Inj. [6], ECF No. 26. *See* Vermont Department of Children and Families Family Services Policy Manual, Policy 76, Supporting and Affirming LGBTQ Children & Youth, (2/27/2020), https://dcf.vermont.gov/fsd/resources/lgbtq.

Today the state actors—from federal to local—appear increasingly invested in demanding a far more extensive set of household norms, rules, and regulations of parents, even while failing to document that such new norms demonstrably improve the lives of children. How does censuring Plaintiffs' behavior—by denying their applications to renew their foster care licenses—not signal a creeping willingness on the part of the State to revoke "non-affirming" biological parents of their custodial rights to their own LGBTQ+ child in their home? *Amici* do not discern how the one is unconnected to the other.

Fundamentally, this case is about demanding of would-be foster and adoptive parents evidence of ideological behavior, when what is needed is their sacrificial love—something no state can provide a child. A family is itself a small society. And families together comprise communities (or polities) but are not themselves simply subservient to the same. In American society, governments do not have the first and last word on how families love, instruct, form, and care for their children[20]. The polity exists for the sake of its families and is to respect rather than dominate them.

III. The District Court's Decision Implies Unscientific Claims About The Fixedness Of Child Characteristics, Regardless Of Age.

VLFC Rule 338 plainly provides that would-be parents' actions—particularly but not exclusively in speech—are to "respect the religious beliefs and cultural

[20] Obergefell v. Hodges, 576 U.S 644 (2015)

heritage of foster children, and shall not interfere with the reasonable practice of a foster child's religious beliefs."[21]

This implies that a child's beliefs—regardless of their age—are fixed, developed, and amply discernible for a foster parent to reinforce but never to shape or challenge. This is not simply unreasonable but developmentally nonsensical. Children change. Identities, interests, and beliefs are taken up and discarded, influenced by many sources. Parents naturally shape how their children think about religious and spiritual matters, including but not limited to the practices they exhibit. It will not be otherwise, regardless of state guidance, suggestions, and/or demands made of parents.[22]

The same is true of sexuality. No provision is made by the State for how the manifestation of sexual development varies by age. How does one support an 11-year-old who self-identifies as asexual or bisexual? Do they understand the meanings of such terms in the same way a post-pubertal adolescent or adult would? Of course not.

The State also refers to "an LGBT child,"[23] as if gender and sexual identity are discernible, fixed statuses regardless of age. This is not how biological and

[21] Licensing Rules for Foster Homes in Vermont, *op. cit.* at 14.
[22] Regnerus, M.D., Smith, C., & and Smith, B. (2004). "Social Context in the Development of Adolescent Religiosity." *Applied Developmental Science* 8: 27-38.
[23] E.g. "Through the LGBTQ Policy, DCF has made it crystal clear that for

social reality works. For example, some gender dysphoric children desist. Others do not. Some seek invasive physical procedures, while others do not. Such nuance is absent in this case. Instead, the Court seems to presume that the child is an adolescent—indeed, one with an elevated awareness of self and sexual and/or gender identity—but does not clearly state so. In this case, Vermont[24] accepted another federal district court's conclusion that a review of the research shows "a disaffirming family environment can have a severe impact on LGBTQ+ youth."[25] However, the District Court in *Bates* leaned—at length—on findings from two data collection efforts: the Trevor Project and the Family Acceptance Project.[26] Put charitably, this was misguided.

A. The Trevor Project Is A Simple Convenience Sample, But It Is Not Designed To Answer Questions About LGBTQ Self-Identity And Suicidality.

Sexual minority youth report higher rates of suicidal ideation.[27] That fact is not at issue here. The relevant question is why and, in particular, what (if any) role

---

purposes of those seeking to 'parent' children in its custody, 'good parenting' includes being accepting of an LGBTQ child's sexual and gender identity." Defs.' Mem. Opp'n Prelim. Inj. [39], ECF No. 26.

