

25-0678-cv

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.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT (BURLINGTON)

**BRIEF OF *AMICUS CURIAE* WOMEN'S LIBERATION
FRONT IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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INTEREST OF *AMICI CURIAE*¹

Amicus is the Women’s Liberation Front (“WoLF”), a non-profit radical feminist organization dedicated to the liberation of women and girls by abolishing sex discrimination.² As a radical feminist organization, WoLF rejects gender identity beliefs because they are founded on regressive sex stereotypes and undermine women’s sex-based rights (including the rights of lesbian and bisexual women who comprise nearly 40% of WoLF’s membership). WoLF’s interest in this case stems from its interest in protecting girls from ideologically-based interference into their freedom of beliefs and from coerced indoctrination into misogynistic ideologies. WoLF supports efforts to ensure that all foster children are in safe and compassionate foster homes, including children who are same-sex-attracted, gender non-conforming, and/or diagnosed with gender dysphoria.

¹ No counsel for any party authored any part of this brief, and no party, their counsel, or anyone other than WoLF, has made a monetary contribution intended to fund its preparation or submission. *Amicus* has consent of all parties to file.

² *Amicus* uses “sex” throughout to refer to the fundamental distinction, found in most species of animals and plants, based on the type of gametes each individual’s body is organized to produce. In humans these fundamental sex differences divide people into two sexual reproductive categories: Females are those whose bodies are organized to support the production of ova and the creation of offspring through sexual reproduction; Males are those whose bodies are organized to support the production of sperm. Sex in humans is determined at conception and remains fixed throughout all life stages, regardless of individual life experiences such as aging, illness, or infertility, and regardless of whether the individual has a “difference (or disorder) of sexual development” (DSD), sometimes incorrectly labeled “intersex.” *See* Sex, Male, and Female, Miller-Keane Encyclopedia and Dictionary of Medicine, Nursing, and Allied Health (7th ed. 2003), <https://medical-dictionary.thefreedictionary.com> (last visited June 4, 2025).

SUMMARY OF ARGUMENT

The Vermont Department for Children and Families (DCF) has implemented policies - specifically Policy 76 and amendments to Rules 200, 201, and 315 - that mandate foster parents to affirm a child's self-declared gender identity, and to profess and demonstrate belief in gender identity ideology generally, in order to be a licensed foster parent. These policies extend beyond prohibiting discrimination and instead enforce a specific ideological viewpoint, compelling foster parents to engage in practices that may conflict with their personal beliefs and understanding of child development and material reality. This harms various vulnerable groups, fails to recognize the distinct experiences and needs of same-sex-attracted individuals in foster care, pathologizes gender non-conforming behavior, and violates the Establishment Clause of the First Amendment of the U.S. Constitution.

ARGUMENT

I. DCF's Policies Enforce Ideological Conformity Rather Than Protecting Children's Well-Being

While DCF's stated goal is to create "safe, healthy, and inclusive environments" for all children, the implementation of Policy 76 and related rules mandates that foster parents actively affirm a child's gender identity, including facilitating access to stereotypically gender-specific clothing and participation in events like Pride parades (without regard to the appropriateness of such events for children, irrespective of sexual orientation). This approach shifts from protecting children

from discrimination to compelling foster parents to adopt and promote a particular ideological stance, even if that stance runs contrary to the foster parent's opinion as to the best interests of the child.

At issue in this case is whether state agencies responsible for child welfare and foster care systems may require foster parents - both religious and nonreligious - to profess and/or demonstrate belief in the concept of "gender identity" and in gender ideology.³ Plaintiffs oppose this on religious freedom grounds, specifically free exercise of their own religious beliefs. However, many other potential foster families may also object to the Rules on a variety of non-religious grounds.

Under Vermont law, the Department of Children and Families ("DCF") maintains legal custody of foster children, retaining control of their "care, maintenance, and education." 33 V.S.A. § 104(9). Meanwhile, foster parents must make "careful and sensible parental decisions that maintain the health, safety, and best interests of a child or youth" and "encourag[e] the emotional and developmental growth of the child." *Id.* § 4906. Under the Licensing Rules for Foster Homes in Vermont ("Rules"), foster parents must show that they can "meet the physical, emotional, developmental and educational needs of each foster child." Rule 301.

³ The Rules also address sexual orientation, the straightforward concept that some people are attracted to the opposite sex, some are attracted to the same sex, and some are attracted to both. As will be discussed, "gender identity" is an entirely different concept (and, because it denies the reality of sex is in fact antithetical to the idea of sexual orientation). This brief primarily addresses the Rules that relate to gender ideology, including concepts like "gender identity" and "gender expression." *See* Wuoti et al v. Winters et al, No. 2:2024cv00614, (D. Vt. 2025).

