

**SPECIAL ISSUE ARTICLE**

# Sexual orientation, gender identity, and foster care: What can social science offer in a case like *Fulton v. City of Philadelphia*?

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## Abstract

Are empirical data and results of research by social scientists relevant to court decisions in foster care cases, and if so, how? How should they be brought to the court's attention? These questions arose in the context of *Fulton v. City of Philadelphia* (2021), a recent U.S. Supreme Court case that posed the question of whether a religiously based foster care agency could refuse to provide service to LGBTQ+ prospective foster parents on the grounds of religious beliefs, and still accept public funds. Empirical evidence is relevant to the evaluation of at least three propositions related to foster care that were raised in *Fulton*: (1) There is a need for qualified prospective foster parents; (2) LGBTQ+ adults are at least as likely as others to be interested in becoming foster parents and they are likely to become competent foster parents; and (3) If sufficient numbers of qualified prospective foster parents cannot be found, children are likely to suffer. Consideration of the evidence reveals that each of these three propositions is supported by factual evidence. In the United States today, there is a definite need for competent foster parents, and competence as a foster or adoptive parent is not associated with parental sexual orientation. Moreover, LGBTQ+ adults may be more likely to show interest in becoming foster parents, on average, than their heterosexual peers. If LGBTQ+ adults are not permitted to become foster parents, some children are very likely to remain without homes, and in this way, will

suffer. If the best interests of children are to prevail, then child welfare agencies should search out, welcome, and support LGBTQ+ prospective foster parents, rather than turning them away. Ways of bringing the findings from research to the attention of the court are also discussed.

#### KEYWORDS

child welfare, foster care, foster parents, gay, lesbian, LGBTQ parents, sexual orientation, social science

#### Key points for the family court community

- Empirical data from social science research are often pertinent to court decisions in foster care cases.
- Empirical data from social science research were particularly relevant to *Fulton v. City of Philadelphia*.
- If the best interests of children are to prevail, then findings from empirical research suggest that child welfare agencies should search out, welcome, and support LGBTQ+ prospective foster parents, rather than turning them away.

## INTRODUCTION

How does society care for children whose parents cannot provide adequate support and supervision for them? And, as raised in the context of *Fulton v. City of Philadelphia* (2021), how can factual information and empirical findings of social science help legal professionals to address these questions? In this article, we first consider ways that child welfare systems function in the United States today, including a brief summary of some issues presented by the *Fulton* case itself, and then consider factual information and empirical research findings that might bear on the case. While empirical research findings can never be the only factor in legal decision making, they may provide information that can assist the court in reaching decisions. In this article, we seek to evaluate the extent to which this may be true in cases like *Fulton*.

## CHILD WELFARE IN THE UNITED STATES TODAY

In the U.S. today, children who have been orphaned, abandoned, or removed from the family home due to abuse or neglect are placed in the custody of the child welfare system, which is responsible for arranging their care (Farr & Grotevant, 2019; Riggs, 2020). At the heart of our child welfare system is the understanding that decisions about a child's care should always be made in that child's best interests (Pinderhughes & Brodzinsky, 2019). These interests are understood to involve family preservation, such as the child's placement in the care of relatives ("kinship placements;" Movement Advancement Project, 2020; Riggs, 2020), whenever possible. If placement with members of the child's birth family is not an option, child welfare workers attempt to place the child in the care of a foster family that has been trained and certified under government guidelines (Farr & Goldberg, 2018; Palacios et al., 2019; Riggs, 2020; U.S. Department of Health & Human Services, 2020).

In the United States today, current figures suggest that 78% of eligible children are actually placed either with relatives (32%) or with non-relative foster parents (46%) (McCann, 2019; U.S. Department of Health & Human

Services, 2020). Children for whom such placements are not found are sent to group homes or other congregate care settings, where they live until they can be safely returned to their birth families, until they become eligible for adoption, or until they become legal adults (U.S. Department of Health & Human Services, 2020). The primary goals of the child welfare system are protection and safety of the children under their care (U.S. Department of Health & Human Services, 2011).