[24] No. 2:24-cv-614, 2025 U.S. Dist. WL 569909 (D. Vermont, Mar. 24, 2025).

[25] *Bates*, *op. cit.* at *21.

[26] *E.g.*, *id.* at *17 n.3.

[27] Bettis, A. H., Thompson, E. C., Burke, T. A., Nesi, J., Kudinova, A. Y., Hunt, J. I., Liu, R. T., & Wolff, J. C. (2020). Prevalence and clinical indices of risk for sexual and gender minority youth in an adolescent inpatient sample. *Journal of psychiatric research*, *130*, 327–332, https://doi.org/10.1016/j.jpsychires.2020.08.022.

parental behavior and home environment have to do with it. The District Court described the Trevor Project as "a survey of approximately 34,000 LGBTQ youth aged 13-24".[28] Nevertheless, the Trevor Project's research design is poorly suited for answering questions about a population of people. Rather, it is designed to suggest what *might* be occurring within a population, or what is popular among a group of people whose representativeness is unknown.[29]

When social scientists wish to understand what's going on in the United States, they design population-based studies. Given recent growth in the *population* of LGBTQ-identified persons in the past decade, the Trevor Project's having resorted to advertising its survey, to dramatically boost its sample size, is poor form. It is both unnecessary—the population is not that small to prompt a turn away from representative designs—and it caters to activists by advertising in media spaces whose content more politically-motivated persons consume. Such would deliver a biased sample that would yield a skewed perspective. The same is true of the Trevor Project. Forty-eight percent of its respondents identified as transgender or nonbinary, a figure far larger than the wider population of LGBTQ.[30]

---

[28] *Bates*, *op. cit.*, at *17 n.3.

[29] *See generally*, 2022 National Survey on LGBTQ Youth Mental Health, Trevor Project (2022), https://www.thetrevorproject.org/survey-2022/assets/static/trevor01_2022survey_final.pdf (hereafter "Trevor Project 2022 Survey").

[30] Trevor Project 2022 Survey, at 3.

Suicidal ideation ("SI") and attempts ("SA") were already on the rise, with children's hospitals witnessing a two-fold increase in SI/SA visits between 2007 and 2015.[31] And in October 2021, the major children's medical associations (including the American Academy of Pediatrics) all declared a national emergency in child and adolescent mental health because the existing mental health challenges among minors were so severe.[32] Indeed, any survey aimed at documenting psychological distress that was fielded in 2021 was invariably confounded with the pronounced, historically unprecedented experience of COVID-era shutdowns, schools going virtual, etc.

Despite this, two-thirds of the Trever Project report's "Key Findings" concerned suicidality.[33] While fears about children's suicide are understandable and ought never to be dismissed, such fears should not utterly supplant scholarly evaluations of suicidality. Too often, suicidal ideation is simply equated with attempted suicide. In reality, the association between the two varies notably in subpopulations.[34] Population-based data, also collected during the COVID-19 era,

---

[31] Burstein, B., Agostino, H., & Greenfield, B. (2019). Suicidal attempts and ideation among children and adolescents in US emergency departments, 2007-2015. *JAMA pediatrics*, *173*(6), 598-600.

[32] Cafferty, R., Grupp-Phelan, J., & Anthony, B. (2023). Children and Adolescents With Suicidal Ideation and the Emergency Department. *JAMA*, 10.1001/jama.2023.26291, https://doi.org/10.1001/jama.2023.26291.

[33] Trevor Project 2022 Survey, at 4.

