

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

MELINDA	ANTONUCCI;	CASEY)	
MATHIEU,)	
	Plaintiffs,)	Case No.: 2:24-cv-783
	v.)	
CHRISTOPHER WINTERS, in his personal)	VERIFIED COMPLAINT
and official capacity as Commissioner of the)	
Vermont Department for Children and)	
Families; ARYKA RADKE, in her personal)	
and official capacity as Deputy Commissioner,)	
Vermont Department for Children and)	
Families, Family Services Division; STACEY)	
EDMUNDS, in her personal and official)	
capacity as Director, Residential Licensing &)	
Special Investigations, Vermont Department)	
for Children and Families; and PAULA)	
CATHERINE, in her personal and official)	
capacity as a Licensing Officer, Residential)	
Licensing & Special Investigations, Vermont)	
Department for Children and Families,)	
)	
	Defendants.)	

INTRODUCTION

1. On any given day, hundreds of children in Vermont await a foster-care placement while in state custody. A shortage of licensed foster families means many of these children wait months to find a placement, if they find one at all. Despite this persistent need for additional foster homes, there are certain families Vermont does not want to participate in the foster-care program, no matter how loving or qualified they are. Vermont’s objection to these families is not based on a legitimate fear that they will inadequately care for foster children. Rather, the objection is based on the families’ unwillingness to pre-commit to the state’s ideological orthodoxy on issues related to so-called “gender affirming care.” If an applicant for a foster-care license is not willing to commit in advance and in the abstract to facilitate controversial psychological and medical

procedures for children—even when doing so would conflict with the applicant’s sincerely held religious beliefs—Vermont deems the applicant unfit to participate in the foster-care program. This is unconstitutional

2. Plaintiffs Melinda Antonucci and her husband Casey Mathieu are loving parents of three children. They are small business owners who are active in their Christian church and local community. And they are a licensed foster family by the Vermont Department for Children and Families (the “Department”). In January of this year, the Department issued a foster-care license to Melinda and Casey following extensive review of their qualifications and their completion of all required background checks and training courses. They are precisely the type of caring people that Vermont needs in its foster-care program.

3. In February of this year, Melinda posted support for a parental rights petition on her personal Facebook account. The petition advocated for public schools to inform parents before performing psychological treatment on their children through social transitioning.¹ Caseworkers with the Department saw the post and opened an investigation into Melinda and Casey. To Vermont, Melinda’s viewpoint on parental rights was evidence that Melinda and Casey were not fit to be foster parents.

4. Following an extensive inquiry into Melinda’s and Casey’s views on “LGBTQ children,” an inquiry in which the Department demanded they commit to facilitating a hypothetical foster child’s social and medical transition,² the Department informed Melinda and Casey that it intended to revoke their license. This was because Melinda and Casey are not willing to enable these controversial procedures in the unlikely event that they ever fostered a transgender-

¹ “Social transitioning” refers to the active affirmation of a person’s transgender identity. In the school setting, it primarily refers to calling the child by a new name and pronouns associated with their transgender identity. In the family setting, it also includes things like allowing the child to wear hairstyles and clothing associated with their transgender identity.

² A “medical transition” refers to medical interventions designed to bring a person’s body in alignment with their transgender identity. It includes things like puberty blockers, cross-sex hormones, and sex-reassignment surgery.

identifying child. Because of their beliefs, Vermont no longer wants Melinda's or Casey's help in alleviating its foster-care crisis.

5. Contrary to ensuring “nondiscrimination” within the foster-care program, Vermont is itself unlawfully discriminating among foster families by imposing its own ideological preferences on them. The effect of the Department's policy is a requirement that every foster family agree—in advance and in the abstract—to use preferred names and pronouns for a hypothetical child who might seek to socially transition to a new gender identity while in their care. Moreover, the Department requires every foster family agree—in advance and in the abstract—to facilitate a hypothetical child's medical transition if requested. This means helping a child obtain puberty blockers, cross-sex hormones, and potentially even sex reassignment surgery, such as a double mastectomy or genital surgery. While these procedures are currently in vogue in the United States for treating psychological distress among transgender-identifying youth, they are the subject of significant scientific and ethical debate within national and international medical communities. Sadly, Vermont requires foster families to take sides in this debate before allowing them to participate in the foster-care program.

6. Other foster families in Vermont have fallen victim to the Department's discriminatory policies. Just last month, two families filed suit against Department officials for revocation of their licenses on similar grounds. The Department's actions with respect to these other families make it clear that the Department has a policy of excluding families from the foster-care program if they hold certain beliefs.

7. Melinda's and Casey's objection to the Department's demands are rooted in both their sincerely held religious beliefs as well as their common sense. Vermont may think it is appropriate to give a child cross-sex hormones or allow them to have their breasts or genitals removed so they can live as a different sex, but Melinda and Casey do not. Melinda and Casey are willing and able to provide a loving and safe home for all children in their care, even those who identify as transgender. But to Vermont, this is not good enough. Melinda and Casey bring this action to vindicate their constitutional rights and to stop Vermont's unlawful discrimination.

JURISDICTION AND VENUE

8. Plaintiffs seek relief under the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. §§ 1983 and 1988, and 28 U.S.C. §§ 2201 and 2202. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343(3).

9. This Court has personal jurisdiction over Defendants, all of whom are employees of the Department and perform their jobs in Vermont.

10. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims alleged herein occurred in this District.