According to recent figures from the U.S. Children's Bureau, more than 400,000 children were in the U.S. foster care system in 2019, the most recent year for which this data is available (U.S. Department of Health & Human Services, 2020). Thus, while child welfare workers had found families for more than 300,000 children, more than 90,000 children were not placed in foster family homes and were sent to group homes or other congregate care settings. In other words, because there are not enough foster parents in our country today, more than 90,000 American children do not have the opportunity to live in safe, nurturing, and supportive foster families. The U.S. has a real shortage of foster parents, and this affects the experiences of children in the child welfare system (Woods, 2019).

It is in this context that the *Fulton v. City of Philadelphia* (2021) matter emerged. The case began in November 2018, when a newspaper reported that, despite the City of Philadelphia's non-discrimination policy, which barred discrimination on the basis of sexual orientation, as well as on the basis of race and other categories, and despite the fact that they were funded by public money, two child welfare agencies in Philadelphia refused to work with married same-sex couples who wanted to become foster parents. When City officials learned this, and contacted the two agencies to clarify, one agency agreed to change their policy, so as to place foster children with same-sex couples, but the other, Catholic Social Services (CSS), did not. The CSS officials stated that it would be against their religious beliefs to allow same-sex couples to become foster parents, whether the couples were legally married or not. Consistent with its non-discrimination policy, the City of Philadelphia then withdrew public funding for child welfare services from CSS. CSS and several foster couples filed litigation against the city, claiming that the city had violated their First Amendment rights. The District Court found for the city, as did the Third Circuit Court of Appeals, and CSS appealed to the U.S. Supreme Court, which heard oral arguments in the case in November 2020. In June 2021, the Supreme Court concluded that Philadelphia had violated CSS' right to free exercise when it enforced the LGBTQ nondiscrimination clause. The contract between CSS and the City of Philadelphia gave the city the power to grant exceptions to its nondiscrimination policy, and the Court concluded Philadelphia had not justified its decision to deny CSS an exception that would accommodate their religious beliefs. Given the narrow scope of the decision, this judgment does not seem to have generated additional challenges for LGBTQ+ prospective foster parents across the U.S. (Liptak, 2021).

In the discussion below, we consider the degree to which empirical social science research findings might be considered relevant and helpful in cases similar to *Fulton v. City of Philadelphia*, in which child welfare agencies might refuse on religious grounds to consider applications from prospective foster and adoptive LGBTQ+ parents. Religious exemptions that permit child welfare agencies to deny services to LGBTQ+ prospective foster or adoptive parents, based on religious beliefs, currently exist in at least 11 states and are being considered in others across the U.S. at the time of this writing (Movement Advancement Project, 2021). Can the findings of social science research inform court decisions that are similar to *Fulton v. City of Philadelphia*, and if so, how? This is the question that we consider below.

## Social science research on foster care in the United States

Considerable research has been conducted on issues related to sexual orientation, gender identity, and foster care in the United States today. Of the questions that have been studied, three are particularly relevant to *Fulton*: (1) Is there a shortage of foster parents?; (2) What kinds of foster parents are most needed, and are LGBTQ+ adults likely to be good foster parents?; (3) If more foster parents cannot be found, what will be the results for children? The discussion below is focused on what research has revealed about each of these questions in turn.

The first question concerns whether there is a need for additional foster parent families in the United States today. Based on the most authoritative estimates that are available, from the fiscal year 2019 (U.S. Department of Health & Human Services, 2020), it is believed that more than 400,000 children are in the U.S. child welfare system. Many are infants or young children. Specifically, 37% are 1- to 4-year-olds, 36% are 5- to 12-year-olds, and 26% are 13- to 20-year-olds (U.S. Department of Health & Human Services, 2020). Thus, there are about 100,000 adolescents in the system at any one time. Because of the large numbers of children and youth in the child welfare system, and especially because of the difficulty of recruiting foster families for some children and adolescents, the U.S. is in need of additional foster parents (Child Welfare Information Gateway, 2021; Dave Thomas Foundation for Adoption, 2017; Pinderhughes & Brodzinsky, 2019; Sheffield, 2020).

