

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

MELINDA ANTONUCCI; CASEY)
MATHIEU,)

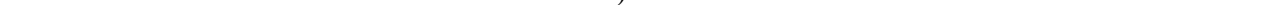
Plaintiffs,)

v.)

Case No.: 2:24-cv-00783

CHRISTOPHER WINTERS, in his personal)
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 of Children and Families,)

Defendants.)



**MEMORANDUM IN SUPPORT
OF MOTION FOR PRELIMINARY INJUNCTION**

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INTRODUCTION

Plaintiffs Melinda Antonucci and her husband Casey Mathieu are loving parents of three children. They are Christians, and motivated by their religious beliefs, they sought to become a licensed foster family in Vermont. The Vermont Department for Children and Families (the “Department”) gave them a license, but when it found out they objected to facilitating “gender affirming care” for minors, it began proceedings to revoke their license. This was unconstitutional.

“Gender affirming care” describes a treatment paradigm for individuals who have gender dysphoria. It calls for affirming the individual’s transgender identity through social transition—which is a form of psychological treatment that involves calling individuals by their preferred names and pronouns—and medical transition—which includes the administration of puberty blockers, cross-sex hormones, and sex-reassignment surgeries, like mastectomies and genital removal surgery. The medical community is engaged in a robust debate regarding the safety and efficacy of these forms of care for minors. Yet despite this debate, the Department forces foster parents to profess their agreement—in advance and in the abstract—to facilitate these treatments on foster children in their care, regardless of whether they are fostering or intend to foster a transgender-identifying child.

Prior to initiating license revocation proceedings against Melinda and Casey, the Department made no finding that their home was unsuitable. Instead, the Department based its actions solely on their refusal to agree to facilitate a hypothetical foster child’s social and medical transition. The Department’s actions violate the U.S. Constitution for at least three reasons. First, the Department’s policies impermissibly seek to compel Melinda and Casey to speak. By requiring them to agree to facilitate a hypothetical foster child’s gender transition, the Department seeks to compel foster families to engage in controversial speech they may disagree with.

Second, the Department’s policies impermissibly discriminate against Melinda and Casey based on viewpoint. Foster families who commit to providing “gender affirming care” to a hypothetical foster child may maintain their license, while those who do not will lose their license.

Third, the Department’s policies impermissibly burden Melinda and Casey’s right to exercise their religion. Because the Department grants variances and secular exemptions from its policies, its regulatory scheme is neither generally applicable nor neutral. Moreover, by requiring foster families to commit to facilitating “gender affirming care,” the Department has created an unconstitutional condition on maintaining a foster-care license.

The Department does not have compelling reasons for imposing these restrictions on foster care licenses, nor are the restrictions narrowly tailored to any goal. Melinda and Casey do not object to fostering a transgender-identifying child; rather, they only object to facilitating the provision of “gender affirming care” to such a child. Moreover, Melinda and Casey want to foster a child who is in the same age range as their five-year-old son, and the number of children in that age range who identify as transgender is vanishingly small. And if a child in their care came to have a transgender identity and wanted such care, the Department could find another placement.

As federal courts in Washington and Massachusetts have recognized, policies like the Department’s violate the U.S. Constitution. For this reason—and because Melinda and Casey will suffer irreparable harm from the Department’s actions—the Court should enjoin the Department from revoking Melinda’s and Casey’s license during the pendency of this litigation.

BACKGROUND

A. The Controversy over “Gender Affirming Care”

Over the past several years, the debate over “gender affirming care” for the treatment of transgender-identifying youth has become one of the most widely discussed, legislated, and

litigated issues in America. In general, the theory that underlies “gender affirming care” is that psychological distress that can be associated with having a transgender identity is best alleviated by affirming that identity. Compl. ¶¶ 20-39. This form of care includes psychological interventions such as “social transitioning”—*i.e.*, allowing transgender minors to use a different name, pronouns, dress, hairstyle, *etc.*, associated with their transgender identity. *Id.* ¶¶ 30-35. It also includes medical interventions, such as puberty blockers, cross-sex hormones, and surgery, like double mastectomies (for girls) and genital removal surgery. *Id.* ¶¶ 36-38.