PARTIES

11. Plaintiff Melinda Antonucci is a resident of Westford, Vermont.

12. Plaintiff Casey Mathieu is a resident of Westford, Vermont. Casey and Melinda are married.

13. Defendant Christopher Winters is the Commissioner of the Department. In this capacity, Mr. Winters is ultimately responsible for the adoption and implementation of all Department policies, including but not limited to policies that govern the foster-care program, and for all licensing decisions made in connection with the Department's foster-care program.

14. Defendant Aryka Radke is Deputy Commissioner of the Department and head of the Family Services Division (the "FSD"). In this capacity, Ms. Radke oversees implementation of the Department's foster-care program, including licensing decisions.

15. Defendant Stacy Edmunds is the Director of the Department's Residential Licensing and Special Investigations unit (the "RLSI"), which is the licensing authority within the Department. In this capacity Ms. Edmunds oversees implementation of the Department's foster-care licensing decisions. At all relevant times, she was acting within the scope of her employment and under color of state law for purposes of 42 U.S.C. § 1983.

16. Defendant Paula Catherine is a Licensing Officer in the RLSI. In this capacity, Ms. Catherine processes licensing applications and approves or denies these applications pursuant to

Department policies. At all relevant times, she was acting within the scope of her employment and under color of state law for purposes of 42 U.S.C. § 1983.

FACTS

Background on Transgender Identities and Gender Dysphoria

17. The terms “sex” and “gender” are not interchangeable. “Sex” refers to an individual’s biological reproductive capabilities, while “gender” refers to the characteristics of women, men, boys, and girls that are socially constructed and mutable.

18. A person’s “gender identity” is the person’s internal, felt experience of gender.

19. Persons with a “transgender” identity feel their gender identity does not match their sex.³

20. “Gender dysphoria” refers to a condition in which the mismatch between an individual’s gender identity and sex produces psychological distress in the individual. While having a transgender identity is not a psychiatric condition, gender dysphoria is. For the psychological distress to constitute gender dysphoria, the distress must be over a certain threshold.

21. A person can have a transgender identity without the threshold of associated psychological distress and thus not have gender dysphoria. Nevertheless, a large proportion of minors who have a transgender identity also have developmental and psychiatric conditions such as autism, depression, anxiety, eating disorders, and attention deficit / hyperactivity disorder. Many also have gender dysphoria or sub-threshold gender-related distress.

22. Having a transgender identity or gender dysphoria is not biologically determined, nor is it possible accurately to predict which transgender-identifying minors have a transgender identity that will persist into adulthood.

23. Minors who claim or express interest in pursuing a transgender identity often do so based on stereotypical notions of femaleness and maleness that reflect constrictive notions of what

³ Transgender-identifying individuals may have a cross-sex gender identity, a non-binary gender identity or a gender identity other than male or female. Plaintiffs use the term “transgender” to include all of these concepts.

men and women can be. For example, a male minor may feel he has a female gender identity because, in his perception, men like sports and he does not. These minors are unaware of—and simply need to be educated regarding—the vast array of possibilities of how life can be lived as a man or a woman.

24. Nationwide, approximately 1.4% of youth ages 13-17 years old identify as transgender. See Herman, *et al.*, *How many Adults and Youth Identify as Transgender in the United States?* Williams Institute UCLA (June 2022) <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf>, attached hereto as Exhibit A.

25. For prepubertal children, their gender identity “is nearly always consistent with their gender assigned at birth.” Philip Graham, *Transgender children and young people: how the evidence can point the way forward*, BJPsych, (April 2023), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10063975/>, attached hereto as Exhibit B.

26. There are generally four approaches to treating gender dysphoria in minors: the “watchful waiting” model, the “hands off” model, the “psychotherapy” model, and the “affirmation” model. There are significant differences in these approaches.

27. The “watchful waiting” model seeks to allow for the fluid nature of gender identity in minors to evolve naturally. Under this model, the mental health professional treats any other psychological co-morbidities without a focus on gender.

28. The “hands off” model is similar to the “watchful waiting” model insofar as it allows the minor’s gender identity to evolve naturally, but it provides no ongoing treatment.

29. Under the “psychotherapy” model, the mental health professional seeks to identify the causes of the psychological distress and to address those causes through psychotherapy as a means of alleviating the distress.

30. The “affirmation” or “affirmational” model is starkly different from the other three. It holds that any expression of a transgender identity in the minor should be immediately accepted as decisive and permanent.

31. A primary pillar of the “affirmational” model is that minors who sincerely assert a transgender identity and who seek to be socially and medically transitioned should be transitioned to alleviate any psychological distress associated with the mismatch between the minor’s gender identity and sex. In addition, the “affirmation” model assumes that any psychological co-morbidities will improve with transition.

32. The “affirmational” model is an inadequate “one-size-fits-all” approach that fails to account for the broader and unique issues the minor is facing.

33. Transitioning is not appropriate for every minor with a transgender identity who expresses a desire to transition, even if the minor has gender dysphoria or sub-threshold distress. For example, as discussed, some minors have a transgender identity due to their stereotypical notions of gender roles. Others may simply be confused about their gender identity. In these and other situations, education and / or psychotherapy—not transitioning—is appropriate to treat the distress. Transitioning in these situations can create psychological complications for the minor.

34. Absent social transitioning, a large majority of minors who have a transgender identity will desist—that is, lose their transgender identity—prior to adulthood.

35. Social transitioning is not a mere benign intervention; instead, it is a significant form of psychological treatment that substantially *reduces* the number of minors who desist from a transgender identity. In other words, socially transitioning minors who have a transgender identity makes it significantly more likely that the transgender identity will persist in the minor. Living in a transgender identity, which is the result of social transitioning, makes desistence more difficult and significantly less likely.