DCF states that based on national data showing that “LGBTQ children” were disproportionately in foster care, and were also experiencing poor outcomes, and state data showing an array of negative outcomes for “LGBTQ youth,” it undertook a process to create new policies and procedures with the purpose of improving these outcomes and provide “safe, healthy, and inclusive environment” for all children and youth served by DCF. ECF No. 27-5 at 1. One result was ‘Policy 76’ in 2017, which prohibits “discrimination and bias based on a child or youth’s real or perceived sexual orientation, gender identity or gender expression,” requiring staff to consider a caregiver’s “attitude and behavior” about children’s sexual or gender identity, and to make “ongoing efforts to recruit, train, support, and retain foster families who are LGBTQ affirming and supporting.” *Id.* DCF also updated a few other rules, including a provision that prohibits DCF from granting any variances on this topic. *Id.* The history of this policymaking and its implementation shows that, with respect to gender identity and gender ideology, there is only one narrow set of quasi-spiritual beliefs that are acceptable to hold, regardless of whether that is in the best interests of the foster children served by DCF.

The concept is the purported justification for a host of practices grounded in the idea that sex is fluid, including medical interventions to change the sex traits of minors, male participation in female sport, and the housing of violent male sex offenders in women’s prisons. Popular opposition has led to state-level bans, widespread

litigation, and/or Executive Orders seeking to end these practices. *See, e.g.,* Executive Order 14168, *Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government* (January 20, 2025).

A. DCF’s Rules Promote a System of Belief Known as Gender Ideology.

A belief system is “a system of ideas that aspires both to explain the world and to change it.” *See* Maurice Cranston, Ideology, Encyclopedia Britannica (2025) <https://www.britannica.com/topic/ideology-society> (last visited June 4, 2025).

DCF’s Rules require that foster caregivers profess and demonstrate adherence to a belief system known as gender ideology. This includes use of preferred pronouns (including neo-pronouns), medicalization of gender non-conforming youth (and rejection of non-medicalized approaches to youth diagnosed with gender dysphoria), and embracing “social transition” which is a regressive embrace of sex stereotypes as a way of defining a person’s sex. Stated differently, DCF uses the Rules to promote a particular system of ideas, that is, an ideology.

This ideology has three central tenets:

- (1) people have an ethereal essence known as a “gender identity”;
- (2) this identity may be different from a person’s sex; and
- (3) when a person’s gender identity and sex conflict, gender identity rather than sex decides that person’s access to single sex spaces, pronouns, and more.

The corner piece of this ideology is the term “gender identity.” This term is associated with John Money, the mid-20th century ‘sexologist’ who is infamous for a disastrous experiment in which he sought to impose a female “identity” on a boy who later killed himself. Money defined “gender identity” as “the private experience of a gender role.” John Money, Gender Role, Gender Identity, Core Gender Identity: Usage and Definition of Terms, J. Amer. Acad. Psychoanalysis, 1(4):397-403 (1973). He defined “gender role” as:

All those things that a person says or does to disclose himself or herself as having the status of boy or man, girl or woman, respectively. It includes, but is not restricted to sexuality in the sense of eroticism. Gender role is appraised in relation to the following: general mannerisms, deportment and demeanor; spontaneous topics of talk in unprompted conversation and casual comment; content of dreams, daydreams and fantasies; replies to oblique inquiries and projective tests; evidence of erotic practices and, finally, the person’s own replies to direct inquiry.

Id. As this quote reveals, “gender identity” is rooted in the idea that sex stereotypes define a core part of a person's identity. The system of beliefs built around this regressive idea - and reflected in foster care Rules - is known as “gender ideology.” The description of “gender ideology” that appears in E.O. 14168 aligns with the three tenets underlying the Rules. The EO states that:

“Gender ideology” replaces the biological category of sex with an ever-shifting concept of self-assessed gender identity, permitting the false claim that males can identify as and thus become women and vice versa, and requiring all institutions of society to regard this false claim as true. Gender ideology includes the idea that there is a vast spectrum of genders that are disconnected from one’s sex. Gender ideology is internally inconsistent, in

that it diminishes sex as an identifiable or useful category but nevertheless maintains that it is possible for a person to be born in the wrong sexed body.

DCF cites poor outcomes (mental health, etc.) as a reason for the changes, but it's not clear that the outcomes have, would, or could improve these outcomes. Certainly no evidence is offered that it has or will.

II. Gender Ideology Harms Children, Women, and LGB People.

Gender Ideology has been promoted as “progressive,” but it is, in fact, a regressive approach to sex stereotypes and sexuality. Using the foster care system to indoctrinate children in state care promotes social harms to vulnerable groups by leading often troubled children to question their sex, by subverting the basis for necessary sex separation, and by confounding the meaning of same sex attraction. As DCF has stated, children and youth in foster care, both nationally and in Vermont, are disproportionately likely to identify as “LGBTQ”, to be diagnosed with gender dysphoria, and to have poor mental health outcomes and adverse experiences.