[34] Han, B., Compton, W. M., Gfroerer, J., & McKeon, R. (2015). Prevalence and correlates of past 12-month suicide attempt among adults with past-year suicidal

complicates matters further, given that young adults ages 18–24 reported suicidal thoughts in the past month at rates 12 times higher than that of respondents age 65 and over, and six times that reported by those between 45 and 64 years old (25.5, 3.8, and 2.0 percent, respectively).[35] Based on thoughts of suicide, then, it could be said that there is a crisis of suicidality among the young. But the crisis of *actual* suicide affects older Americans to a far more significant degree.[36]

The CDC did not track suicide among youth identifying as transgender but did note elevated rates among individuals identifying as lesbian, gay, or bisexual. Suicides and attempted suicides among the self-identified transgender population are indeed higher than those in the population at large.[37] While it's difficult to determine this subpopulation's scope of suicide risk with accuracy, it's not impossible: analyses of data from the UK's Tavistock gender clinic revealed an

---

ideation in the United States. *The journal of clinical psychiatry*, *76*(3), 295–302, https://doi.org/10.4088/JCP.14m09287.

[35] Czeisler, M. É., Lane, R. I., Petrosky, E., Wiley, J. F., Christensen, A., Njai, R., Weaver, M. D., Robbins, R., Facer-Childs, E. R., Barger, L. K., Czeisler, C. A., Howard, M. E. & Rajaratnam, S. M. W. (2020). Mental health, substance use, and suicidal ideation during the COVID-19 pandemic — United States, June 24–30. *MMWR Morbidity & mortality weekly report, 69*(32), 1049–1057, doi: http://dx.doi.org/10.15585/mmwr.mm6932a1.

[36] Hedegaard, H., Curtin, S. C., Warner, M. (2021). Suicide mortality in the United States, 1999–2019. *NCHS data brief, no. 398*. Hyattsville, MD: National Center for Health Statistics, https://dx.doi.org/10.15620/cdc:101761.

[37] Thoma, B. C., Salk, R. H., Choukas-Bradley, S., Goldstein, T. R., Levine, M. D., & Marshal, M. P. (2019). Suicidality Disparities Between Transgender and Cisgender Adolescents. *Pediatrics*, *144*(5), e20191183, https://doi.org/10.1542/peds.2019-1183.

estimated annual suicide rate of 13 per 100,000.[38] While the rate is 5.5 times greater than the overall adolescent suicide rate, it pays to retain perspective. The actual proportion of patients who died by suicide was only 0.03%, which the author describes as "orders of magnitude smaller than the proportion of transgender adolescents who report attempting suicide when surveyed."[39] Exaggerating the actual suicide risk, the author concluded, is irresponsible and could exacerbate transgender teens' risk of self-harm. Meanwhile, suicide rates have increased strikingly in the general population over the past decade.[40]

An extensive, longitudinal "chart study" of all 8,263 adult, adolescent, and child referrals to an Amsterdam gender clinic between 1972 and 2017 documented that 41 natal men (0.8 percent) and 8 natal women (0.3 percent) died by suicide.[41] Among the former, suicide deaths had decreased over time, while it did not change in natal women. Only four suicide deaths were observed among patients referred to

---

[38] Biggs, M. (2022). Suicide by clinic-referred transgender adolescents in the United Kingdom. *Archives of sexual behavior*, *51*(2), 685-690.
[39] *Ibid.,* page 688.
[40] Whalen, J. (2018, May 15). Youth suicidal behavior is on the rise, especially among girls. *Wall street journal*, https://www.wsj.com/articles/youth-suicidal-behavior-is-on-the-rise-especially-among-girls-1526443782.
[41] The median age at first visit, however, was 25. See Wiepjes, C. M., den Heijer, M., Bremmer, M. A., Nota, N. M, de Blok, C. J. M., Coumou, B. J. G., & Steensma, T. D. (2020). Trends in suicide death risk in transgender people: Results from the Amsterdam cohort of Gender Dysphoria study (1972–2017). *Acta psychiatrica Scandinavica, 141*(6), 486-491. https://doi.org/10.1111/acps.13164

the clinic before the age of 18 (0.2 percent), which was a lower risk than among adult patients (0.7 percent).