36. In the vast majority of cases where minors receive “affirmational” care in the form of social transitioning, the minor goes on to receive further “affirmational” care in the form of medical interventions.

37. Included among these medical interventions are:

- a. Administration of gonadotropin-releasing hormone (GnRH) analogues (also known as “puberty blockers”), which inhibit the body’s natural production of gonadal hormones such as estrogen, progesterone, and testosterone.
- b. Administration of cross-sex hormones such as testosterone (for natal females) and estrogen (for natal males).
- c. Double mastectomies for natal females (also known as “top surgery”).
- d. Genital modification or removal (also known as “bottom surgery”).

38. The risks associated with these medical interventions are significant, and include bone weakness, cardiovascular harm, depression, increased risk of suicide, decreased sexual response, infertility, sterility, and premature adult mortality. Because of the high likelihood minors who socially transition will go on to receive medical interventions, a mental health professional must take account of risks associated with medical interventions prior to a minor’s social transition.

39. The methods of psychological and medical treatment contemplated by the “affirmational” model are controversial and the subject of significant scientific and ethical debate in national and international medical communities.

40. Approximately twelve states have laws requiring parental notification and / or consent before public schools may socially transition a minor. Approximately twenty-five states have restricted or banned medical interventions associated with “affirmational” care for minors.

41. Vermont does not have any laws requiring parental notification and / or consent before a minor may be socially transitioned at school, nor does it have any restrictions specifically restricting or prohibiting minors from obtaining medical interventions associated with “affirmational care.”

42. In addition, there are hundreds of lawsuits and legislative efforts related to “gender affirming care”—both pro and con—in courtrooms and state capitols across the country. The Supreme Court recently granted certiorari in a challenge to Tennessee’s ban on gender affirming care for minors, thrusting the legality of such bans into the national spotlight.

43. In April 2024, Dr. Hilary Cass, former president of the United Kingdom’s Royal College of Paediatrics and Child Health, released the final version of her long-awaited evidence review assessing the effectiveness of practices associated with the “affirmational” method of care. *See The Cass Review: Independent review of gender identity services for children and young people*, Dr. Hilary Cass, United Kingdom National Health Service (April 10, 2024) (attached hereto as Exhibit C).

44. The Cass Review found, among other things, that (1) “there was no evidence that social transition in childhood has any positive or negative mental health outcomes”; (2) “weak evidence” that social transition in adolescence has positive mental health outcomes” and (3) there was a “lack of high-quality evidence” regarding the safety and efficacy of “the use of puberty blockers and [cross-sex] hormones” in minors. *Id.* at 31, 20.

45. Based on Dr. Cass’s recommendations, England’s National Health Service announced it would no longer prescribe puberty blockers to minors for “affirmational” care due to lack of evidence demonstrating their safety or efficacy. As a result, in May 2024, the United Kingdom temporarily banned prescription of puberty blockers to minors for “affirmational” care.

46. In light of the first principle of medical ethics (“do no harm”) and the risk of iatrogenic harm associated with the “affirmational” method—including the likelihood of inducing persistence through social transitioning and potential harm of medical interventions associated with “affirmational” care—the distinct trend among governments and practitioners in western Europe is a move away from the “affirmational” model as the first approach to treating gender dysphoria in minors.

Vermont’s Foster Care Program

47. Vermont has a significant shortfall in the number of licensed foster homes.⁴ Many children in the state’s custody wait weeks before a home opens for them, and some never find a home before leaving the state’s custody.

⁴ Mikaela Lefrak, *et al.*, *Vermont can’t find enough foster parents. What that means for kids in state care*, Vermont Public Radio (June 2, 2023), <https://www.vermontpublic.org/show/vermont->

48. The Department oversees Vermont’s foster-care program. The FSD operates the program. The RLSI is the FSD’s licensing authority.

49. A patchwork of statutes, regulations, and Department policies govern the program. Title 33, chs. 49, 51 of the Vermont Code provides the statutory authority for the program. The Department and FSD have adopted various rules and regulations that set forth licensing and other requirements for the program. The FSD has also adopted internal guidance policies that govern its administration of the program.

50. These statutes, regulations, rules, and policies define the obligations of foster families and the Department.

51. Families who seek to foster children must complete an application and pass a background check prior to obtaining a license.

52. The application process is extensive. Ostensibly, its purpose is to ensure that foster families are qualified and that best outcomes are achieved for both foster families and the child in need of care.

53. The Department asks applicants to consider whether there are any “behaviors [of potential foster children] that would make [them] feel uncomfortable” and whether there is “a particular age group or special need” that the licensee seeks to provide care for. Vermont DCF Foster Parent Guide at 8, attached hereto as Exhibit E.

54. The Department wants to know if an applicant can “care for children who may come from different backgrounds, have a different religion, identify as LGBTQ, have a disability, etc.” *Id.*

55. The Department tries “to recruit, train, support, and retain foster families who are LGBTQ affirming and supporting” because “LGBTQ children . . . will be placed in an LGBTQ affirming” home. Policy 76, attached hereto as Exhibit F.

[edition/2023-06-02/vermont-cant-find-enough-foster-parents-what-that-means-for-foster-kids,](#)
attached hereto as Ex. D.

56. The Department’s licensing rules contain a nondiscrimination requirement that provides “[a]ll foster parents are prohibited from engaging in any form of discrimination against a foster child based on race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability.” Vt. Dep’t for Child. And Fams., Fam. Servs. Div., Licensing Rules for Foster Homes in Vermont (Licensing Rules) Rule 200, attached hereto as Exhibit G.