A. Children

Gender ideology does not provide a consistent or clear definition of gender or sex or transgender. Often gender and sex are used interchangeably. This creates categorization and cognitive confusion as the logic of the proposition cannot be untangled without agreed to definitions. Attempts to define “transgender” result in similarly circular reasoning. Even if children themselves do not subscribe to gender

ideology, under the Rules they will still be placed with caregivers who will espouse belief (as factual) in gender ideology.

To teach such a destabilizing concept to young children can erode their trust in their parents, their teachers, and their doctors, as well as in themselves. From there, harms may escalate to the practice of “social transition” whereby foster parents and others “affirm” the new gender or sex. This can lock in a child’s identification with the wrong sex. See e.g., Jane Martin, MD, “*What is ‘Social Transition’ and Why is it Important?*” Clinical Advisory Network on Sex and Gender (can-sg.org) (2023) (citations omitted). Once a wrong-sex identity is affixed by social transition, there is evidence that children are likely to pursue irreversible hormonal and surgical interventions such as puberty blockers. See Ruth Hall et al., Impact of Social Transition in Relation to Gender for Children and Adolescents: A Systematic Review, *Archives Disease Childhood* 1. 1 (2024).

Puberty blockers halt the development of secondary sexual characteristics like breasts, height, Adam’s apple, and facial and pubic hair. They are not “reversible” despite the gender industry’s claim that they are merely a harmless, reversible, “pause.” See Meghan Twohey, Chrsitina Jewett, *They Paused Puberty, but is there a Cost?* N.Y. TIMES (November 14, 2022). But, if the child is not socially transitioned, then between 80-90 percent of children who express gender or sex confusion before puberty grow out of the confusion after puberty.

http://www.sexologytoday.org/2016/01/do-trans-kids-stay-trans-when-they-grow_99.html) (last visited June 4, 2025) Puberty blockers have serious physical consequences for growing children. Puberty blockers may interfere with normal cognitive development. See Sallie Baxendale, *The impact of suppressing puberty on neuropsychological function: A review*, ACTA PAEDIATRICA (February 9, 2024), <https://doi.org/10.1111/apa.17150> (last visited June 4, 2025).

Other hormonal interventions include the administration of cross-sex hormones to promote secondary sex traits associated with the opposite sex. Females taking sufficient levels of testosterone to induce changes in their body increases the risk of erythrocytosis, myocardial infarction, liver dysfunction, coronary artery disease, cerebrovascular disease, hypertension, and breast and uterine cancer. Males taking sufficient levels of estrogen to induce changes may experience sexual dysfunction and increased the risk of hypertriglyceridemia. *Id.* at 489.

For many years gender advocates have maintained that if children are not “affirmed” and permitted to transition, they will commit suicide. Parents who ask questions about alternatives, such as waiting, or exploratory therapy, or if they show any resistance are asked “Would you rather have a dead girl or a live boy?” This is perhaps the most pernicious manner of eliminating challenges from parents, other family members, teachers, coaches, other medical professionals, journalists, and even judges. Gender advocates and the gender industry have persisted with this

claim, despite the fact that it is completely false and has always been completely false. The data relied on to support this was from studies that have been discredited. See <https://www.transgendertrend.com/the-suicide-myth/> (last visited June 4, 2025); Correction of a Key Study: No Evidence of “Gender Affirming” Surgeries Improving Mental Health, August 2020, https://www.segm.org/ajp_correction_2020 (last visited June 4, 2025); Sapir, Leo Reckless and Irresponsible, <https://www.city-journal.org/article>, 16. May 17, 2023. A more relevant and recent study shows the opposite is true. Children who transition are more likely to commit suicide. *See* Examining the Gender Specific Mental Health Risks After Gender Affirming Surgery: A National Database Study, Joshua E Lewis, BS, Amani R Patterson, MBS, Maame A Effirim, BS, Manav M Patel, BSA, Shawn E Lim, BS, Victoria A Cuello, BS, Marc H Phan, BS, Wei-Chen Lee, PhD Journal of Sexual Medicine, qdaf026, February 23, 2025, <https://academic.oup.com/jsm/advance-article-abstract/doi/10.1093/jsxmed/qdaf026/8042063> (last visited June 4, 2025).

On December 4, 2025, Chase Strangio admitted in the United States Supreme Court that the statistics did not support that position.⁴ Sapir, Leo, December 5, 2024

⁴ Excerpt from transcript of oral argument in U.S. v. Skrmetti, United States Supreme Court, December 4, 2024, Page 88-89.

<https://www.city-journal.org/article/aclu-attorney-confesses-transgender-suicide-claim-is-a-myth> (last visited June 4, 2025). Thus, we have all been led on our own

“gender journey” right along with the children who hear that if they do not transition, they too will commit suicide.