The need for additional foster parents is shown by considering the living arrangements of children in the child welfare system: 78% are in foster homes, either the homes of biological kin or those of non-relative foster parents. Since there are not enough foster homes for all, however, 22% of American children and youth in the child welfare system—more than 90,000 youngsters—live in some other kind of setting, such as a group home, or other institutional facility (U.S. Department of Health & Human Services, 2020), which are generally regarded as less desirable (Mountz, 2011; Palacios et al., 2019).

Not every child is equally easy to place in a foster home. In general, agencies find it easier to find foster homes for younger infants and children. Children who have health conditions that require special care, are in sibling groups, are Black, are over 5 years of age, and/or who identify as LGBTQ+ are considered to be harder to place (Baams et al., 2019; Dave Thomas Foundation for Adoption, 2017; Pinderhughes & Brodzinsky, 2019). Youth who are LGBTQ+ also have various other intersecting social identities, and those who are also racial/ethnic minorities, transgender or gender diverse, or differently abled may be particularly vulnerable to disparities while involved in the child welfare system (Dettlaff et al., 2018; McCormick et al., 2017; Mountz et al., 2018; Paul, 2020; Pinderhughes et al., 2019). Such children are among the least likely to find foster home placements, and they are more likely to be sent to less desirable group homes or other institutional care settings (Jacobs & Freundlich, 2006; McCormick et al., 2017; Wilson & Kastanis, 2015). There are, it seems, never enough foster homes to provide one for every child who needs care.

The evidence that LGBTQ+ youth are over-represented in child welfare systems is strong (Baams et al., 2019; Choi & Wilson, 2018; Fish et al., 2019). In a study of youth in foster care in Los Angeles, Wilson and Kastanis (2015) found that, while 8% of youth in the city identified as LGBTQ+, more than twice as many—fully 19%—of youth in foster care identified themselves as LGBTQ+. Dettlaff et al. (2018) studied data from the National Survey of Child and Adolescent Well-Being (NSCAW-II), a nationally representative sample of youth between 11 and 17.5 years old, who identified their sexual orientation, and who were referred to child welfare agencies over a 15-month period; they reported that 15% of these youth identified as lesbian, gay, or bisexual. In New York City, Sandfort (2020) reported that as many as 34% of youth in the child welfare system identified as LGBTQ+. Since suitable foster homes could not be found for all of them, these young people were more likely than their heterosexual peers to live in group homes or institutional settings. In another recent study (Fish et al., 2019) used two national datasets to study how likely youth in foster care were to be LGBTQ+, and found that LGBTQ+ youth appeared twice as often as expected from the base rates using data from the National Longitudinal Study of Adolescent Health, and in another dataset, they were three times as likely. In short, across many samples, many investigators have found that LGBTQ+ youth are over-represented in child welfare settings; no findings to the contrary have been reported. More sexual and gender-minority youth are involved in the child welfare system than are cisgender and heterosexual youth (Woods, 2019).

Furthermore, LGBTQ+ youth face pervasive discrimination while involved in the child welfare system, further exacerbating harmful health consequences for these children (Jacobs & Freundlich, 2006; Movement Advancement Project, 2018; Wilson & Kastanis, 2015). These youth may not be placed as readily in foster homes, they may endure multiple placements due to their LGBTQ+ identities, they may encounter harassment in group or foster homes by other children or social workers, and/or they may be pushed into conversion therapy while in care (McCormick

et al., 2017; Mountz et al., 2018; Paul, 2020; Woods, 2019). As examples, LGBTQ+ former foster youth have reported that their foster families tried to take them to a pastor or other Christian “counselor” to “make them straight,” sat them down with a big family bible to discuss how being gay is wrong, or kicked them out because they were LGBTQ+ (Estrada & Marksamer, 2006; Woods, 2019; Woronoff et al., 2006).