57. In addition, foster parents must “meet the physical, emotional, developmental and educational needs of each foster child, in accordance with the child’s case plan.” *Id.* at Rule 201.

58. Further, foster parents must “support children in wearing hairstyles, clothing, and accessories affirming of the child’s racial, cultural, tribal, religious, or gender identity.” *Id.* at Rule 315.

59. Under the rules, however, applicants “shall not be denied a license solely based on inability to care for children of a certain age or children with special needs.” *Id.* at Rule 200.

60. While the Department’s regulations generally provide the option for individualized “variances” from almost all of its licensing requirements, *id.* at Rule 35, the regulations provide that “[u]nder no circumstances will the state licensing authority grant a variance from” its nondiscrimination rules—*i.e.*, “rules 200, 201, or 315.” *Id.*

61. The Department has also adopted an internal policy—Policy 76—specific to “Supporting and Affirming LGBTQ Children & Youth.” *See* Policy 76 (Ex. F). Policy 76 contains extensive requirements that Department staff must meet in order to satisfy the Department’s nondiscrimination prohibition based on gender identity.

62. Policy 76 provides that “all [FSD] staff are prohibited from engaging in any form of discrimination or bias based on sex, sexual orientation, gender identity, gender expression, or material status or partnership.” *Id.*

63. Policy 76 also provides that FSD “staff shall not attempt to persuade an LGBTQ individual to reject or modify their sexual orientation, gender identity, or gender expression. Staff will not impose personal or religious beliefs onto children and youth served by the division.” *Id.*

64. While the text of Policy 76 applies only to Department staff—and not applicants for a foster care license or existing license holders—the Department has interpreted Policy 76 to apply to foster families as well.

65. Despite these nondiscrimination provisions, the Department makes clear that, with respect to other traits, foster families generally “HAVE THE RIGHT TO SAY NO.” Foster Parent Guide at 6. Indeed, in the Department’s own words, “[t]he ability to say no [to a placement] is one of the most important skills you can have as a foster parent.” *Id.*

66. Though licensees generally have the right to “say no” to any given placement in their discretion, this right does not trump the Department’s nondiscrimination requirements.

67. Through its interpretation of its governing statutory and regulatory provisions, the Department has adopted a *de facto* policy requiring foster families to commit to fostering transgender-identifying children and facilitating the social and medical transition of transgender-identifying foster children in their care prior to being granted a license.

68. Under this *de facto* policy, if a foster family already has a license, the family must provide the Department assurances on demand that they will commit to fostering transgender-identifying children and facilitating the social and medical transition of a transgender-identifying child in their care if the child requests it.

69. The Department requires this commitment and these assurances in advance and in the abstract even if a foster family does not intend to foster a transgender-identifying child.

Melinda and Casey

70. Melinda and her husband Casey are loving parents who have been blessed with a happy and stable home. They have three children—a nineteen-year-old son, a sixteen-year-old daughter, and a five-year-old son.

71. Melinda and Casey are Christians, and their religious beliefs guide them in all that they do. To exercise their beliefs, they seek to give back to their community by helping those less fortunate.

72. Fostering children in need is how they intend to put their faith into practice, which a foster-car license allows them to do.

73. In or about February of 2023, they applied for a foster-care license with the Department.

74. During the licensing process, the Department sought Melinda's and Casey's views on transgender-identifying children.

75. On the license application, applicants must indicate whether they are willing to foster an "LGBTQ+" child. *See* Application for Care of Children, attached hereto as Exhibit H.

76. Melinda and Casey indicated they would be willing to foster an "LGBTQ" child.

77. The Department employee who conducted the first required home inspection also asked Melinda and Casey if they were willing to foster an LGBTQ child.

78. Melinda informed the Department employee that she and Casey had some hesitation with fostering a transgender-identifying child, but Melinda did not go into specifics.

79. This hesitation is not due to any discriminatory animus against transgender-identifying persons, but rather due to an inability—due to their sincerely held religious beliefs—to facilitate controversial psychological and medical treatment that a transgender-identifying child might request, such as social transitioning, administration of puberty blockers and cross sex hormones, or removal of healthy body parts.

80. If Melinda and Casey are not required to engage in or facilitate these treatments, they would be willing to foster a transgender-identifying child.

81. The Department employee advised Melinda and Casey to avoid expressing any hesitation about fostering a transgender-identifying child during the next home inspection or the Department may not issue them a license.

82. On October 19, 2023, a different Department employee, Paula Catherine, contacted Melinda and Casey by email to schedule the second required home inspection. *See* Emails from Paula Catherine to Melinda Antonucci, Dated Oct. 19, 2023, attached hereto as Exhibit I.

83. In that email, Ms. Catherine asked Melinda and Casey to complete a supplemental training module not included in the normal training.

84. This supplemental training module taught foster parents to affirm a foster child's transgender identity and facilitate the provision of medical and psychological treatment intended to aid in the child's transition if the child requested it. *See LGBTQ+ 101: Caring for LGBTQ Children and Youth [FY22 - Present]*, attached hereto as Exhibit J; *Supporting Youth*, attached hereto as Exhibit K.

85. Ms. Catherine indicated this supplemental training was necessary given the Department's perceived hesitancy by Melinda and Casey to foster a transgender-identifying child.

86. When Ms. Catherine arrived at Melinda's and Casey's home later that day, she again stressed that all homes must be "affirming" of a child's transgender identity.