This movement has been extremely profitable, generating approximately \$1.2B dollars in 2022 in the United States for surgical procedures alone. Grandview Research, *U.S. Sex Reassignment Surgery Market Size*, <https://www.grandviewresearch.com/industry-analysis/us-sex-reassignment-surgery-market> (last visited June 4, 2025). Activists often minimize the prevalence of pediatric sex trait modification procedures and deny that such surgeries are performed on minors at all, but data from a recent analysis of insurance claims shows that in the United States between 2019 and 2023: 13,994 minors underwent sex trait modification treatments, 5,747 minors had sex trait modification surgeries; 8,579 minors received hormones and puberty blockers; and 62,682 sex change prescriptions were written for minors. See Do No Harm, Stop the Harm Database at

JUSTICE ALITO: Well, I - I don't regard the Cass review as - necessarily as - as the Bible or as something that's, you know, true in every respect, but, on page 195 of the Cass report, it says: There is no evidence that gender-affirmative treatments reduce suicide.

MR. STRANGIO: What I think that is referring to is there is no evidence in some - in the studies that this treatment reduces completed suicide. And the reason for that is completed suicide, thankfully and admittedly, is rare and we're talking about a very small population of individuals with studies that don't necessarily have completed suicides within them.

<https://stoptheharmdatabase.com/about/> (last visited June 4, 2025). This database does not include data from Kaiser Permanente or the Department of Veterans Affairs. “Gender affirming care” is a medical scandal. See amicus brief of the State of Alabama in *U.S. v. Skrmetti*, 23-477, page 1, https://www.supremecourt.gov/DocketPDF/23/23-477/328275/20241015131826340_2024.10.15%20-%20Ala.%20Amicus%20Br.%20iso%20TN%20FINAL.pdf (last visited June 4, 2025).

Almost all children who receive “gender affirming care” have one or more co-morbidities such as depression, anxiety, autism, self-harming behaviors, and suicidal ideation. *See, e.g.,* Lisa Littman, *Parent reports of adolescents and young adults perceived to show signs of a rapid onset of gender dysphoria* (2018) PLOS ONE 13(8): <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0214157> (last visited June 4, 2025). Many have a history of trauma and abuse. *Id.* Nevertheless, where there should be exploratory therapy to identify the source of a child’s difficulty they are immediately “affirmed” and set on a path of medical interventions contrary to their biology. The evidence relied on by gender advocates is extremely weak. The World Professional Association of Transgender Health (WPATH) hired Johns Hopkins University to review the evidence supporting the permanent alteration of children’s bodies to address gender confusion, the team “found little to no evidence about children and adolescents, . . . ” WPATH resisted the publication of the review. See exhibit 175, pages 20-25 (pages not redacted) at

<https://www.alabamaag.gov/wp-content/uploads/2024/10/SJ.DX173-560-23-HHS-5-REDACTED.pdf> (last visited June 4, 2025); Azeen Ghorayshi, U.S. Study on Puberty Blockers Goes Unpublished Because of Politics, Doctor Says, New York Times, October 23, 2024, <https://www.nytimes.com/2024/10/23/science/puberty-blockers-olson-kennedy.html> (last visited June 4, 2025).

None of the interventions, including social transition, are benign. The medical interventions, including puberty blockers, cross-sex hormones, genital and other surgeries all carry grave risks and future complications. A recent study of over 100,000 patients who identified as transgender “were at significantly higher risk for depression, anxiety, suicidal ideation, and substance use disorder than those who did not have surgery.” *See* Examining the Gender Specific Mental Health Risks After Gender Affirming Surgery: A National Database Study, Joshua E Lewis, BS, Amani R Patterson, MBS, Maame A Effirim, BS, Manav M Patel, BSA, Shawn E Lim, BS, Victoria A Cuello, BS, Marc H Phan, BS, Wei-Chen Lee, PhD Journal of Sexual Medicine, qdaf026, February 23, 2025, <https://academic.oup.com/jsm/advance-article-abstract/doi/10.1093/jsxmed/qdaf026/8042063> (last visited June 4, 2025). In addition, the John Hopkins review found that adolescents who identified as transgender and had surgery suffered more depression, anxiety, suicidality and distress or dysphoria than trans-identified adolescents who did not have surgery. *See* exhibit 175, page 25 (pages not redacted) at <https://www.alabamaag.gov/wp->

content/uploads/2024/10/SJ.DX173-560-23-HHS-5-REDACTED.pdf (last visited June 4, 2025).

B. Women and Girls

When government decision makers ignore the actual science and accept theoretical biology, necessary and relevant sex distinctions between men and women are denied and women and girls are disproportionately harmed by the resulting unworkable public policy.

In contrast to sex, gender is a classification based on the social construction (and maintenance) of cultural distinctions between males and females. Institute of Medicine Committee on Assessing Interactions Among Social, Behavioral, and Genetic Factors in Health, (Hernandez, LM and Blazer, DG, editors) *Genes, Behavior, and the Social Environment: Moving Beyond the Nature/ Nurture Debate*, National Academies Press, 2006. The United States Department of Health and Human Services (DHHS) agrees, defining “gender” as “a social construct of identities, norms, behaviors, and roles that vary between societies and over time.” DHHS, *Gender Identity Non- Discrimination and Inclusion Policy for Employees and Applicants* at 2 (2023).