Does parental response exacerbate risk among young people? Does failure to endorse and affirm the identity interests of LGBTQ youth elevate suicidality among them? Even among this population, "suicide is extremely rare"[42] and is "rarely caused by a single circumstance or event."[43] Indeed, implying or reporting a presumed cause leaves the public with a simplistic and often misleading understanding of suicide. Such a practice, implied by the State by imputing to Plaintiffs the obvious risk of subsequently heightening an adoptive child's proneness to suicide, is inconsonant with commonly understood ways of understanding and preventing suicide contagion.

In an impressive study of 6,423 adolescents ages 12–17 who visited 14 emergency rooms and who completed an assessment of suicide risk and protective factors, researchers found that "[d]epression, bullying victimization, and sexual abuse" were the most prominent risk factors, while "parent-family connectedness and positive affect" were the strongest protective factors *against*

[42] Gender Identity Development Service. (2021). Evidence base: Psychosocial difficulties, https://gids.nhs.uk/evidence-base.

[43] Centers for Disease Control, (2022), Risk and Protective Factors, Suicide Prevention, https://www.cdc.gov/suicide/factors/index.html.

suicidal ideation and suicide attempts among sexual minority youth.[44] Note that while these data are from a cross-sectional study and hence cannot document causation, the self-reports are coming directly from obviously troubled sexual minority youth. They didn't simply report about their situation online at the prompting of a social media ad. They had already gone to the hospital. And even the State would agree that Plaintiffs in this case would earnestly seek to develop "parent-family connectedness" and display "positive affect" toward any child placed in her custody and care.

B. Like The Trevor Project, The "Family Acceptance Project" Wields Influence In This Decision That Far Outpaces Its Quality And Design.

The District Court in *Bates* also relied heavily on a series of studies by Caitlin Ryan that draw on the Family Acceptance Project (hereafter, "the Project").[45] The Project's data show "clear links between family acceptance in adolescence and health status in young adulthood" and that "young adults who reported low levels of

[44] Horwitz, A. G., Grupp-Phelan, J., Brent, D., Barney, B. J., Casper, T. C., Berona, J., ... & Pediatric Emergency Care Applied Research Network. (2021). Risk and protective factors for suicide among sexual minority youth seeking emergency medical services. *Journal of Affective Disorders*, *279*, 274-281.
[45] *See Bates*, *op. cit.*, at *67–73.

family acceptance had scores that were significantly worse for depression, substance abuse, and suicidal ideation and attempts."[46]

The claims and recommendations of the State in their guidance—what to do and what not to do to support your "LGBT child"—appear to be reinforced by the Project.[47] In a key paragraph from Ryan's *Pediatrics* 2009 study, the authors conclude that "[h]igher rates of family rejection were significantly associated with poorer health outcomes."[48] In particular:

> …LGBTQ+ young adults who experienced higher levels of family rejection during adolescence "were 8.4 times more likely to report having attempted suicide, 5.9 times more likely to report high levels of depression, 3.4 times more likely to use illegal drugs, and 3.4 times more likely to report having engaged in unprotected sexual intercourse."[49]

How confident should Vermont be in the Project's findings? Not confident at all. The Family Acceptance Project is a survey data collection effort that interviewed 245 young adults courted from LGBT organizations and bars within 100 miles of

---

[46] Ryan, C., Russell, S. T., Huebner, D. M., Diaz, R., & Sanchez, J. (2010). Family acceptance in adolescence and the health of LGBT young adults. Journal of Child and Adolescent Psychiatric Nursing, 23(4), 205-213, page. 208.

[47] *See* Oregon Department of Human Services Child Welfare Procedure Manual, http://www.dhs.state.or.us/caf/safety_model/procedure_manual/Oregon-DHS-Child-Welfare-Procedure-Manual.pdf. The Project is referred to at 1081, 1632, 1812, 1815.

[48] Ryan, C., Huebner, D., Diaz, R. M., & Sanchez, J. (2009). Family rejection as a predictor of negative health outcomes in white and Latino lesbian, gay, and bisexual young adults. *Pediatrics*, *123*(1), 346-352, page 346.