Because LGBTQ+ are over-represented in child welfare caseloads, problems such as the lack of sufficient numbers of foster parents tend to hit these youth especially hard. When older children and adolescents who identify as members of sexual or gender minorities cannot be placed in foster homes, they are likely assigned with greater frequency to institutional settings (Jacobs & Freundlich, 2006). Few data are available to reveal whether LGBTQ+ youth are relegated more often to institutional settings, but this seems likely (Wilson & Kastanis, 2015). It is clear that there is a shortage of foster parents, and since LGBTQ+ youth are harder to place, this shortage likely falls most heavily on them (Bewkes et al., 2018). To satisfy the needs of all children under the state’s care, more foster parents are needed.

### What kinds of foster parents are most needed, and are LGBTQ+ adults likely to be good foster parents?

Clearly, parents who will accept sexual and gender minority youth into their homes, and who can work successfully with such youth are needed. These may disproportionately be LGBTQ+ adults themselves, who are familiar with the challenges that LGBTQ+ youth face. If, however, LGBTQ+ adults do not make competent foster parents, then recruiting them for this role could be a mistake. What is known about the availability, competence, and interest of LGBTQ+ adults in becoming foster parents?

Data from the U.S. Census show that same-sex couples are more likely to be foster and adoptive parents than are different-sex couples (Goldberg & Conron, 2018). By studying the ACS PUMS data, Goldberg and Conron (2018) found that 0.4% of different-sex adult couples, but fully 2.9% of same-sex couples were foster parents in the U.S. Similarly, only 3.0% of different-sex adult couples, but fully 22.1% of same-sex couples were adoptive parents. Thus, many same-sex couples are interested in foster and adoptive parenting, and—despite obstacles—have become foster and adoptive parents (Goldberg et al., 2019).

It is also clear from empirical research that LGBTQ+ adults are generally successful as parents in general (Patterson, 2017) and as adoptive parents in particular (Farr, Vázquez, & Patterson, 2020). Forty years of research has shown that LGBTQ+ adults are generally competent parents and that they generally rear well-adjusted children (Goldberg & Allen, 2020; Patterson, 2017). Studies have been carried out by many researchers, in different locations, using different samples, employing various methodological approaches, and exploring diverse facets of development. These studies have repeatedly replicated the main finding that children of LGBTQ+ parents are well adjusted (Calzo et al., 2019; Reczek, 2020). Reputable investigators have all come to the same conclusions, and major professional organizations such as the American Psychological Association, and the American Academy of Pediatrics have all issued statements in support of these conclusions (Patterson, 2009). On average, when LGBTQ+ adults become foster and/or adoptive parents, they succeed in this role.

A number of studies have focused specifically on lesbian and gay adults as foster and adoptive parents, indicating their comparable mental health and adjustment to their heterosexual counterparts (Farr et al., 2020; Goldberg, 2010; Lavner et al., 2014; Riggs, 2020). For instance, Farr and Patterson studied 106 adoptive families—56 same sex couples (27 lesbian and 29 gay couples) as well as 50 heterosexual couples and their children. The children had been adopted at birth or very early in life, in domestic adoptions; all the members of all the couples were legally recognized as parents. They were studied first in early childhood, when the children were preschoolers, then again when the children were in middle childhood, using multiple methods. Findings revealed that parental and couple adjustment was excellent, and that children were well-adjusted; there was no evidence of maladjustment (Farr et al., 2020). Furthermore, studies about the adjustment of children and youth adopted specifically from foster care

by sexual minority adults also convey a positive picture, comparable to that of their peers adopted from care by cisgender heterosexual adults (Cody et al., 2017; Lavner et al., 2012).