Women and girls suffer from the loss of single-sex spaces where, because sex change is impossible and men mimicking women may enter also, women and girls lose their

ability to police the space. This increases the risk to women and girls as they also become trained to ignore their instincts.

Women and girls are vulnerable to male violence. Men are far more likely to commit violent offenses including homicide and rape than women, and rape is overwhelmingly committed by men against women and girls. See FBI Crime Data Explorer at <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/crime-trend> (last visited June 4, 2025) (official U.S. crime statistics over a five- year period). Male violence and femicide is a threat and reality for women. <https://www.populationinstitute.org/news/new-report-exposes-surprising-prevalence-of-femicide-child-marriage-and-female-genital-mutilation-in-the-us/> (last visited June 4, 2025); https://vpc.org/revealing-the-impacts-of-gun-violence/female-homicide-victimization-by-males/?campaign=14820441548&gad_source=1&gclid=CjwKCAiArKW-BhAzEiwAZhWsIIrDBMy0_U7xXSsHBOIK9d6Z7vKxdMDuT2sETOH_yj48oTCC4SVEIWB0CC2kQAvD_BwE (last visited June 4, 2025). Male pattern criminality is not changed by transitioning. Evidence and Data on Trans Women’s Offending Rates, Professor Rosa Freedman, Professor Kathleen Stock and Professor Alice Sullivan, <https://committees.parliament.uk/writtenevidence/18973/pdf/> (last visited June 4, 2025).

Furthermore, the deprivation of single sex spaces favors men who mimic female sex stereotypes over women, effectively establishing a preference by the government for

conformity to sex stereotypes. If males can identify into the sex class of women, then there is no such class and women are once again, invisible.

C. Lesbians, Gay Men, and Bisexual People.

i. Safeguarding Concerns of Pride Events and Adult-Oriented Events

DCF's policies insist that foster parents should facilitate a child's participation in events like Pride parades if the child desires. However, many, if not most, Pride events include adult-oriented content, including public nudity and sexualized activity and/or entertainment, which is not appropriate for children. Many of the largest and/or longest-running Pride events also celebrate “kink culture” including “bondage, domination, sado-masochism (BDSM)”.⁵ There has been significant criticism and debate about the appropriateness of allowing children to these events.

⁵ See the Folsom Street Fair, which in recent years has included public flogging demonstrations, rope bondage, and attendees in various states of undress. <https://thehomoculture.com/folsom-street-fair-2022-fulfilled-fetishes-and-fantasies-nsfw>; <https://sfstandard.com/2023/09/24/san-francisco-folsom-street-fair-kink-leather-lgbtq-pride-soma/>; San Francisco 2024 Pride Parade’s ‘Fetish Zone’, where explicit sexual activities occurred publicly, including urination on individuals in inflatable pools. <https://thepostmillennial.com/savanah-hernandez-reports-san-francisco-pride-devolves-into-urine-soaked-orgy-in-public-fetish-zone>; West Hollywood’s Pride Parade, which was overtly advertised as a family-friendly event but which included graphic acts of BDSM performed in public. Videos circulated online showing men engaging in simulated sexual acts while children were present. <https://www.hngn.com/articles/249216/20230605/west-hollywood-pride-parade-included-bdsm-sex-act.htm>. Please note that the links in this footnote contain images of the subject matter discussed, including nudity.

Kinks aside, some caregivers, who have no issue whatsoever with sexual orientation, reasonably believe that any public celebration of sexuality is something that simply ought to be reserved for adults. This is neither homophobic nor is it harmful to youth who are same-sex attracted, especially not in an otherwise-supportive environment. Requiring foster parents to support attendance at such events, even indirectly, raises concerns about child safety and the appropriateness of exposing minors to adult themes. There are greater concerns as to safeguarding and the appropriateness of sexual material for children that must not be conflated with views on sexual orientation. There are many, many LGB adults who do not believe children should be ideologically influenced and exposed to sexualized events and material. DCF suggests that foster caregivers who are uncomfortable simply “facilitate” the children’s attendance at such events, which runs contrary to the very reason behind all non-religious opposition: if foster parents do not believe an event is appropriate for their foster child, they certainly won’t think it is appropriate for their foster child to attend *alone*.

Even if the sexual content of some Pride events were not a concern, in recent years Pride events are not always safe or welcome places for women and girls who identify as lesbian and reject gender ideology’s insistence that biological males can be lesbians. In recent years, there have been instances where lesbians expressing gender-critical views have faced exclusion or hostility at Pride events. *See e.g.* Chad

Felix Green, *Lesbians Accused Of Hate Crimes For Objecting To Transgenderism At London Pride Festival*, July 10, 2018. <https://thefederalist.com/2018/07/10/lesbians-accused-hate-crimes-objecting-transgenderism-london-pride-festival>.