[49] *Ibid.*

San Francisco. It appears to have concluded not more recently than 2005[50]—19 years ago—and plays an outsized and unmerited role in this case. This study's sample, which carries significant weight in the court's decision, includes no children at all. Everyone is at least 21 years old, and "half [of the sample] were from clubs and bars serving this group."[51] It would not include anyone presently in foster care.

Therefore, the Court's empirical findings largely hinge on a survey of adults who were sampled from San Francisco-area gay community organizations and bars. No doubt these 245 people—a woefully small sample size—had no idea how influential the time they spent filling out a survey would eventually be nearly 20 years later. It is empirically irresponsible to cite such a study in a very consequential legal case concerning the adoption of children.

The Court's decision notes that "the government has presented evidence that an affirming home environment can mitigate the harm that other factors cause to an LGBTQ+ youth's mental health and outcomes."[52] As stated, to "mitigate" means that an affirming home can lessen, salve, or reduce the harm that other factors have on the mental health of LGBTQ youth. Statistically, this statement implies that

[50] Toomey, R. B., Ryan, C., Diaz, R. M., & Russell, S. T. (2011). High school gay–straight alliances (GSAs) and young adult well-being: An examination of GSA presence, participation, and perceived effectiveness. Applied developmental science, 15(4), 175-185.
[51] Ryan et al. 2009, at 347.
[52] *Bates*, *op. cit.*, at *68–69.

affirmation works to make other harmful factors "better" or less damaging. That is an implausible claim.

The problem with the Project runs far deeper than what it claims to have learned, though. An examination of how its measures of family affirmation and rejection were developed further undermines confidence in it to teach anything except that which its principal investigators and its participants hold to be true. This is because it is the product of what's called "participatory action research,"[53] which means the data collection and analyses are—from start to finish—designed and advised by parties interested in the outcomes and in fostering social change as a result of the project.

While some degree of bias is unavoidable in the conduct of research, participatory action research *invites* bias—personal perspectives—to shape a study's very design rather than merely color the subsequent interpretation of data:

> This study used a participatory research approach that was advised at all stages by individuals who will use and apply the findings—LGBT adolescents, young adults, and families—as well as health and mental health providers, teachers, social workers, and advocates. Providers, youth, and family members provided guidance on all aspects of the research, including methods, recruitment, instrumentation, analysis, coding, materials development, and dissemination and application of findings.[54]

[53] Baum, F., MacDougall, C., & Smith, D. (2006). Participatory action research. *Journal of epidemiology and community health*, *60*(10), 854–857. https://doi.org/10.1136/jech.2004.028662.
[54] Ryan et al. (2010), at 206.

This bias that participatory action research invites can be illustrated by using Plaintiffs as an example. Plaintiffs here are evangelical Christians, by their own admission. But social scientists of organized religion know that to understand how evangelical Christians think and act, you should not just seek them out in churches or other organized forms of Christianity like small group Bible studies or prayer groups. There are many such Christians who aren't active in this manner or who profess different beliefs. But if *Amici* wished to shed positive light on such a group, participation action research is one way to nearly guarantee it. Likewise, the Project's sample is hardly random and not reflective of the population of LGBTQ young adults, to say *nothing* of LGBTQ children and adolescents—the focus of this case.

The Project's survey was designed by consulting with 53 self-identified LGBT adolescents and their families who live in California. These 53 interviewees were the source of the "list of 55 positive family experiences" that "assessed the presence and frequency of each accepting parental or caregiver reaction to participants' sexual orientation and gender expression when they were teenagers (ages 13–19)."[55] In other words, this is the source of the affirmative actions demanded of the Plaintiffs for licensure. Fifty-five is a lot of boxes to check for a would-be foster parent.

[55] *Ibid*, at 207.

Furthermore, "family acceptance scale scores were calculated as the sum of whether each event occurred," using a 4-point scale (0 = never, 3 = many times).[56] Despite this, Ryan and her co-authors then elected to "lose information" by dichotomizing each of these affirmative actions as either *never* having happened (0) versus *ever* having happened (1). Consistency is not required in this measure.