Even though many LGBTQ+ people are interested in becoming parents, and are likely to be successful parents with children who are faring well overall, discrimination against them in foster care settings has not disappeared (Cody et al., 2017; Downs & James, 2006; Goldberg et al., 2019; Goldberg, Moyer, Kinkler, & Richardson, 2012; Goldberg, Tornello, Farr, Smith, & Miranda, 2020; Mallon, 2011; Riggs, 2020). Discrimination takes many forms; there may be legal discrimination, such as outright bans on adoption or foster care by LGBTQ+ adults, agency discrimination in which private agencies will not work with LGBTQ+ prospective foster parents, or there may be birth family and/or foster child preferences, for instance, if members of the birth family prefer that the child be placed with heterosexual foster parents (Brodzinsky & Goldberg, 2016; Downs & James, 2006; Farr & Goldberg, 2018).

In *Fulton*, a central concern was that there would be clear cut discrimination, based on a religious exemption, by the agency. In a nationwide online survey, Goldberg and her colleagues (2019) found that lesbian/gay prospective foster parents did indeed encounter this type of discrimination. For example, one participant said, “a private adoption agency with religious affiliation wouldn't work with us,” and another reported, “We fostered to adopt and had a placement. The adoption was canceled due to [people] accusing us of indoctrinating the child into being gay.” (Goldberg et al., 2019, p. 4). Another issue with religious exemption laws, noted in the amicus brief filed by the American Psychological Association (APA) for the *Fulton* case, is that LGBTQ+ biological relatives of children awaiting placement from care might be denied as prospective foster parents, despite the goals of both permanency and reunification with birth families in the child welfare system (APA, 2020a). In these ways, some children could be denied foster home placements, including even kinship care placements.

Putting all of this together, it is clear that many children and youth need homes and that more foster parents are needed. Research has revealed that many LGBTQ+ adults are capable of competent parenting and would like to become foster parents. Still, anti-LGBTQ+ discrimination may be contemplated, and if allowed, will stand in the way of children being placed with available prospective foster parents.

## If appropriate foster parents cannot be found, what will be the results for children?

Without enough available foster homes, there will be limited options for children to live in family homes, and more youth will be sent instead to less desirable institutional settings (Palacios et al., 2019; Wax-Thibodeaux, 2019). Without competent foster parents, and without non-discrimination policies that are enforced, LGBTQ+ children and youth involved in care may be exposed to negative experiences such as homelessness, harassment, bullying, or even conversion therapy as they are moved among group and foster homes (Jacobs & Freundlich, 2006; Mountz et al., 2018; Movement Advancement Project, 2018, 2020; Paul, 2020; U.S. Department of Health & Human Services, 2011). These children may grow up with more mental health problems, such as depressive symptoms, and with a greater likelihood of substance abuse than other children (Dettlaff et al., 2018; McCormick et al., 2017; Wilson & Kastanis, 2015). Moreover, some may age out of foster care while still living in group homes, and these youth are less likely than others to graduate from school, less likely to be employed, and more likely to become homeless (Baams et al., 2019; Movement Advancement Project, 2018; Paul, 2020; Pinderhughes et al., 2019). In other words, many such children and youth will suffer.

If LGBTQ+ prospective foster parents are not certified by agencies, LGBTQ+ youth are especially likely to be among those who are never placed in a suitable foster home (Bewkes et al., 2018). Such youth may be sent to congregate care or other institutional settings (Paul, 2020; Riggs, 2020; U.S. Department of Health & Human Services, 2011). In some states, such as West Virginia, this is so common that the majority of foster care youth live in group settings such as emergency shelters, youth prisons, or other institutional environments

(Wax-Thibodeaux, 2019). It is widely agreed that these alternatives are less desirable than a suitable foster home (Mountz, 2011; Palacios et al., 2019).

## HOW SHOULD RESULTS OF SOCIAL SCIENCE BEST BE MADE AVAILABLE TO THE COURT?

Based on our review, three findings emerge from empirical literature: (1) There is a need for qualified prospective foster parents; (2) LGBTQ+ adults are at least as likely as others to be interested in becoming foster parents and they are likely to become competent foster parents; and (3) If sufficient numbers of qualified prospective foster parents cannot be found, children are likely to suffer. How might these findings best be made available to the court? Of course, the findings are often published in professional journals or even noted in the popular press, but what additional methods are best in making them available to legal professionals?