For example, during the 2022 Cardiff Pride march in the United Kingdom, members of the group "Get The L Out UK" were removed by police for allegedly causing confrontation after displaying banners stating "Lesbians don't like penises" and "Trans activism erases lesbians." Reduxx Team, *UK: Lesbians Removed from Pride Event for Criticizing Gender Ideology*, August 27, 2022, <https://reduxx.info/uk-lesbians-removed-from-pride-event-for-criticizing-gender-ideology/>

Similarly, in 2018, at the Vancouver Dyke March, lesbian participants were told to remove symbols such as the double Venus sign (which indicates 'lesbian') and "XX" (which represents the female sex) from their attire and placards, as these were deemed 'exclusionary', and they were labeled a "hate group" by march organizers. Danielle Cormier, *Lesbians are being excluded from the Vancouver Dyke March in the name of 'inclusivity'*, August 12, 2018, <https://www.feministcurrent.com/2018/08/13/lesbians-excluded-vancouver-dyke-march-name-inclusivity>.

ii. Disproportionately medical transitioning

Lesbians, gay men, and bisexual people are harmed by gender ideology since they are more likely to be given sex trait modifications as children. Lucy Bannerman, *It Feels Like Conversion Therapy for Gay Children*, The Times, August 4, 2019.

Though billed as progressive, the “born in the wrong body” narrative is homophobic and has been notably embraced by countries such as Pakistan and Iran (where homosexuality is punished by death, but “sex change” is government subsidized). See, e.g., Ali Hamedani, The Gay People Pushed to Change Their Gender, BBC News (2014) available at <https://www.bbc.com/news/magazine-29832690> (last visited June 4, 2025); Sofia Bloem, Pathologizing Identities Paralyzing Bodies, Justice for Iran, 2014. This attitude may be more common in the west than many realize - whistleblowers from a child “gender” clinic in the UK have stated that “gender- affirming” care is sometimes sought by families who prefer a “transgender” child over a gay child. See BBC Newsnight report on the Tavistock GIDS (2020), available at <https://www.transgendertrend.com/bbc-newsnight-tavistock-gids/> (last visited June 4, 2025). “The evidence shows that the majority of adolescents and young people now identifying as transgender are lesbian, gay or bisexual, and that homophobic bullying is indicated as a possible reason. This is cause for serious concern that ‘affirmation’ is a way of ‘transing away the gay.’” <https://www.transgendertrend.com/affirmation-gay-conversion-therapy-children-young-people/> (last visited June 4, 2025).

This is true in the United States as well. Kimberly Shappley, a mother, admits publicly to beating and abusing her son, Kai, when he was just a toddler, for demonstrating an interest in “feminine” things. She stated in an interview, “I

remember thinking even before Kai was 3, this kid might be gay. And, I thought, that cannot happen, would not happen. We started praying fervently. Prayers turned to googling conversion therapy, and how can we implement these techniques at home to make Kai not be like this.” (quote from imgur post: <https://imgur.com/a/kai-shapple-BqM7g1O>) (last visited June 4, 2025). Kai’s experience is heralded as a success story for “trans children.” Madeleine Carlisle, Kid of the Year Finalist Kai Shapple, 11, Takes on Lawmakers in Her Fight for Trans Rights, TIME, January 12, 2022, <https://time.com/6128490/kid-of-the-year-kai-shapple-trans-activist/> (last visited June 4, 2025). It is clear that “transitioning” children who are gender nonconforming is, in many cases, constructing a medicalized heterosexuality” - and is the express aim of some children who choose this path or have it chosen for them. These drugs and procedures serve no medical purpose but rather are undertaken in an attempt to resemble the opposite sex, ostensibly to treat clinically significant distress that a person experiences as a result of not appearing “masculine” or “feminine” enough. These drugs and procedures can lead to sterilization and adult sexual dysfunction; the children who “consent” to them are simply too young to meaningfully consent to permanent impairment of fertility or of adult sexual experiences that they cannot yet comprehend. Given the high rate of desistance from childhood gender dysphoria, as well as the very high number of dysphoric youth who are same- sex attracted, serious caution should be urged. Littman L., Individuals

Treated for Gender Dysphoria with Medical and/or Surgical Transition Who Subsequently Detransitioned: A Survey of 100 Detransitioners, Archives of sexual behavior 50(8), 3353–3369; Wallien MS, Cohen- Kettenis PT, Psychosexual outcome of gender-dysphoric children, J Am Acad Child Adolesc Psychiatry, (Dec 2008) 47(12):1413-23.