87. Melinda expressed reservations about facilitating psychological and medical treatment for a transgender-identifying child if requested.

88. Because Melinda and Casey were looking to foster a younger child closer to their five-year-old son's age, they informed Ms. Catherine that they did not think the issue of transgender-identifying child would arise.

89. Ms. Catherine stated that children are starting to question their gender at very young ages, and that Melinda and Casey must be mindful that this could come up with one of their foster children.

90. In January 2024, the Department approved Melinda's and Casey's foster care application and issued them a license.

91. The following month, Melinda and Casey began fostering an eight-year-old boy. The placement was on an emergency basis and lasted for approximately two weeks.

The Department's Retaliation against Melinda and Casey

92. On February 19, 2024, Melinda posted on her personal Facebook page a link to a Petition for parental rights in the Essex Westford School District ("Petition"). *See* Facebook Post of Melinda Antonucci, Dated February 19, 2024, attached hereto as Exhibit L.

93. The Petition called on the school district to recognize parents' constitutional right to raise their children by informing parents prior to assisting their child's social transition to a new gender identity at school. *Id.*

94. In her Facebook post, Melinda encouraged residents in the community to sign the Petition.

95. On April 1, 2024, Ms. Catherine emailed Melinda requesting to speak to her about her public support for the Petition. *See* Email from Paula Catherine to Melinda Antonucci, dated April 1, 2024, at 3, attached hereto as Exhibit M.

96. In a phone call later that day, Ms. Catherine informed Melinda that a third party had brought the Petition to the Department's attention, and that Melinda's support for it was concerning to her because all foster homes must "affirm" transgender-identifying children.

97. Ms. Catherine did not explain how the Petition—which did not advocate for non-affirmance—was inconsistent with that requirement.

98. Ms. Catherine then interrogated Melinda about her beliefs on transgender-identifying children, asking questions about her willingness to use preferred names and pronouns and whether she would require her five-year-old son to use a transgender-identifying foster child's preferred name and pronouns in the event they fostered a transgender-identifying child.

99. Ms. Catherine ultimately demanded that Melinda commit to fostering a transgender-identifying child under the terms required by the Department—that is, by affirming the child's transgender identity through social and medical transition.

100. While Melinda was not opposed to fostering a transgender-identifying child, she said she would not facilitate a child's medical transition or require her five-year-old son to use the hypothetical foster child's preferred names and pronouns.

101. Because the Department generally allows parents to select the child before agreeing to foster, Melinda did not think her position would present a problem. If the Department insisted that foster parents must agree to transition transgender-identifying children, she and Casey could simply choose not to foster a transgender-identifying child. And if a child in their care began

identifying as transgender, the Department could find an alternative placement if it believed that certain psychological or medical treatment was necessary.

102. But this did not satisfy Ms. Catherine, who indicated that Melinda's and Casey's views were disqualifying and that their license could be revoked because of them.

103. On April 4, 2024, Ms. Catherine emailed Melinda and informed her that "since [she] will not foster a transgender child and discuss they/them pronouns with [her] child, then [the Department does not] know how [it] can move forward with fostering given the inability to predict any foster child's journey with their own identity." *See* Email from Paula Catherine to Melinda Antonucci, dated April 4, 2024, Exhibit M at 1.

104. Ms. Catherine informed Melinda that she (Melinda) could voluntarily "close [her] foster care license or [Ms. Catherine] will need to formally deny [their] license." *Id.* Ms. Catherine gave Melinda until April 30 to decide. Email from Paula Catherine to Melinda Antonucci dated April 19, 2024, attached hereto as Exhibit N.

105. On April 23, Melinda requested clarification from Ms. Catherine regarding the impact of voluntarily withdrawing their license versus the Department revoking it. Email from Paula Catherine to Melinda Antonucci, dated April 25, 2024, attached hereto as Exhibit O.

106. On April 25, Ms. Catherine responded and informed Melinda that if she and Casey voluntarily withdraw their license, the state may still rely on them for temporary emergency placements. *Id.* By contrast, formal revocation would prohibit Melinda and Casey from participating in the foster-care program even for temporary placements.

107. On April 30, 2024, Melinda emailed Ms. Catherine and informed her that she and Casey were not willing to voluntarily close their license, and that if the Department wished to revoke it, it needed to provide them with a formal notification. *See* Email from Melinda Antonucci to Paula Catherine, dated April 30, 2024, attached hereto as Exhibit P.

108. On information and belief, based on this email, Ms. Catherine arranged for the Department to stop sending Melinda and Casey emails notifying them of foster placements. Plaintiffs make this allegation on information and belief because prior to April 30, 2024, Melinda

and Casey received these types of emails once or twice a week, but since May 10, 2024, they have not received a single one.

109. On May 29, 2024, Melinda and Casey, through counsel, sent the Department a letter explaining their objections to the Department's policies and requesting clarification regarding the status of their license. *See* Letter from Plaintiffs' Counsel to Chris Winters (dated May 29, 2024), attached hereto as Exhibit Q.

110. On June 14, 2024, the Department responded to the letter, although it did not address the merits of Melinda's and Casey's concerns. *See* Letter from Vermont Attorney General's Office to Plaintiffs' Counsel (dated June 14, 2024), attached hereto as Exhibit R.

111. On or about July 6, 2024, Melinda and Casey received formal notice in a letter signed by Ms. Catherine and Ms. Edmunds that the RLSI was recommending that their foster-care license be revoked. *See* Notice of Decision (dated July 1, 2024), attached hereto as Exhibit S.