One way in which findings are digested and conveyed is when social scientists appear in court as expert witnesses to explain research findings (Gilfoyle & Dvoskin, 2017; Hammack & Windell, 2011; Herek, 2010). When a professional social scientist with recognized credentials can offer a summary of the available research, this may be helpful to the court (Hammack & Windell, 2011; Herek, 2010; NASEM, 2020). As is well known, however, there are many pitfalls in this approach. For example, qualified experts may have difficulty in summarizing the material in a succinct and appropriate fashion so as to make it useful to the court. In controversial areas, the evidence may be open to distortion, the views of individual scholars may be open to question, and “dueling experts” can cause confusion (George, 2016; Hammack & Windell, 2011).

An alternative way in which research findings can be conveyed is through the resolutions of major professional groups. For instance, since 2004, the American Psychological Association (APA) has had a resolution deploring discrimination on the basis of sexual orientation in child custody, foster care, and adoption, which reads in part: “Whereas research has shown that the adjustment, development, and psychological well-being of children is unrelated to parental sexual orientation and that the children of lesbian and gay parents are as likely as those of heterosexual parents to flourish ... therefore be it resolved that the APA opposes any discrimination based on sexual orientation in matters of adoption, child custody and visitation, foster care, and reproductive health services” (Paige, 2005, p. 500). This resolution, together with the associated review of the research, was adopted unanimously by the APA Council of Representatives at its July 2004 meeting, thereby becoming official APA policy (Paige, 2005). Since the APA, with more than 100,000 members, is the largest organization of psychologists in the world, its carefully considered policies rightly command respect. In the years since 2004, APA policy in this area has been updated so that it now covers gender identity as well as sexual orientation (APA, 2020b), but the central message of the policy remains unchanged.

In that a central part of APA's core mission is to advance the use of psychological science “to promote health, education, and public welfare” (Gilfoyle & Dvoskin), the 2004 APA policy (and its successors) also contained a provision that APA should provide “scientific and educational resources that inform public discussion and public policy development” regarding these issues (APA, 2020b, p. 4; Paige, 2005, p. 500). This provision led APA to initiate a program of *amicus curiae* (“friend of the court”) briefs relevant to discrimination in adoption, child custody and visitation, foster care and reproductive health services on the basis of sexual orientation.

The decision about whether APA should produce an *amicus* brief in any particular case is made through a carefully developed process (Gilfoyle & Dvoskin, 2017). Potential cases are reviewed with regard to their significance to psychology, their relevance to APA objectives and policies, whether there is sufficient research and data to present a clear position, and whether APA can make a useful contribution to the case. This involves evaluation by the APA General Counsel and by top APA officers; with their approval, a case will also be reviewed by the members of the APA Committee on Legal Issues (COLI), and ultimately by the APA Board of Directors. In addition to evaluation of the legal and psychological issues, the Board of Directors must also decide whether sufficient time and resources are

available to allow APA to prepare a valuable brief. Before APA can go forward in producing an *amicus* brief in any particular case, all these groups must agree that the psychological research evidence is clear, solid, convincing, and relevant to the case at hand (Gilfoyle & Dvoskin, 2017).

Thus, when APA committed its resources to producing an *amicus* brief in *Fulton v. City of Philadelphia*, it was a sign that the organization viewed the body of research evidence as important enough, extensive enough, and clear enough to justify this move (APA, 2020a). Indeed, the APA brief argues for each of the three main points discussed above—that there is a shortage of foster parents, that LGBTQ+ adults can be and often want to be competent parents, and that if more good foster homes cannot be found, children will suffer. The brief concludes that laws prohibiting discrimination against sexual minorities in the child welfare system are needed, and should be enforced (APA, 2020a).

It is also notable that the APA's (2020a) brief is joined by three other major professional organizations, the American Academy of Pediatrics (AAP), the American Medical Association (AMA), and the American Psychiatric Association (also abbreviated as APA). Each of these is the largest and most highly respected organization of its type in the U.S., and together, they represent many thousands of medical professionals. By virtue of these groups joining in, the views expressed in APA's *amicus* brief are given added weight.