There is a spirited debate in the medical community regarding the efficacy and safety of these procedures with respect to minors. *Id.* ¶¶ 39-45. The National Health Service in the United Kingdom commissioned a years-long study into the question—called *The Cass Review*—which concluded there is little high-quality evidence demonstrating that “gender affirming care” in minors is effective or safe. *Id.* ¶¶ 43-44. Here at home, approximately twelve states have passed laws requiring schools to notify and / or obtain parental consent before socially transitioning minors at school, and approximately twenty-five states have enacted laws that ban or restrict “gender affirming” medical treatment for minors. *Id.* ¶ 40.¹ 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. *Id.* ¶ 42.

B. Vermont’s Foster Care System

Vermont has a serious shortage of licensed foster families. *Id.* ¶ 47. Many children in the state’s custody wait weeks before a home becomes available to them, and some never find a home before leaving the state’s custody. *Id.* Despite this need, the Department excludes certain families

¹ Vermont does not have any such laws. *Id.* ¶ 41.

from the program based on their beliefs. *Id.* ¶¶ 66-120. Specifically, the Department does not want the help of families who do not share the state’s views on “gender affirming care.” *Id.* ¶¶ 99-115.

While the Department’s overlapping regulations and policies on this point are confusing and internally inconsistent, the Department implements those regulations and policies to mandate that all foster families must commit—in advance and in the abstract—to facilitating the provision of “gender affirming care” to transgender-identifying foster children in their care. *Id.* ¶¶ 67-69. While foster families generally “HAVE THE RIGHT TO SAY NO” to any placement, Foster Parent Guide at 6, they are nevertheless “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.” Rule 200. Moreover, foster parents must “meet the physical, emotional, developmental and educational needs of each foster child, in accordance with the child’s case plan,” Rule 201, and must “support children in wearing hairstyles, clothing, and accessories affirming of the child’s racial, cultural, tribal, religious, or gender identity.” Licensing Rules 315. These requirements contain an exception for foster parents who do not wish “to care for children of a certain age or children with special needs.” *Id.*

The Department also has an internal policy—Policy 76—specific to “Supporting and Affirming LGBTQ Children & Youth.” Compl. ¶¶ 61-64 and Ex. F. Policy 76 provides that “all division staff are prohibited from engaging in any form of discrimination or bias based on sex, sexual orientation, gender identity, gender expression, or marital status or partnership.” *Id.* ¶ 62. Policy 76 further provides that “[d]ivision 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.” Compl. ¶ 63.

While the plain text of Policy 76 applies only to Department employees, the Department has interpreted this Policy to apply to foster families as well. *Id.* ¶ 64.

In sum, the Department interprets these various governing provisions to require that, prior to receiving a license, foster families must commit to facilitating the social and medical transition of transgender-identifying foster children. *Id.* ¶¶ 65-69. And if a foster family already has a license, they must provide the Department assurances on demand that they will facilitate the social and medical transition of a transgender-identifying child. *Id.* The Department requires this commitment in advance and in the abstract even if a foster family has no intentions of ever fostering a transgender-identifying child. *Id.* ¶ 69.

C. Melinda and Casey

Melinda and Casey are loving parents who have been blessed with a happy and stable home. *Id.* ¶ 7. They have three children—a nineteen-year-old son, a sixteen-year-old daughter, and a five-year-old son. *Id.* ¶ 70. Melinda and Casey are Christians, and their religious beliefs guide them in all that they do, including motivating them to become foster parents. *Id.* ¶ 71.

In or about February of 2023, Melinda and Casey applied for a foster-care license. *Id.* ¶ 73. On the license application, applicants were required to indicate whether they were willing to foster an “LGBTQ” child. *Id.* ¶ 75 and Ex. H. Melinda and Casey indicated that they were. *Id.* ¶ 76. The Department employee who conducted the first home inspection also asked Melinda and Casey if they were willing to foster an LGBTQ child. *Id.* ¶ 77. Melinda informed the employee that she and Casey had some hesitation with fostering a transgender-identifying child. *Id.* ¶ 78. This hesitation was not due to animus against transgender identifying children, but rather due to Melinda’s and Casey’s perception that the Department would require them to facilitate the social and medical transition of a transgender-identifying child in their care, practices they disagreed with based on

their religious and social views. *Id.* ¶ 79. If the Department does not require foster families to facilitate these practices, Melinda and Casey are willing to foster a transgender-identifying child. *Id.* ¶ 80. The Department employee advised Melinda and Casey to avoid expressing hesitation about fostering a transgender-identifying child during the next home inspection. *Id.* ¶ 81.