112. In the letter, Ms. Catherine and Ms. Edmunds said the reason for the RLSI's recommendation was Melinda's and Casey's failure to comply with the non-discrimination requirement (Licensing Rule 200) by failing to commit to facilitating the social and medical transition of a hypothetical foster child. *Id.*⁵

113. According to the Department, it is not enough for Melinda and Casey to provide a loving and supporting home for a transgender-identifying child. *Id.* Instead, they must agree to provide an "affirming" home as well, even if they never intend to foster a transgender-identifying child. *Id.*

114. Under the letter, Melinda and Casey have until August 1, 2024 to file an appeal with the Vermont Human Services Board. If no appeal is filed, the revocation of their license will be effective as of that date. *Id.*

115. Melinda and Casey intend to file such an appeal.

⁵ The letter also states that Melinda and Casey were unwilling to foster a transgender identifying child. That is incorrect. Melinda and Casey are willing to foster a transgender identifying child. They are not willing to commit to facilitating the social and medical transition of all such children in their care.

The Department's Pattern of Unlawful Conduct

116. On or about June 4, 2024, two former foster families filed suit against Department officials for revoking their licenses on almost identical grounds as those provided to Melinda and Casey. *See Wuoti et al., v. Winters, et al.*, No. 2:24-cv-00614 (D. Vt.).

117. In that suit, the foster families allege that the Department made similar inquiries into their views on "LGBTQ" children and their willingness to facilitate social and medical transitioning of foster children in their care. *Id.*

118. The foster families further allege that when the Department determined that they were not sufficiently supportive of facilitating a foster child's potential social or medical transition, it determined they were not eligible to participate in the foster-care program due to an ostensible violation of the Department's policies governing non-discrimination based on gender identity. *Id.*

119. The allegations in this lawsuit support Melinda and Casey's allegations that the Department interprets Policy 76 as applying to foster families despite the fact its text applies only to Department employees and licensing agencies. *Id.*

120. Further, based on one of the foster family's experience in the appeals process, it is a foregone conclusion that Melinda's and Casey's appeal will be denied and their license will be revoked.

Melinda's and Casey's Harm

121. Defendants' actions as alleged herein have caused, are causing, and will continue to cause significant harm to Melinda and Casey by depriving them of their fundamental rights protected by the U.S. Constitution.

122. Defendants' actions as alleged herein have caused, are causing, and will continue to cause significant harm to Melinda and Casey by depriving them of the ability to practice their religion by serving as foster parents for children in need.

123. Defendants' actions as alleged herein have caused, are causing, and will continue to cause significant harm to Melinda and Casey by depriving them of the ability to foster children in need and by depriving them and their biological children of the opportunity to form relationships

with the foster children placed with them. One of Melinda’s and Casey’s children is five years old, and Melinda and Casey believe his development would benefit from having a foster sibling, a benefit that will wane over time as he matures.

124. Defendants’ actions as alleged herein have caused, are causing, and will continue to cause significant harm to Melinda and Casey by seeking to compel them to speak messages with which they disagree.

125. Defendants’ actions as alleged herein have caused, are causing, and will continue to cause significant harm to Melinda and Casey in the form of emotional distress.

126. Defendants may not condition participation in Vermont’s foster-care program on families’ willingness to take a side in a divisive ideological debate. The psychological treatment and medical procedures Defendants seek to require foster families to facilitate are controversial and subject to intense debate within the medical community. And while Defendants may view the “affirmational” approach as the best way to care for a transgender-identifying child, there is no reason why all foster families must share in this belief to participate in the program. Defendants can allow families to provide treatment to transgender-identifying children in their own way or opt out of fostering a transgender-identifying child if the family felt they could not comply with Defendants’ preferred treatment methods. But instead, Defendants have chosen to exclude these families altogether simply because they are unwilling to conform with their preferred ideology.

FIRST CAUSE OF ACTION

(42 U.S.C. §1983)

Violation of the First and Fourteenth Amendments – Retaliation

127. Plaintiffs repeat and incorporate by reference all paragraphs of this Complaint as if fully restated herein.

128. Defendants retaliated against Plaintiffs based on activity that is protected by the First Amendment.

129. Melinda’s February 2024 Facebook post advocating for a parental rights petition is speech protected by the First Amendment.

130. Plaintiffs' ideological and religious views and statements regarding "LGBTQ" children and the way Plaintiffs would care for an "LGBTQ" foster child are protected by the First Amendment.

131. Plaintiffs' statements regarding Defendants' requirements regarding care for "LGBTQ" foster children were based on their sincerely held religious beliefs.

132. Defendants initiated an investigation into Plaintiffs' license, removed Plaintiffs from the Department's email distribution list, recommended that their license be revoked, and pursued revocation proceedings based on their protected First Amendment activity.

133. Defendants' actions were motivated by or substantially caused by Plaintiffs' exercise of their First Amendment rights, and Defendants would not have taken action against Plaintiffs but for their protected First Amendment activity.

134. Plaintiffs' First Amendment activity is not a legitimate basis for the actions Defendants took against Plaintiffs.

135. Defendants' actions would deter a similarly situated individual of ordinary firmness from exercising his or her First Amendment rights.

136. Defendants' actions harmed Plaintiffs in the ways set forth above.

137. Plaintiffs have no adequate remedy at law for these deprivations and will suffer serious and irreparable ongoing harm to their constitutional rights unless Defendants are preliminarily and permanently enjoined as set forth herein.