In summary, the evidence is clear, and experts agree that: (1) there are many children in the child welfare system who need homes, and there is a definite shortage of prospective foster parents; (2) LGBTQ+ adults are as likely as others to become fit and competent foster and adoptive parents; and (3) without more foster homes available for those who need them, many children will be assigned to less desirable placements and will suffer. Recognizing that the needs of vulnerable children are at the heart of all child welfare, the need for anti-discrimination law in this area is both real and important.

## POSSIBLE SOLUTIONS

The problems posed by an agency such as Catholic Charity Services (CSS), whose refusal to recruit or work with LGBTQ+ adults who want to become foster parents, can be approached in a variety of ways. In one approach, agencies might be required by law to remain open to all prospective foster parents, without discriminating on the basis of characteristics such as sexual or gender minority status. This approach could generate a larger pool of available homes to children needing foster and adoptive placement, including LGBTQ+ youth, and if so, it would be aligned with the best interests of children. Indeed, earlier research has indicated that more children are adopted from foster care each year in states with no anti-gay legislation as compared to states with anti-gay legislation (Kaye & Kivalanka, 2006). Economists have also estimated significant financial cost to states that limit or deny sexual minority adults the ability to foster children (Gates et al., 2007). More recent data point to greater numbers of children experiencing multiple placements, as well as fewer instances of placements with relatives (i.e., less kinship care) while in government care, in states with laws that allow the so-called religious exemptions (Movement Advancement Project, 2020).

On the other hand, if agencies such as CSS were required to work with LGBTQ+ prospective foster parents in order to remain open, they might decide to shut down. If that happened, it would reduce available services not only to LGBTQ+ prospective foster parents but also to others, and might result in a decrease in the overall number of available foster homes. No empirical research on this topic yet exists, so reliable estimates of the likelihood of this outcome cannot be made. One might note, however, that, in the run-up to the *Fulton* case itself, two agencies were cited as not being open to LGBTQ+ prospective foster parents. CSS refused to change its policy, and brought the *Fulton* case; the other, however, simply changed its policy so that it would be in compliance with Philadelphia's non-discrimination policy.

Federal legislation such as the John Lewis Every Child Deserves a Family Act (<https://everychilddeservesafamily.com>) is an important step toward ensuring equal treatment for all in child welfare (Movement Advancement Project



and the Every Child Deserves a Family Coalition, 2019). Following calls from numerous organizations, scholars, and legal advocates, increased non-discrimination legislation at state and federal levels related to LGBTQ+ individuals and their families in child welfare settings is also warranted (APA, 2020a, 2020b; Downs & James, 2006; Farr & Goldberg, 2018; Movement Advancement Project, 2020; NASEM, 2020; U.S. Department of Health and Human Services, 2011).

Agencies might even be required to do outreach to bring in LGBTQ+ prospective foster parents, and in this way expand the pool of prospective foster parents who could provide homes for children who need them (Child Welfare Information Gateway, 2021; Farr & Goldberg, 2018), including LGBTQ+ youth. In fact, LGBTQ+ foster parents may be uniquely situated to provide supportive and affirming environments for LGBTQ+ youth. As such, and aligned with the best interests of children (Pinderhughes & Brodzinsky, 2019), LGBTQ+ parent homes should be sought after as particularly suitable potential placements for LGBTQ+ youth (Child Welfare Information Gateway, 2021). Another approach might involve offering specialized training for agency personnel as well as foster parents who were otherwise without knowledge of or experience with LGBTQ+ issues (e.g., Cody et al., 2017; Craig-Oldsen et al. 2006; Mountz, 2011; NASEM, 2020; Salazar et al., 2020; U.S. Department of Health & Human Services, 2011), in the hope of best supporting LGBTQ+ youth in care and allowing foster parents to become more supportive to all children. Both of these two approaches are discussed briefly below.