On October 19, 2023, a different licensing employee from the Department, Paula Catherine, contacted Melinda and Casey to schedule the second home inspection. *Id.* ¶ 82 and Ex. I. Ms. Catherine asked Melinda and Casey to complete a supplemental training module not included in the normal training. *Id.* ¶ 83. This supplemental training module taught foster parents how to affirm a child's transgender identity and to facilitate the provision of psychological and medical treatment intended to aid in the child's transition if the child requested it. *Id.* ¶ 84 and Exs. K, J. Ms. Catherine indicated this supplemental training was necessary given the Department's perception that Melinda and Casey were hesitant to foster a transgender-identifying child. *Id.* ¶ 85. Melinda expressed reservations about facilitating psychological and medical treatment for a transgender-identifying child, particularly considering Melinda and Casey wanted to foster a younger child close to their five-year-old son's age. *Id.* ¶ 88. 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 happen with a foster child who was placed in their care. *Id.* ¶ 89.

In January 2024, the Department approved Melinda's and Casey's foster care application and issued them a license. *Id.* ¶ 90. The following month, they fostered an eight-year-old boy. *Id.* ¶ 91. The placement was on an emergency basis and lasted for about two weeks. *Id.*

D. The Department Acts Against Melinda and Casey

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. *Id.* ¶ and Ex. L. The Petition called on

the school district to begin informing parents prior to assisting their child's social transition to a new gender identity at school. *Id.* ¶ 93. Melinda encouraged the community to sign the Petition.

On April 1, 2024, Ms. Catherine emailed Melinda requesting to speak to her about her support for the Petition. *Id.* ¶ 95 and Ex. M. Ms. Catherine then proceeded to interrogate Melinda and Casey about their beliefs on transgender-identifying children, asking questions about their willingness to use preferred names and pronouns and whether they would require their 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. *Id.* ¶¶ 96-100. Ms. Catherine ultimately demanded that Melinda and Casey 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. *Id.* ¶ 99, Melinda said she was willing to foster a transgender-identifying child, but she would not facilitate a child's medical transition or require her five-year-old son to use the foster child's preferred names and pronouns. *Id.* ¶ 100.

On April 4, 2024, Ms. Catherine emailed Melinda and informed her that “since [she] will not . . . discuss they/them pronouns with [her] child, then [the Department does not] know how [it] can move forward with fostering.” *Id.* ¶ 103 and Ex. M. Ms. Catherine then informed Melinda that she “can chose (sic) to 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. *Id.* ¶ 104 and Ex. N.

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. *Id.* ¶ 109 and Ex. Q. On June 14, 2024, the Department responded to the letter, but did not address the merits of Melinda's and Casey's concerns. *Id.* ¶ 110 and Ex. R.

On July 1, 2024, Melinda and Casey received formal notice that a licensing division within the Department was recommending that their license be revoked. *Id.* ¶ 111 and Ex. S. The Department said the reason for the recommendation was Melinda 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.* ¶ 112-13. 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.*²

E. The Department’s Pattern of Unlawful Conduct

On June 4, 2024, two Vermont foster families formerly licensed by the Department filed suit alleging facts substantially similar to those at issue here. *Id.* ¶ 116. The plaintiffs alleged that the Department revoked their licenses because they would not commit to facilitating social and medical transition of foster children in their care. *Id.* ¶ 117. Those allegations confirm that the Department has a policy of denying/revoking licensure when the foster family will not agree to facilitate social and medical transitioning of foster children. *Id.* ¶ 119.

ARGUMENT

To obtain preliminary injunctive relief against the state, plaintiffs must show: (1) “a likelihood of success on the merits of their claims”; (2) that they will suffer “irreparable harm absent injunctive relief”; and (3) that the injunction is in the “public interest.” *Kane v. De Blasio*, 19 F.4th 152, 163 (2d Cir. 2021) (quotations omitted). Melinda and Casey make a strong showing on each of these factors.