138. Plaintiffs are entitled to monetary relief, declaratory relief, and preliminary and permanent injunctive relief invalidating and restraining Defendants from their ongoing violations of Plaintiffs' constitutional rights as set forth herein.

SECOND CAUSE OF ACTION

(42 U.S.C. §1983)

***Violation of the First and Fourteenth Amendments – Compelled Speech and Viewpoint
Discrimination***

139. Plaintiffs repeat and incorporate by reference all paragraphs of this Complaint as if fully restated herein.

140. Defendants violated Plaintiffs' First Amendment rights, both facially and as applied, by initiating an investigation into Plaintiffs' license, removing Plaintiffs from the Department's email distribution list, recommending that their license be revoked, and pursuing revocation proceedings based on their refusal to engage in speech required by Defendants.

141. Defendants' policies require foster families to agree in advance to socially transition a transgender-identifying foster child, which includes using a child's preferred name and pronouns and requiring other family members to use such a child's preferred name and pronouns, and to facilitate a transgender-identifying foster child's medical transition even if the family never intends to foster a transgender-identifying child.

142. Plaintiffs object to and disagree with the view that transgender-identifying minors should undergo social or medical transition.

143. Plaintiffs object to and disagree with calling younger transgender-identifying minors by their preferred names and pronouns associated with their transgender identity

144. Plaintiffs object to and disagree with requiring their five-year-old son to call transgender-identifying minors by their preferred names and pronouns associated with their transgender identity

145. The use of preferred names and pronouns is an important aspect of social transitioning, which is a controversial form of psychological treatment in minors.

146. Social and medical transitioning in minors is the subject of intense scientific and ethical debate among the national and international medical communities.

147. Plaintiffs are aware of this debate and do not believe that there is sufficient evidence to back social or medical transitioning as a safe and effective form of psychological treatment for minors.

148. Plaintiffs believe that God creates humans to be either male or female and, accordingly, that it is immoral for adults to facilitate a minor's social or medical transition to live as a member of a sex different from their sex at birth. Because of their beliefs, Plaintiffs are unable

to participate or facilitate the social or medical transition of a transgender-identifying foster child if they were to ever have one in their care.

149. Plaintiffs do not wish to speak to their five-year-old son about preferred names and pronouns because they do not believe a child of his age is developmentally mature enough to process the distinction between sex and gender.

150. Defendants' requirement that Plaintiffs agree in the abstract to facilitate social and medical transitioning for a transgender-identifying foster child in their care compels them to speak ideas with which they disagree as a condition for maintaining a license.

151. Defendants' requirement that Plaintiffs agree in the abstract to refer to a transgender-identifying foster child in their care by his or her preferred name and pronouns compels them to speak ideas with which they disagree.

152. Defendants' requirement that Plaintiffs agree in the abstract to require their five-year-old to refer to a transgender-identifying foster child in their care by his or her preferred name and pronouns compels them to speak ideas with which they disagree.

153. Defendants violated Plaintiffs' First Amendment rights by taking action against them based on their refusal to engage in compelled speech.

154. Defendants' actions against Plaintiffs were regulatory, proscriptive, or compulsory in nature.

155. Defendants' actions were motivated by or substantially caused by Plaintiffs' refusal to engage in speech required by them, and Defendants would not have taken action against Plaintiffs but for their refusal.

156. Defendants would not have taken action against Plaintiffs if Plaintiff had been willing to speak Defendants' preferred message.

157. Defendants' actions against Plaintiffs constitute viewpoint discrimination.

158. Defendants' requirement that Plaintiffs commit in advance and in the abstract to facilitating social and medical transitioning to maintain their license serves no compelling,

important, or legitimate government interest, nor is it rationally related or narrowly tailored to achieve any such interest.

159. Defendants' actions harmed Plaintiffs in the ways set forth above.

160. Plaintiffs have no adequate remedy at law for these deprivations and will suffer serious and irreparable ongoing harm to their constitutional rights unless Defendants are preliminarily and permanently enjoined as set forth herein.

161. Plaintiffs are entitled to monetary relief, declaratory relief, and preliminary and permanent injunctive relief invalidating and restraining Defendants from their ongoing violations of Plaintiffs' constitutional rights as set forth herein.

THIRD CAUSE OF ACTION

(42 U.S.C. §1983)

Violation of the First And Fourteenth Amendment – Free Exercise

162. Plaintiffs repeat and incorporate by reference all paragraphs of this Complaint as if fully restated herein.

163. Defendants violated Plaintiffs' First Amendment Free Exercise rights, both facially and as applied, by initiating an investigation into Plaintiffs' license, removing Plaintiffs from the Department's email distribution list, recommending that their license be revoked, and pursuing revocation proceedings based on their religious exercise.

164. Plaintiffs' desire to be foster parents is motivated by their sincerely held religious beliefs.

165. Plaintiffs have a sincerely held religious belief that humans are created by God to be either male or female and, accordingly, that it is immoral for adults to facilitate a minor's social or medical transition to live as a member of a sex different from their sex at birth. Because of their sincerely held religious beliefs, Plaintiffs are unable to participate or facilitate the social or medical transition of a transgender-identifying foster child if they were to ever have one in their care.

166. Defendants' policies require Plaintiffs to commit to facilitating social and medical transition of a foster child, which their religious beliefs will not allow them to do, as a condition for maintaining their license.

167. Defendants' policies substantially burden Plaintiffs' exercise of their religion.

168. Defendants' policies are neither neutral nor generally applicable.

169. Defendants' policies allow for variances from almost all of its rules, but not its requirement that foster families commit to facilitating social and medical transition of a foster child.

