

# WHAT'S AT STAKE IN *FULTON*: KIDS IN THE FOSTER CARE SYSTEM



On November 4th, 2020, the U.S. Supreme Court heard arguments in *Fulton vs. City of Philadelphia*. The case concerns a religious organization that contracts with the City of Philadelphia to provide foster and adoption services to the public using taxpayer money. The religious agency has since refused to license same-sex couples, in violation of the city's contract prohibiting such discrimination. Many worry about the potential harmful impacts on [the nearly 425,000 children in the nation's child welfare system](#) if the Supreme Court rules against the City of Philadelphia and against nondiscrimination requirements in government contracts more broadly. If agencies are allowed to reject qualified families for reasons other than what is best for the children in their care, then the already insufficient pool of foster families will be even further limited. The end result is that fewer foster and adoptive homes are available to care for children in need.

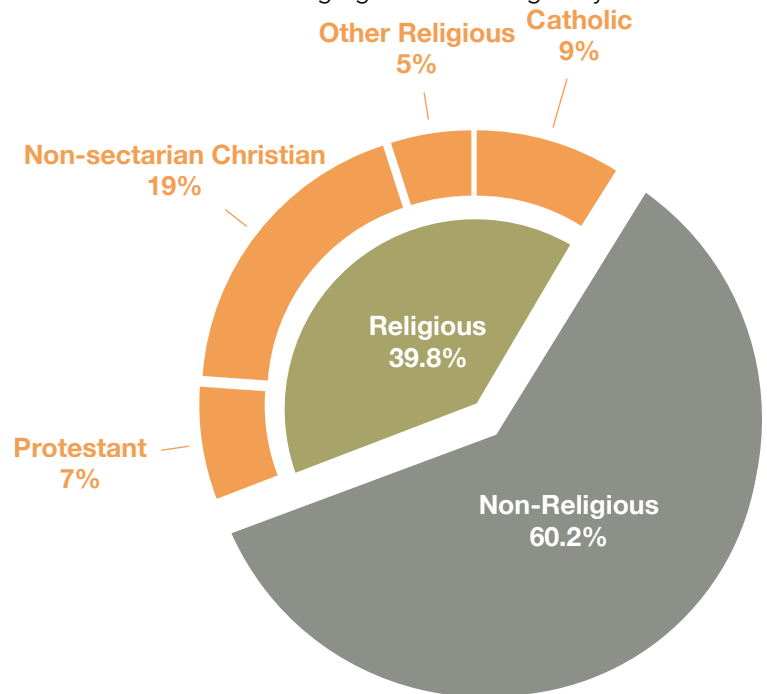
To better understand the potential implications of a ruling that could give religious agencies a license to discriminate in their role as city or state contractors, MAP took a deep dive into state and federal data regarding the types of agencies that contract with the government and the experiences of children in the child welfare system.

## What Role Do Religiously Affiliated Agencies Play in the Child Welfare System?

Nationally, [there are more than 1,200 child placement agencies](#) that contract with city, county, and/or state governments to care for children. New analysis by MAP using data from the Children's Bureau reveals that **39.8% of those agencies are religiously affiliated**, with the vast **majority (88%) of religiously affiliated agencies identifying with a mainstream Christian denomination**.

Both numbers vary greatly by state; in New Mexico, for example, every private agency located in the state is Christian, while in Idaho no such agency is religiously affiliated.

**Figure 1:** Nearly Two in Five Government-Contracted Child Placing Agencies are Religiously Affiliated



Source: MAP original analysis of Children's Bureau FY2019 data.



To be clear, it isn't known the extent to which religiously affiliated agencies would restrict the types of families they serve if the U.S. Supreme Court were to grant them an exemption from child welfare nondiscrimination requirements, like the one being sought by the city-contracted agency in the *Fulton* case. Just because an agency is religiously affiliated does not mean that it would seek a license to discriminate against LGBTQ families, single people, unmarried couples, or families who do not share the agency's faith. In fact, many of these agencies would continue to serve diverse families even if the Supreme Court granted them a license to discriminate. In both [Philadelphia](#) and [Michigan](#), for example, Bethany Christian Services has updated their agency policies to consider all qualified families, following the city or state's nondiscrimination requirements.