² Melinda and Casey plan to oppose the revocation proceedings in the administrative context. *Id.* ¶ 115.

I. MELINDA AND CASEY ARE LIKELY TO SUCCEED ON THE MERITS

The Department's efforts to revoke Melinda's and Casey's license violate their rights to free speech and free exercise under the First and Fourteenth Amendments to the constitution. The Court should preliminarily enjoin those efforts.

A. The Department's Policies Violate the Free Speech Clause

The Department's requirement that Melinda and Casey commit to facilitating the social and medical transition of foster children in their care violates their free speech rights in two ways. First, it impermissibly attempts to compel their speech. Second, it impermissibly discriminates against them based on their viewpoint regarding "gender affirming care."

1. The Department seeks to compel speech.

The Free Speech Clause prohibits "the government from compelling individuals to express certain views." *United States v. United Foods, Inc.*, 533 U.S. 405, 410 (2001). "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). The government violates this command when it "compel[s] a person to speak its own preferred messages." *303 Creative LLC v. Elenis*, 600 U.S. 570, 586 (2023); *see also New Hope Fam. Servs., Inc. v. Poole*, 966 F.3d 145, 171 (2d Cir. 2020) (reversing dismissal of free speech claim where regulation required adoption agency to recommend adoptions in violation of its religious views). The government compels a person to speak when it requires speech as a prerequisite for obtaining or maintaining a government license. *See, e.g., All. for Open Soc'y Int'l, Inc. v. U.S. Agency for Int'l Dev.*, 651 F.3d 218, 234 (2d Cir. 2011) ("Compelling speech as a

condition of receiving a government benefit cannot be squared with the First Amendment.”), *aff’d sub nom. Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.*, 570 U.S. 205 (2013).

By requiring Melinda and Casey to profess a commitment to socially and medically transitioning a hypothetical foster child to maintain their license, the Department seeks to compel speech. *Evergreen Ass’n, Inc. v. City of New York*, 740 F.3d 233, 249 (2d Cir. 2014) (“Mandating speech that a speaker would not otherwise make necessarily alters the content of the speech.” (citation omitted)); *New Hope*, 966 F.3d at 171. The debate surrounding “gender affirming care” is divisive and can strike at the core of a person’s beliefs. This is all the more reason why speech regarding this form of care must be protected. *303 Creative*, 600 U.S. at 588 (holding government may not seek the “elimination of dissenting ideas about [important issues]”). While the state has taken a position on gender affirming care, there is no reason why Melinda and Casey must profess their adherence to the state’s orthodoxy to maintain a license.

Moreover, requiring Melinda and Casey to (1) commit to using a hypothetical transgender-identifying foster child’s preferred names and pronouns and (2) speak with their own children about the issue and require them to do the same also compels speech. It is impermissible for the Department to make such speech a necessary condition to obtaining and maintaining a foster care license. *See Meriwether v. Hartop*, 992 F.3d 492, 510 (6th Cir. 2021) (holding that use of pronouns is protected speech); *Darren Patterson Christian Acad. v. Roy*, No. 123CV01557DDDSTV, 2023 WL 7270874, at *17 (D. Colo. Oct. 20, 2023) (same).

2. The Department discriminates based on viewpoint.

The Department’s actions also discriminate against Melinda and Casey on the basis of viewpoint. “[T]he First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others.” *Matal v. Tam*, 582 U.S. 218, 234 (2017)

(citation omitted). Viewpoint discrimination is particularly odious when done to compel conformity with the government's own prevailing orthodoxy. *See Sorrell v. IMS Health Inc.*, 564 U.S. 552, 566 (2011) (observing that the government “may no more silence unwanted speech by burdening its utterance than by censoring its content.”). If the government allows certain views to flourish while stifling dissenting opinions, it engages in viewpoint discrimination. This is no less true when the government makes a state license dependent on speech that conforms with the state's preferred ideology. *See Wandering Dago, Inc. v. Destito*, 879 F.3d 20, 36 (2d Cir. 2018) (holding viewpoint compliance requirement is “an unconstitutional burden on First Amendment rights”).

