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Religious Refusal Laws in Child Welfare - Harming Children and Stunting Progress

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All young people deserve to live in families where they are loved, nurtured and accepted for who they are, including children and youth who are removed from their homes due to abuse and neglect. Throughout the country, child welfare systems have made reforms to ensure that children who must be removed from their families are placed in the care of another family or in the most family-like setting possible. While this is not always achieved, child welfare systems have increasingly been working to place more children with their extended families or in family foster care settings when out of home placement is necessary. When children cannot reunify with their biological family for any reason, child welfare systems must find and support a positive permanent relationship with another parent, permanent adoptive home or long term guardian.

Child welfare systems across the country struggle to identify and maintain enough loving and supportive foster and adoptive homes. Of the 427,910 young people in foster care in 2015, 111,820 children were waiting to be adopted, more than half (62,378) of whose parental rights for all living parents had been terminated.¹ These children are disproportionately children of color: in 2015, over half (57 percent) of all children waiting to be adopted were children of color.² The average child awaiting adoption is seven and half years old and has been in foster care for almost 32 months.³

The time spent in foster care impacts children into adulthood. Research shows that young people who spent long periods of time in multiple foster care placements were more likely than their peers to experience unemployment, homelessness, incarceration or early pregnancy.⁴ Each year, over 20,000 young people “age-out” of foster care without ever being placed in a family or permanent home.⁵ Young people who age out of care without achieving positive permanency are more likely to experience housing instability and homelessness, face poor educational outcomes and become involved with the criminal justice system.^{6,7}

Religious refusal laws, such as the recently-passed Texas HB 3859⁸ allow publicly funded agencies to prevent safe, loving and caring individuals and families from becoming foster and adoptive parents because they fail to meet agency-imposed religious criteria. These laws directly contradict the mandates of the child welfare system and child welfare reform efforts over the years to ensure that more children are placed in family-based settings. They will further have very real and harmful effects on all children involved in child welfare.

While religious refusal laws vary across the country, they contain many similar provisions or common elements, including:

- Allowing publicly-funded child welfare service providers to refuse to place or provide services to individuals if those services conflict with the agency’s deeply-held religious beliefs contained in the agency’s written policy or statements of faith;
- Protecting such child welfare service providers from adverse action on behalf of the state, including loss of funding or rescissions of contract; and
- Requiring agencies to refer families to either another agency or the state Department of Health and Human Services, but not requiring agencies to notify parents of their discriminatory policies or provide services to families if there are no other nearby agencies to serve them.

To thrive, we know that all young people involved in child welfare need:

1. safe and affirming placements in the most family-like settings possible;
2. safe schools and communities;
3. connections to family and supportive social networks;
4. appropriate medical and behavioral health care;
5. external connections and support transitioning from care; and
6. connections to aftercare services.



In contrast to significant gains made by child welfare systems across the country to recruit and retain quality foster and adoptive homes and what we know children need to thrive, religious refusal laws will have harmful and far-reaching consequences for children and families involved in child welfare, including:

A reduction in the number of available homes for children and increased time in foster care

Religious refusal laws give publicly-funded social service agencies broad license to refuse prospective foster or adoptive parents who do not adhere to an agency or individual worker's religious beliefs. This means that agencies could reject otherwise qualified unmarried couples, individuals who are single or divorced, people of a different faith than the agency, interfaith couples, families and individuals who do not belong to a religious practice or lesbian, gay, bisexual, transgender, queer (LGBTQ) or gender expansive individuals or couples. These individuals and families, who are otherwise entirely qualified to provide safe and stable family environments for children,⁹ may also choose not to apply to become licensed as foster or adoptive parents for fear of denial of their application by a discriminatory agency. They may also only live near one child caring agency, further limiting the pool of available foster and adoptive homes for children.

Under broad religious refusal laws, agencies could also refuse potential foster or adoptive parents who do not agree with their religious beliefs about child rearing, meaning an agency could reject the application of otherwise qualified foster or adoptive parents who do not support the use of corporal punishment or support the use of vaccinations. This would result in children remaining in foster care rather than being placed in a loving, capable and qualified adoptive home. It could also increase referrals to group and congregate care facilities due to lack of available foster homes.

Educational disruption

Many students in foster care experience educational disruption not only when they enter care, but also upon subsequent changes in their placements. Research shows that educational disruption has a number of long-lasting, detrimental effects on students' academic achievement, brain growth, mental development, psychological adjustment and likelihood of high school completion.¹⁰ For example, it can take a student four to six months to academically recover for each school move and students who have moved schools multiple times have significantly

lower test scores and are more likely to repeat a grade than non-mobile students.^{11,12} Changing schools even once during high school renders students who have moved less than half as likely to graduate high school as their peers who do not change schools.¹³ Thus, it is critical to their educational success to limit the number of potential foster and adoptive placements, yet religious refusal laws increase the likelihood that children entering foster care will have to move further away from their home school for their placement and experience education disruption.