170. Defendants' policies provide an express exemption to the nondiscrimination policy for "age" and "special needs."

171. Defendants' policies do not provide an exemption from the nondiscrimination policy for religious beliefs.

172. Defendants' policies provide variances or exceptions for certain regulatory requirements to accommodate a foster family's situation. These variances are not afforded to foster families on the basis of religious beliefs.

173. Defendants' policies uniquely burden religious conduct, favor secular conduct, and burden more religious conduct than necessary to achieve its goals.

174. By requiring Plaintiffs to engage in acts that conflict with their sincerely held religious beliefs, Defendants' policies impose an unconstitutional condition on them.

175. Defendants' requirement that Plaintiffs commit to facilitating social and medical transitioning to maintain their license serves no compelling, important, or legitimate government interest, nor is it rationally related or narrowly tailored to achieve any such interest.

176. Defendants' actions harmed Plaintiffs in the ways set forth above.

177. Plaintiffs have no adequate remedy at law for these deprivations and will suffer serious and irreparable ongoing harm to their constitutional rights unless Defendants are preliminarily and permanently enjoined as set forth herein.

178. Plaintiffs are entitled to monetary relief, declaratory relief, and preliminary and permanent injunctive relief invalidating and restraining Defendants from their ongoing violations of Plaintiffs' constitutional rights as set forth herein.

FOURTH CAUSE OF ACTION
(42 U.S.C. §1983)

Violation of the Fourteenth Amendment – Equal Protection

179. Plaintiffs repeat and incorporate by reference all paragraphs of this Complaint as if fully restated herein.

180. Defendants violated the Equal Protection Clause, both facially and as applied, by initiating an investigation into Plaintiffs' license, removing Plaintiffs from the Department's email distribution list, recommending that their license be revoked, and pursuing revocation proceedings based on Plaintiffs' speech, failure to engage in compelled speech, and religious exercise.

181. Defendants' actions harmed Plaintiffs in the ways set forth above.

182. Plaintiffs have no adequate remedy at law for these deprivations and will suffer serious and irreparable ongoing harm to their constitutional rights unless Defendants are preliminarily and permanently enjoined as set forth herein.

183. Plaintiffs are entitled to monetary relief, declaratory relief, and preliminary and permanent injunctive relief invalidating and restraining Defendants from their ongoing violations of Plaintiffs constitutional rights as set forth herein.

JURY DEMAND

Plaintiffs hereby request a trial by jury on all claims so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Melinda Antonucci and Casey Mathieu respectfully pray that this Court enter judgment in their favor and against Defendants on the following terms:

- A. Declaring Defendants' policies as alleged herein unlawful on their face and as applied to Plaintiffs;

- B. Preliminarily and permanently enjoining Defendants from enforcing Defendants' policies as alleged herein on their face and as applied to Plaintiffs;
- C. Preliminarily and permanently enjoining Defendants from revoking or otherwise impairing Plaintiffs' foster care license based on the policies as alleged herein or, in the alternative, requiring Defendants to reissue Plaintiffs' license;
- D. Awarding Plaintiffs nominal damages;
- E. Awarding Plaintiffs their attorneys' fees and all costs; and
- F. All other relief the Court deems just and proper.

Respectfully submitted,

Dated: July 17, 2024.

by:

/s/ Robert Kaplan

Robert Kaplan
Kaplan and Kaplan
95 St. Paul Street Ste. 405
(802) 651-0013
rkaplan@kaplanlawvt.com

Harmeet K. Dhillon*
Josh W. Dixon*
Eric A. Sell*
Center for American Liberty
1311 S. Main Street, Suite 207
Mount Airy, MD 21771
(703) 687-6212
harmeet@libertycenter.org
jdixon@libertycenter.org
esell@libertycenter.org

Attorneys for Plaintiffs
*Pro Hac Vice Application Pending

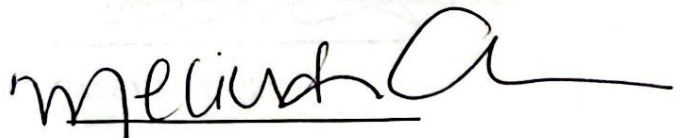
VERIFICATION

I, Melinda Antonucci, declare as follows:

1. I am over the age of eighteen years old, I am competent to make this verification, and have personal knowledge of the matters set forth herein.
2. I have reviewed the Verified Complaint to be filed on my behalf in this matter.
3. The allegations in paragraphs 2-4, 7, 11-12, 69-114, 120-25, 130-31, 142-52, 164-66 of the Verified Complaint are within my personal knowledge and are true and correct to the best of my knowledge.
4. All exhibits attached in support of this Verified Complaint are true and correct copies of the original documents.
5. I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed on July 16, 2024

Westford, Vermont

A handwritten signature in black ink, appearing to read 'Melinda A.', written over a horizontal line.

MELINDA ANTONUCCI

I, Casey Mathieu, declare as follows:

1. I am over the age of eighteen years old, I am competent to make this verification, and have personal knowledge of the matters set forth herein.
2. I have reviewed the Verified Complaint to be filed on my behalf in this matter.
3. The allegations in paragraphs 2-4, 7, 11-12, 69-114, 120-25, 130-31, 142-52, 164-66 of the Verified Complaint are within my personal knowledge and are true and correct to the best of my knowledge.
4. All exhibits attached in support of this Verified Complaint are true and correct copies of the original documents.
5. I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed on July 16, 2024

Westford, Vermont



CASEY MATHIEU