However, the risk is not merely hypothetical. There are already clear examples of agencies seeking the ability to discriminate. For example, [Miracle Hills Ministries and South Carolina](#) state officials successfully petitioned the federal government for a waiver allowing it to work only with families that meet the agency's Evangelical Christian standard. Given the fact that 40% of all government-contracted agencies are religiously affiliated, if even a small number of such agencies were to make similar choices on a national scale, the ramifications would be pronounced. A [June 2020 survey by the Center for American Progress and NORC at the University of Chicago](#) found that two in five LGBTQ people said it would be "very difficult" or "not possible" to find an alternative child placement agency if they were turned away by one they approached.



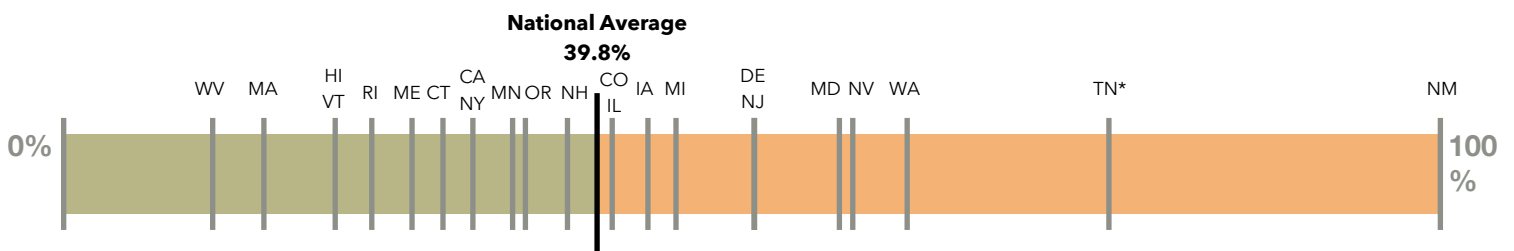
**2 in 5**

LGBTQ people would struggle to find an alternative if turned away by a placement agency

Source: [Center for American Progress 2020](#).

Opponents often claim that nondiscrimination laws put religious agencies out of business, but this claim is false. New research from MAP shows that, in states with LGBTQ-inclusive nondiscrimination laws or policies in child welfare, religiously affiliated agencies continue to receive contracts to provide care for children. In fact, and as shown in Figure 2, among the [23 states](#) that in 2019 had already passed explicit laws, regulations, or policies requiring agencies to serve all qualified individuals, roughly **half (11 states) have a higher percentage of religiously affiliated agencies than the national average** (39.8%). Furthermore, looking at outcomes for children in the child welfare system, MAP's analysis finds that there is **no evidence that states with nondiscrimination policies have fewer registered foster families or more children in group homes** than those without such laws. This shows that requiring government-contracted agencies, including those which are religiously affiliated, to consider all qualified families does not reduce the pool of foster families or limit the placement options available to children.

**Figure 2: States with LGBTQ-Inclusive Child Welfare Policies Continue to Have Large Shares of Religiously Affiliated Agencies**  
*Percent of government-contracted agencies that are religiously affiliated in states with LGBTQ-inclusive nondiscrimination policies*



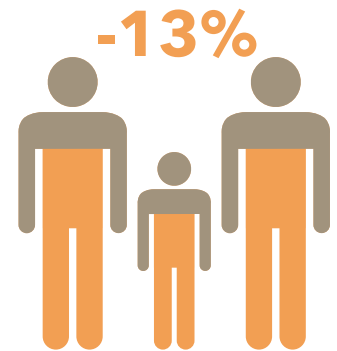
\*The Tennessee legislature passed a license to discriminate bill in 2020. In 2019, the state's child welfare agency had an LGBTQ-inclusive nondiscrimination policy.  
 Source: MAP original analysis of Children's Bureau 2019 data. State policies as of 12/31/2019.

# What Happens to Kids When Agencies Are Given the Right to Discriminate?

Over the past eight years, nine states have passed laws permitting taxpayer-funded, religiously affiliated foster care and adoption agencies to discriminate against applicants who fail to meet the agency's religious litmus test.<sup>a</sup> Using the most recent data reported to the government through [the Adoption and Foster Care Analysis and Reporting System \(AFCARS\)](#) and reported on by [Child Trends](#), MAP compared outcomes for children in states that permit discrimination and in state without such laws.<sup>b</sup> This new research by MAP provides important new insight into the impact of discrimination by agencies on children in the system.