In the context of *Fulton*, it is clear that one solution would emerge if agencies were required to work with otherwise qualified LGBTQ+ adults who are interested in becoming foster parents. Such adults, who have first-hand knowledge of many identity and other issues facing LGBTQ+ youth, may be both more knowledgeable and also more motivated than heterosexual adults to support LGBTQ+ foster youth during their adolescent years (Brodzinsky & Goldberg, 2016; Cody et al., 2017; Downs & James, 2006; Goldberg et al., 2019; Goldberg et al., 2020; U.S. Department of Health and Human Services, 2011). Thus, if agencies were to welcome and even seek out LGBTQ+ adults as well as cisgender heterosexual adults who want to become foster parents, this would likely result in additional foster homes becoming available to youth who need them (Bewkes et al., 2018; Movement Advancement Project, 2020). Of course, the decision in *Fulton* did not accomplish this aim.

Another approach is to develop agencies' skills in working with LGBTQ+ people. An example of this approach is offered by the Human Rights Campaign's (HRC) All Children, All Families Program, which is designed to help child welfare programs become more welcoming to all people, regardless of sexual orientation or gender identity (Human Rights Campaign Foundation, 2021). The All Children, All Families Program involves discussion of inclusive anti-discrimination policies, provision of staff training, exposure to parent best practices—all conveyed via written materials, in-person training, webinars, and other methods. This program has trained staff at more than 600 public and private agencies, helping them to become more inclusive. As another example, the Child Welfare Information Gateway (2021), which is part of the U.S. Department of Health and Human Services, has put forth a comprehensive and up-to-date guide for professionals who work with LGBTQ+ families in foster care and adoption. Other organizations, such as the National Resource Center for Family and Permanency Connections (NRCFPC) and AdoptUSKids have also been funded by the U.S. Department of Health and Human Services to provide training and resources related to LGBTQ+ issues (U.S. Department of Health and Human Services, 2011). These kinds of approaches are designed to strengthen the policies of existing agencies.

Some additional suggestions have been made. One strategy could be to offer specialized congregate care settings and other services for LGBTQ+ youth that enhance safety and minimize experiences of harassment (Mountz, 2011; Paul, 2020). As noted above, these specialized supports could include purposeful exploration of LGBTQ+ foster parent homes for LGBTQ+ youth awaiting placement (Child Welfare Information Gateway, 2021). These approaches have received less attention than some others but are worth exploration. Other observers (e.g., Roberts, 2021) argue that our nation should abandon its current child welfare system and develop very different strategies for protecting children's welfare. Careful examination of these suggestions is warranted, but it is beyond the scope of this article.

Whatever strategies can best ameliorate problems in child welfare, the case for using evidence from empirical social science in this area seems strong. Many of the questions being posed here (e.g., is there a shortage of prospective foster parents?) are indeed empirical questions. Clear and accurate empirical information cannot decide *Fulton* or any other case, but it can surely inform legal decision-making processes. In this way, the results of research in the social sciences can often make significant contributions to the resolution of legal issues.

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Charlotte J. Patterson, PhD, is a Professor of Psychology at the University of Virginia. Best known for her work on child development in lesbian- and gay-parented families, her research has been published in the field's top journals, and she has written or edited several books. A past president of the Society for Psychological Study of Sexual Orientation and Gender Diversity (Division 44 of the American Psychological Association (APA)), Patterson has won a number of awards, including APA's Distinguished Contributions to Research in Public Policy Award. Her book, *Handbook of Psychology and Sexual Orientation* (Oxford University Press, 2013), coedited with Anthony R. D'Augelli, won the Outstanding Book of the Year Award from APA Division 44. Recently, she served as coeditor of *Understanding The Well-Being of LGBTQ+ Populations*, a study sponsored by the National Academies of Science, Engineering, and Medicine that was published in October 2020.

Rachel H. Farr, PhD, is an Associate Professor of Psychology at the University of Kentucky. Her research focuses on diverse families, particularly those parented by LGBTQ+ adults and formed through adoption. For 14 years,

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