The Department's policies are viewpoint discriminatory. By requiring Melinda and Casey to agree in advance to facilitate “gender affirming care,” the department is not ensuring the safety of foster children; rather, it is ensuring foster families' compliance with ideological orthodoxy. Indeed, Policy 76's prohibition of “attempt[s] to persuade an LGBTQ individual to . . . modify their . . . gender identity[] or gender expression” is so broad that it precludes Melinda and Casey from even discussing “gender affirming care” with foster children in their care.

Further, because Melinda and Casey wanted to foster a child in the same age range as their five-year-old son, it is extremely unlikely that they would even be asked to foster a transgender-identifying child. Compl. ¶ 25. Thus, there is no reason for the Department to require them to take a position on this divisive topic. And even if a child they were fostering developed a transgender identity later in life, the Department could find an alternative placement if it believed the child's emotional or developmental needs were not being met by Melinda's and Casey's decision not to affirm that identity. In short, there is simply no need for the Department to demand Melinda and Casey profess their assent to the state's views on “gender affirming care.”

B. The Department’s Policies Violate the Free Exercise Clause

The Department’s policies also violate Melinda’s and Casey’s free exercise rights. The government is prohibited from burdening religious exercise under policies that are not both “generally applicable” and “neutral.” *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993). The Department’s policies here are neither “generally applicable” nor “neutral.” In addition, they impose an unconstitutional condition on foster-care licensure.

1. The Department’s policies are not “generally applicable.”

Laws that contain individualized exemptions or exemptions for secular conduct but not similar religiously motivated conduct are not “generally applicable.” *Fulton v. City of Phila.*, 593 U.S. 522, 537 (2021). The Department’s policies violate both commands.

First, Licensing Rule 35 authorizes the Department to “grant a variance” whenever it believes the “licensee will otherwise meet the goal of the rule” at issue. This Rule permits the Department “to grant exemptions based on the circumstances underlying each application.” *Fulton*, 593 U.S. at 534. And while Rule 35 does not apply to Rules 200, 201, or 315, it reveals that the licensing regime is little more than a series of discretionary determinations made by the Department. This “invites the government to decide which reasons for not complying with the policy are worthy of solicitude.” *Id.* at 537; *see also Blais v. Hunter*, 493 F. Supp. 3d 984, 998–99 (E.D. Wash. 2020) (holding Washington foster-care regime was not generally applicable where rules gave “state actors unfettered discretion unrestricted by particularized, objective criteria” (cleaned up)); *Burke v. Walsh*, 3:23-cv-11798, Order Denying Motion to Dismiss (ECF 85), at *13–17 (D. Mass. June 5, 2024) (same with respect to Massachusetts foster-care regime).³

³ Plaintiffs request that the Court take judicial notice of the court’s Order in *Burke*. *See Anderson v. Rochester-Genesee Reg’l Transp. Auth.*, 337 F.3d 201, 205 n.4 (2d Cir. 2003) (taking judicial notice of court decision). A copy of this Order is attached as Exhibit A.

Second, the Department’s non-discrimination policy (Rule 200) provides an exemption for parents who cannot or are unwilling to foster a child of a certain age or with special needs. Compl. ¶ 59 and Ex. G at 8. By allowing “discrimination” on these bases but not religious beliefs, the policy impermissibly “prohibits religious conduct while permitting secular conduct that undermines the government’s asserted interests in a similar way.” *Fulton*, 593 U.S. at 534.

2. The Department’s policies are not “neutral.”

The Free Exercise Clause obviously prohibits laws that facially discriminate against religion, but it also forbids those laws that amount to the “covert suppression of . . . religious beliefs.” *Church of Lukumi*, 508 U.S. at 534. In determining whether a law covertly suppresses religion, the Court should evaluate whether: (1) the law uniquely burdens “religious objectors”; (2) the law “favors secular conduct”; and (3) the law bars “more religious conduct than is necessary to achieve [its] stated ends.” *Blais*, 493 F. Supp. 3d at 995. A complaint need only raise a “slight suspicion” of covert suppression to establish non-neutrality. *New Hope*, 966 F.3d at 161.

These conditions are satisfied here. While there are valid secular reasons to oppose gender transitions, as a practical matter, “the only foster care applicants who might object to supporting certain issues LGBTQ+ children might face will likely do so on religious grounds.” *Blais*, 493 F. Supp. 3d at 996. For this reason, the Department’s policies “favor . . . secular viewpoints over . . . religious viewpoints.” *Id.* And the Department’s policies “bar more religious conduct than necessary to achieve its ends.” *Id.* Accordingly, the Department’s policies are not neutral.