Then Ryan and her coauthors simplify even further, calculating "a categorical indicator of family acceptance, dividing the distribution into even thirds" (that is, low, moderate, and high levels of family acceptance).[57] No matter what a parent does, they may well find themselves categorized as "low" on acceptance if two-thirds of the respondent's peers thought their own parent(s) did more.

Hence, on the basis of a non-representative convenience sample, yielding cross-sectional data whose measures were constructed in congruence with interested and motivated advocates, Ryan and her colleagues go on to inform families everywhere about what to do and not to do to support the wishes of LGBTQ+-identified children in families.

Ryan's measures of family support, however, are far more ideological than they need to be. In a study analyzing New Mexico Youth Risk and Resilience Survey data, researchers noted that gender minority students "experienced higher rates of

[56] *Ibid*.
[57] *Ibid*.

violence and self-harm and lower levels of support than cisgender students."[58] Family support, however, was associated with lower odds of self-harm and sexual violence. That makes sense.

But the New Mexico study's measures of family support were nothing like those in the Family Acceptance Project. Instead, family support in New Mexico study's was measured as the response to three questions:

- In my home, there is a parent or some other adults who is interested in my school work.
- In my home, there is a parent or some other adults who believes that I will be a success.
- When I am not at home, one of my parents/guardians knows where I am and who I am with.[59]

This is a fundamentally different type of family support than Ryan—and with her, the State of Vermont—is pushing for. Both Plaintiff couples were licensed and relicensed as foster parents for years. Both Plaintiff couples successfully adopted children. Thus the Plaintiffs have consistently demonstrated their clear commitment to the kind of family support that *actually mattered* for curbing self-harm among

[58] Ross-Reed, D. E., Reno, J., Peñaloza, L., Green, D., & FitzGerald, C. (2019). Family, School, and Peer Support Are Associated With Rates of Violence Victimization and Self-Harm Among Gender Minority and Cisgender Youth. *The Journal of adolescent health: official publication of the Society for Adolescent Medicine*, *65*(6), 776–783, https://doi.org/10.1016/j.jadohealth.2019.07.013 at 776.
[59] *Ibid*, at 778.

gender minority students. The State's vision of an affirming environment seems more about endorsing identities than the kind of care that actually keeps children from risk and self-harm.

CONCLUSION

Christians in America have a long history of exhibiting interest in adopting children.[60] While there is no "right" to a foster child, the State should not create unnecessary and discriminatory barriers to certifying foster and adoptive parents who seek to provide stable, loving homes—households that have long varied widely (and over time) in quality of support, attentiveness, and care. It is in the best interests of children to be placed.

Vermont's statutes and viewpoint discrimination affect one of the largest potential sources of placement, and none too subtly suggest that Christian would-be-adoptive-parents should change their beliefs. Thus, many Christians, not to mention others with similar faith beliefs (such as Muslims or Orthodox Jews), would be conscientious objectors to this policy.

But unlike in other domains, conscience is not permitted by the State of Vermont. And yet even Caitlin Ryan—whose activist research methods undergird the State's key empirical claims in this case—admits that

[60] Perry, S. L. (2017). *Growing God's family: The global orphan care movement and the limits of evangelical activism*. NYU Press.

> People of deep faith live their lives grounded by their religious beliefs and need to understand how they can support their LGBT child in the context of their deeply-held values. An important aspect of our work is helping parents and families understand that they can support their LGBT child even if they believe that being gay or transgender is wrong.[61]

Plaintiffs have no doubt demonstrated their parental competence to the State. What has changed is not the willingness of couples like the Wuotis and Gantts but the shift in understanding the State as parent—a role it has never been competent at, because states cannot love.