There is a tension where some lesbians feel that their definition of same-sex attraction is being challenged or invalidated. The Economist has noted that the gender-identity movement can undermine lesbians by promoting the idea that sexual orientation is based on gender identity rather than biological sex, leading to the erasure of lesbian identity. Sanchez Manning, *Proposed Pride march could be alternative for ‘fed up’ lesbians this summer*, April 27, 2024, <https://www.telegraph.co.uk/news/2024/04/27/alternative-pride-march-could-be-held-for-fed-up-lesbians/>

New organizations have been created to preserve the rights that Lesbians, Gay Men, and Bisexuals have fought for, to stop the medical treatment of children for gender confusion, and to fight for sex-based rights. See The LGB Alliance USA, <https://lgbausa.org/>, and Gays Against Groomers, <https://www.gaysagainstgroomers.com/> (last visited June 4, 2025) (organizations fighting the sexualization, indoctrination, and medicalization of children).

Even people who identify as transgender have joined with lesbians, gay men, and bisexuals to reform gender medicine for children. See The LGB Courage Coalition <https://www.lgbtcourage.org/> (last visited June 4, 2025). These groups recognize that the children and young adults being medicalized for not conforming to sex-based stereotypes are disproportionately same-sex attracted (LGB). See, e.g. Lisa Littman, Rapid-Onset Gender Dysphoria in Adolescents and Young Adults: A Study of Parental Reports, 13 PLoS One 1 (2018).

III. Mandating Adherence to Gender Ideology is an Unconstitutional Establishment of Religion

DCF defends its Rules, claiming they are necessary to protect “LGBTQ” foster care youth, an ostensibly secular principle rooted in protecting vulnerable children. However, the Rules promote an ideology that is itself quasi- religious in nature, making the mandatory agreement by foster parents with gender ideology an impermissible establishment of religion in violation of the Establishment Clause of the United States Constitution.

A. Gender Ideology is Religious in Nature.

This ideology is not named in the Rules nor acknowledged by DCF as an ideology. Denial of any ideological bent is characteristic of gender ideology adherents; its strongest proponents instead frame their beliefs as grounded in indisputable fact and universally observed truth. For example, GLAAD (which formerly stood for ‘Gays and Lesbian Alliance Against Defamation’ but which now spends much of its time

promoting gender ideology), believes “everyone has a gender identity,” and issued a fact sheet advising reporters to avoid the term “gender ideology.” *See* GLAAD, *Fact Sheet for Reporters—Term to Avoid: “Gender Ideology”* (December 3, 2024), <https://glaad.org/fact-sheet-for-reporters-term-to-avoid-gender-ideology/> (last visited June 4, 2025). The Fact Sheet states that “Gender ideology” is “an inaccurate term” and that unverifiable claims about gender identity do not constitute an ideology because “‘ideology’ describes a political construct and opinion that can be debated, argued about, and can change over time.” The assertion that our political and cultural discourse on sex, gender, and gender identity, cannot be debated or argued about, and does not change over time, is simply untrue, otherwise there would be no controversy.

And at its core, the very concept of “gender identity” and its opposition to the observable fact of sex refutes this framing. The concept and the ideology built on it are quasi-religious in nature. Chris Bodenner, *Is the Transgender Movement a Spiritual One?*, *The Atlantic*, June 28, 2016, <https://www.theatlantic.com/national/archive/2016/06/is-the-transgender-movement-a-spiritual-one/623668/> (last visited June 4, 2025).

There is no consistently applied legal definition of “religion,” but a common understanding of that term includes the idea of a set or attitudes, beliefs, and practices towards things sacred. *Religion* Merriam-Webster.com Dictionary,

Merriam-Webster, <https://www.merriam-webster.com/dictionary/religion> (last visited June 4, 2025) In contrast with secular attitudes, beliefs and practices, religious attitudes, beliefs and practices often cannot be fully explained by reference to observable phenomena.

Indeed, while sex is an observable characteristic based in reality, “gender identity” is wholly self-determined. The disconnect of the metaphysical “gender identity” to physical sex is akin to the religious concept of a soul: “the principle of life, feeling, thought, and action in humans, regarded as a distinct entity separate from the body, and commonly held to be separable in existence from the body; the spiritual part of humans as distinct from the physical part.” Soul Definition, *Dictionary.com* (based on Random House Unabridged Dictionary, 2020).

Leaders within the movement to promote gender ideology openly describe the spiritual nature of their belief. The publication *them*, which bills itself as “the award-winning authority on what LGBTQI means today,” published an interview on the “divinity of transness” with Reverend Valerie Spencer, the founder of a spiritual organization for “LGBTQI communities.” Spencer states:

[t]o be trans is one of the most spiritual things one can ever be in and itself - even should you never pray. We are the rare people that caught a glimpse of God being itself as us, dancing around as us. And when we begin to move towards that vision, that is divine.

Rev. Valerie Spencer and Wren Sanders, *Reverend Valerie Spencer Sees the Divinity of Transness*, *them*, July 1, 2022.