3. The Department’s policies impose an unconstitutional condition.

The government may not deny “a generally available benefit solely on account of religious identity.” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 458 (2017). For the same reasons the Department’s policies are not generally applicable or neutral, they also deny

Melinda and Casey a generally available benefit based on their religious status and activity. *Id.*; *see also Blais*, 493 F. Supp. 3d at 999–1000.

C. The Department Cannot Satisfy Strict Scrutiny

To justify its actions, the Department must satisfy strict scrutiny. *Kane v. De Blasio*, 19 F.4th 152, 169 (2d Cir. 2021) (free exercise); *Evergreen Ass'n, Inc. v. N.Y.C.*, 740 F.3d 233, 244 (2d Cir. 2014) (speech). To make this showing, the Department must demonstrate its policies are “the ‘least restrictive means’ of achieving its objective.” *Kane*, 19 F.4th at 169 (citation omitted); *see also Centro de la Comunidad Hispana de Locust Valley v. Town of Oyster Bay*, 868 F.3d 104, 115 (2d Cir. 2017) (holding strict scrutiny requires showing of “no conceivable alternative”). The Department cannot satisfy this heavy burden.

As an initial matter, the Department cannot establish that requiring Melinda and Casey to commit to facilitating “gender affirming care” serves a compelling interest. In fact, in light of *The Cass Review*, the prevailing winds are blowing away from this treatment paradigm. *See also Agudath Israel of Am. v. Cuomo*, 983 F.3d 620, 635 (2d Cir. 2020) (observing the court “may not defer to the Governor simply because he is addressing a matter involving . . . public health”).

Moreover, requiring every foster family to agree to facilitate this form of care is not the least restrictive means to achieve healthy foster-care placements. As the Court in *Blais* noted, the Department “could address LGBTQ+ concerns at the placement stage, rather than at licensing.” 493 F. Supp. 3d at 1000. In other words, the Department could allow foster families to base their placement decisions on the foster child’s gender identity, just as it does with respect to age, special needs, and any other trait that does not fall within the terms of its nondiscrimination rules. This is particularly true here, considering Melinda and Casey want to foster young children, almost none of whom have a transgender identity. And in the “rare situation” where a young foster child may

develop a transgender identity after being placed, the Department could “change placements” if it concluded Melinda and Casey were not providing the type of care it wanted. *Id.* This paradigm would better serve the state’s goals—and better address Vermont’s foster-care crises—than excluding the thousands of Vermonters who hold traditional views on gender identity.

To be clear, Melinda and Casey do not object to fostering a transgender-identifying child. Rather, they object to facilitating such a child’s transition. If the Department maintains that foster families must commit to facilitating transgender-identifying children’s transitions, the Department must allow Melinda and Casey to opt-out of fostering transgender-identifying children (1) at the placement stage and (2) if a child comes to have a transgender identity while in their care.

II. MELINDA AND CASEY SATISFY THE REMAINING INJUNCTION FACTORS

“[T]he deprivation of First Amendment rights [alone] is an irreparable harm . . .” *Agudath Israel*, 983 F.3d at 637 (cleaned up). Moreover, Melinda and Casey want their youngest son to have the experience of having a foster sibling as part of his development. Compl. ¶¶ 88, 123. Absent an injunction, precious time goes by without this experience. Because Melinda and Casey have shown a likelihood of success on the merits, “no further showing of irreparable injury is necessary.” *Id.* Moreover, Melinda and Casey have demonstrated that a preliminary injunction is in the public interest because “securing First Amendment rights is in the public interest.” *SAM Party of New York v. Kosinski*, 987 F.3d 267, 278 (2d Cir. 2021).

Finally, because granting a preliminary injunction will not harm Defendants, the Court should not require a bond. *Doctor’s Assocs., Inc. v. Stuart*, 85 F.3d 975, 985 (2d Cir. 1996).

CONCLUSION

For the foregoing reasons, the Court should grant Melinda’s and Casey’s motion for preliminary injunction.

Respectfully submitted,

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