If the Court is to privilege rigorous tests of causation, then the State's showcasing of research on the associations between parental endorsement and mental health outcomes among LGBTQ+-identified children in their care comes up far short of a standard of confidence. As in the *Brown v. Entm't Merchs. Ass'n* , so it is here: the cited research is "'based on correlation, not evidence of causation, and most of the studies suffer from significant . . . flaws in methodology.'"[62]

Participatory action research ought never be the basis for scientific studies of cause-and-effect, or even reliable correlations. This is the fatal flaw in the main research relied upon by the District Court in *Bates*. But the Court here opined that the "concerns about the quality of the research " in *Brown* "do not arise in this

[61] Ryan, C. (2014). Generating a revolution in prevention, wellness, and care for LGBT children and youth. *Temp. Pol. & Civ. Rts. L. Rev.*, *23*, 331-344, page 341.
[62] *Brown v. Entm't Merchs. Ass'n*, *op. cit.*(citation omitted).

case."[63] *Amici* could not disagree more. Remarkably, the Court even "acknowledges that the amount of academic literature assessing the impact of home environments on LGBTQ+ youth is limited."[64] This is compounded by the reality that faulty perceptions of parental support may be a result, rather than a cause, of poor mental health among some adolescents.[65]

Of course home environment can "impact" a youth's health. But the Court must do better than show that a "disaffirming home environment can negatively impact an LGBTQ+ youth's mental health and health outcomes."[66] "Can" or "might," are too speculative an alter on which to sacrifice the sacrosanct protections of the First Amendment.

In this particular case, we need to know with confidence that failure to *consistently* affirm adopted children in *particular* ways demonstratively incurs negative impacts (and even then, such should be weighed against the impact of not being placed at all). It is true "that state is not required to demonstrate a scientific certainty to support compelling interest "[67] But there is considerable space between "can" and "does." That something "can" occur is able to be documented by anecdotal

---

[63] *Bates*, 2023 *op. cit.*, at *67.
[64] *Id.* at *68.
[65] Needham, B. L., & Austin, E. L. (2010). Sexual orientation, parental support, and health during the transition to young adulthood. *Journal of youth and adolescence*, *39*, 1189-1198.
[66] *Bates*, *op. cit.*, at *68.
[67] *Id.* (internal question marks and citation omitted).

evidence. But to issue a sweeping rejection of applicants because of undemonstrated risk of uncertain outcomes is an overreach. That is what has occurred in this case.

Plaintiffs have demonstrated their fitness as parents to foster in the State of Vermont. Now they are hamstrung only because of a series of unclear state speculations about possible future challenges between parents and child. It is not enough that Plaintiffs would no doubt never tolerate the bullying of their child and would make every effort to foster a loving and secure home. No—the State is unsatisfied with Plaintiffs' commitment to "love and support" a child placed in their care on their terms—not those of the State's new ideological guidelines. But that is how families work. They do the caring, the sacrificing, the supporting, the comforting, and the challenging. States cannot.

Date: June 3, 2025

/s/ Denis A. Kitchen
DENIS A. KITCHEN, P.C.
8899 Main Street
Williamsville, NY 14221
716-631-5661
denis@kitchenlaw.com

Attorney for Amicus Curiae

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because this brief contains 6,220 words, excluding the parts of this brief exempted by Fed. R. App. P. 32(f).

This brief 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 this brief has been prepared in a proportionately spaced typeface using Microsoft Word in 14-point Times New Roman font.

DATED: June 5, 2025

/s/ Denis A. Kitchen

DENIS A. KITCHEN, P.C.
8899 Main Street
Williamsville, NY 14221
716-631-5661
denis@kitchenlaw.com

Attorney for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system on June 5, 2025. I certify that all participants in this case are registered CM/ECF users, and that service will be accomplished by the appellate CM/ECF system.

DATED: June 5, 2025

/s/ Denis A. Kitchen
DENIS A. KITCHEN, P.C.
8899 Main Street
Williamsville, NY 14221
716-631-5661
denis@kitchenlaw.com

Attorney for Amici Curiae