The most troubling part of the cognitive dissonance underlying gender ideology's fundamentally quasi-religious nature is that its adherents use its mystical associations to shield a highly idiosyncratic and unscientific belief system from inquiry. Ideologues have long treated gender ideology as a rigid orthodoxy concerning which there can be "no debate" and any dissenter as an apostate, making reasoned questioning of its tenets impossible. *See, e.g.,* Ellen Pasternak, "No Debate" No Longer an Option, *The Critic* magazine (September 22, 2021) (describing the "taboo" around discussing beliefs critical of gender ideology dogma, such as that sex is binary and fixed) ; Frances Widowson, *The Campus Trans Diktat: No Debate, No Dissent - And No Jokes*, *Quillette* (September 6, 2022). Critics of the ideology may be tarred as hateful, bigoted, or - in the case feminist critics - trans-exclusionary radical feminists or TERFs, a term used to demean critics of the belief in gender ideology. *See* <https://terfisaslur.com/> (website documenting the abuse, harassment and misogyny directed at feminists critical of gender ideology). These critics have faced job loss, deplatforming, censorship, and cancellation, punishments that have been visited disproportionately on women. *See* List of Women Cancelled in the United States Over Gender Ideology, <https://womensliberationfront.org/list-of-cancelled-women> (last visited June 4, 2025).

B. Requiring Foster Parents Profess and Demonstrate Belief in Gender Ideology Constitutes an Establishment of Religion.

DCF’s Rules requiring foster caregivers to profess and demonstrate belief in gender ideology in order to act as foster parents is an establishment of religion. While the legal standard for finding an impermissible establishment of religion has evolved, there remains the basic requirement that the government must remain neutral towards religion. *Lemon v. Kurtzman*, 403 U.S. 602 (1971). Finding an impermissible establishment of religion here is not overly complicated by evolving Establishment Clause precedent because a program of coercive indoctrination of children and youth that favors religious dogma over secular belief violates the constitution under any analysis. *Id.* See also *International Refugee Assistance Project v. Trump*, 883 F. 3d 233 (4th Cir. 2018).

The Supreme Court has evaluated such government actions according to a three-pronged test: First, the government must have adopted the law or policy with a secular purpose. Second, the principal or primary effect must be one that neither advances nor inhibits religion. Third, it must not result in an excessive entanglement of government with religion.

i. DCF’s Rules Regarding Gender Ideology are Coercive and Constitute an Endorsement of Religion.

In *Kennedy v. Bremerton*, the Court wrote that “the Establishment Clause must be interpreted by “reference to historical practices and understandings,” including the

principle “that government may not, consistent with a historically sensitive understanding of the Establishment Clause, ‘make a religious observance compulsory.’” 597 U.S. 507 (2022), slip op. at 23, 24-25 (*internal citations omitted*). The DCF Rules permit no variances to be granted under any circumstances, even when beliefs about sexuality and gender ideology are plainly irrelevant, such as for the care of infants, or should clearly be overridden by other considerations, such as with kinship care or respite care. The Rules related to gender ideology are on their face coercive. The motivation behind the prohibition on variances is part of the relevant inquiry, and there is no reasoning based in child protection - i.e. the secular purpose of the Rules - to mandate absolute adherence to gender ideology for all potential foster caregivers regardless of situation.

ii. DCF’s Rules Favors A Certain Religion or Creed Over Secular Beliefs.

and youth in foster care who question the beliefs their caregivers are forced to push will only receive further indoctrination in gender ideology about the subjective and fluid nature of gender identity.

DCF’s preference for doctrine over secular truth is plainly at odds with Court precedent. The favoring of religion over non-religion violates the fundamental principle under the Establishment Clause of government neutrality towards religion. Under this principle:

[g]overnment in our democracy, state and national, must be neutral in matters of religious theory, doctrine, and practice. It may not be hostile to any religion or to the advocacy of no- religion, and it may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite. The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.

Epperson v. Arkansas, 393 U.S. 97, 103 (1968). But the Rules not only favor the religious doctrine of gender ideology over a nonreligious, science-based understanding of sex and child safeguarding, the Rules also favor gender ideology over other faiths, which is in fact the primary argument of the Plaintiffs in this case. Differential treatment effectively creates a hierarchy of religion, with gender ideology trumping all other faiths as well as no faith. These Rules are on their face neutral neither among religions nor between religion and nonreligion. Such Rules violate the Establishment Clause under any analysis.

CONCLUSION

WoLF urges the Court to consider the implications of DCF's policies on foster parents' rights and the well-being of foster children. Policies that compel ideological conformity and potentially harm gender non-conforming children under the guise of inclusivity warrant careful scrutiny and violate the Establishment Clause. WoLF supports the Plaintiffs-Appellants in seeking relief from these mandates.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Second Circuit Rule 32.1 because this brief contains 6,293 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. 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 proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font.

Dated: June 6, 2025

Respectfully submitted,

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