Disconnection from family and other supportive social networks

When children cannot be reunified with their birth family for any reason, their placement with or adoption by relatives or close family friends is often the preferred resource because it maintains their connection to family. Research shows that such kinship care is associated with better outcomes for children, including more positive adjustment, greater permanency and stability, better behavioral development and mental health stability than children in nonkinship foster care.^{14,15} Religious refusal legislation would allow an agency to refuse to place a child with an otherwise qualified relative or family friend for multiple reasons related to the agency or individual worker's religious beliefs and instead place the child in non-relative foster care or in a group or congregate care facility. This would cause needless disconnection from family and other supportive networks.

Lack of access to appropriate medical and behavioral health care

Research shows that children and youth in foster care experience greater physical and mental health issues than their peers not in foster care, making appropriate medical and behavioral health care critically important for their safety and well-being. Almost half of young people in care have had four or more “adverse family experiences”, or potentially traumatic events that contribute to multiple poor outcomes. Children in foster care are more likely to have received mental health services in the past year and to have a limiting physical, learning or mental health condition than their peers not in care.¹⁶ Moreover, research shows that long-lasting placement instability significantly worsens children’s behavioral well-being.¹⁷ Limiting potential foster and adoptive placements increases the likelihood that children in foster care will experience disruptions in their medical or behavioral health care. Moreover, an agency could deny children and young people necessary medical care, such as vaccinations, reproductive care or access to contraception, which runs counter to the work of jurisdictions throughout the country to ensure that all children in foster care are vaccinated, receive regular medical and dental care and are screened and receive access to any identified mental health care.

Young people who identify as LGBTQ or who are transgender or gender expansive are overrepresented in the child welfare system and are disproportionately youth of color. When data are disaggregated by sexual orientation, gender identity and race, research shows that these young people experience poorer mental and behavioral health outcomes when compared to their heterosexual or cisgender peers in foster care, in part due to experiencing greater discrimination outside of care and in part due to their placement in foster care environments that are unsafe and do not affirm their sexual orientation, gender identity and gender expression.¹⁸ Under religious refusal laws, an agency could refuse to connect LGBTQ and transgender or gender expansive young people in their care with affirming medical and behavioral health care providers, further exacerbating health or behavioral health problems. An agency could also place children who identify as LGBTQ or who are transgender or gender expansive with parents who will force them to attend conversion therapy. Conversion therapy—sometimes known as “reparative” or “sexual reorientation” therapy—is a dangerous practice that purports to change a person’s sexual orientation. This practice has been discredited by virtually all major American medical, psychiatric, psychological and professional counseling organizations and trauma experienced in conversion therapy has been

linked to increased risk of depression, illicit drug use and suicidal ideation.¹⁹ Involvement in foster care should not result in more harm to any young person’s health and well-being. All children deserve to feel safe and respected in their home environments and to have access to appropriate mental and behavioral health care. Religious refusal laws prevent states or localities from barring the use of this practice.

Additional harm for LGBTQ+, transgender and gender expansive young people in foster care

Promoting safety and affirmation is critical to ensuring healthy identity development and positive outcomes for all youth, but especially LGBTQ and transgender or gender expansive young people. Many of these youth have entered foster care because they were rejected by their families due to their sexual orientation or gender identity. Research shows that young people who identify as LGBTQ or who are gender expansive are more likely than their heterosexual, cisgender peers to experience multiple foster placements, be moved from their first placement at the request of the caregiver or foster family and be placed in congregate care settings. When child welfare systems do not affirm all young people in their sexual orientation and



gender identity (SOGIE) development, either through non-affirming agency policy or by placing children and youth in non-affirming settings, they are more likely to replicate the very harm and rejection that resulted in that young person entering care in the first place. As many as one out of every four LGBTQ youth in a congregate care setting will exit care without achieving permanency.²⁰ By allowing agencies to discriminate against LGBTQ or gender expansive foster or adoptive parents, religious refusal laws send a clear and powerful message that the public agencies charged with protecting youth who have been rejected by their families

will further repeat that trauma and validate such rejection by not supporting or affirming their identities. In addition, placement of young children in non-affirming homes can result in abuse and failed adoptions later when a child comes out in that home.

This rejection and additional traumatization directly contradicts all that we know is considered good parenting, including the results of scientific studies showing that children raised by same sex couples experience healthy outcomes. It also discounts the fact that foster and adoptive parents of all religions have demonstrated the ability and commitment to provide loving and affirming homes to all children regardless of their religious affiliation. Just as all people have a SOGIE, all young people deserve to feel safe and nurtured as they grow and develop their own understanding of their sexual orientation and gender identity.

Conclusion

Religious refusal laws will greatly impact all children and youth in foster care and can result in a further reduction in the number of homes for children, increased time in foster care and multiple placement changes, increased congregate care placements, educational disruption, disconnection from family and supportive social networks, lack of access to appropriate medical and behavioral health care and additional harm for LGBTQ and transgender or gender expansive young people in care. These outcomes are far from inevitable. We call upon policymakers and advocates to join the many states and communities who are rejecting religious refusal laws that provide publicly-funded agencies with a license to discriminate and are instead working to ensure that child serving agencies focus on promoting the best interests of all children in their care through inclusive nondiscrimination laws and providing them with capable, loving and stable homes.



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