1

Child welfare religious exemption laws weaken foster children's familial ties. Analysis of 2019 data shows that **states that permitted discrimination by taxpayer-funded agencies made a combined 13% decrease in placements with relatives**, compared to states without such legislation. This is despite the child welfare system's [core mission](#) of family preservation.



Fewer placements with relatives

2

Granting agencies the license to discriminate prevents children from being placed in homes that best meet their needs. In the eight states that permitted discrimination in 2019, an estimated 5.4% more children (or an over 9% increase) had two or more foster placements during their time in government care, as compared to other states. **In just these eight states, that 5.4% difference amounts to an estimated over 3,500 more children that experienced multiple placements.** Increased placements can have a destabilizing effect on the lives of children, as family stability is [core to children's mental, emotional, and physical health and well-being](#). **If the Court granted a nationwide exemption to religious agencies, that 5.4% difference would amount to nearly 23,000 children currently in the foster system nationwide.**



More children with 2+ placements

<sup>a</sup> Two additional states, Alabama and Michigan, permit discrimination only by child service agencies that do not receive government funding. State-licensed agencies can discriminate, but only if they do not receive state funding.

<sup>b</sup> For this analysis, the most recently available child placement data were from FY 2019, so MAP examined the eight states that, in 2019, permitted taxpayer-funded agencies to discriminate. The ninth state, Tennessee, passed a license to discriminate law for child placing agencies in 2020.

The ultimate goal of the child welfare system is to provide safe, supportive temporary homes for children who are removed from their families of origin, and then to either reunite them with their families or to find them long-term foster or adoptive homes. Yet, this new research finds that permitting taxpayer-funded child welfare agencies to discriminate threatens the wellbeing of children, particularly when it comes to maintaining family ties and securing stable, loving homes for children who cannot return to their families of origin. If the U.S. Supreme Court were to grant taxpayer-funded child welfare agencies nationwide the ability to discriminate, the impact on the children in the system could be devastating.

To learn more about what's at stake in the *Fulton* case and its potential impact on children and adults, view [MAP's work on the case](#).

To learn more about your state's adoption and foster care laws and policies, visit [MAP's Equality Maps](#), which are updated and maintained in real time.

To find an LGBTQ+ friendly child welfare agencies certified by the Human Rights Campaign, visit the [All Children - All Families campaign](#).

#### Notes on Methods

MAP used several data sources for the analyses summarized in this brief.

- First, to assess the role that religiously affiliated agencies play in the taxpayer-funded child welfare system, MAP obtained a list of government-contracted child placement agencies from the [Children's Bureau's National Foster Care & Adoption Directory](#). MAP then classified each agency broadly as religious or non-religious, and then noted the religious affiliation of organizations within the former category. To do this, MAP used statements from the agencies' websites as well as those made by organizations specifically listed as affiliates of those agencies.
- For the analysis of state policy landscapes, only states that prohibit discrimination based on both sexual orientation and gender identity in both adoption and foster care were considered as having LGBTQ-inclusive nondiscrimination policies, and only states that had laws allowing taxpayer-funded agencies to discriminate were considered as having discriminatory laws. More detailed information about state adoption and foster care law and policies, including the presence of a state law, policy, or agency regulation prohibiting discrimination based on sexual orientation and gender identity in adoption and foster care is available through MAP's [Equality Maps](#), which are updated and maintained in real time.
- To assess the impact of different state policy landscapes on the outcomes for children in the child welfare system, MAP relied on two key data sources: the [Adoption and Foster Care Analysis and Reporting System](#) (AFCARS) and the [Child Trends](#) resources based on AFCARS data. These sources provide only preliminary data for FY2020, so for the purposes of our analysis we drew from the most recent finalized dataset, FY2019. As a result, when evaluating the impact of state policy landscapes, we used state policies as of 12/31/2019. Since then, two states have changed policies: in 2020, Kentucky's governor issued an executive order prohibiting discrimination in all government services and contracts, and Tennessee's legislature passed a law granting child welfare agencies a license to discriminate.

