

# The High Stakes for LGBT Older People in the *Fulton* Case

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On November 4, 2020, the U.S. Supreme Court will hear oral arguments in *Fulton vs. City of Philadelphia*. The case centers on a Catholic child welfare agency that is suing the City of Philadelphia to receive taxpayer dollars for its child welfare services, despite the agency's refusal to comply with the City's non-discrimination requirement. On its face, the case is about whether a child welfare agency can continue to receive City contracts to care for children in Philadelphia's child welfare system while refusing to meet the requirements set by the City for all contractors (if the contract requirements purportedly conflict with the agency's religious beliefs). Yet the potential implications of the case go far beyond the City of Philadelphia or the child welfare context. If the Court rules that governments cannot enforce any contract or grant requirements when private contractors cite a religious objection—whether in child welfare services or elsewhere—it would drastically upend the way in which social services are provided in the United States. This is particularly true for services and supports for older people in the United States, including LGBT older people.

## Millions of LGBT Older People Rely on Aging Networks and Supports

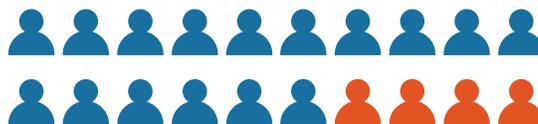
There are more than 2.7 million LGBT people who are 50 years or older living in the United States.<sup>1</sup> Approximately one in five (20%) of LGBT older people are people of color, a proportion expected to double by 2050.<sup>2</sup> LGBT older adults are less likely to be married or to have children, which means they can be more vulnerable to social isolation.<sup>3</sup> For example, one in three LGBT people over the age of 65 in California live alone. Social isolation can hinder successful aging. What's more, research finds that nearly one-third of LGBT older adults are living at or below 200% of the federal poverty level. This number rises to over 40% for African American and Hispanic LGBT

2.7 MILLION LGBT ADULTS AGED 50 AND OLDER

1.1 MILLION ARE 65 AND OLDER



APPROXIMATELY ONE IN FIVE (20%)  
LGBT OLDER ADULTS ARE PEOPLE OF COLOR



older adults.<sup>4</sup> LGBT people of color, and LGBT older adults of color in particular, experience increased disparities across many measures of wellbeing, including physical and mental health outcomes, economic security, and experiences of discrimination.<sup>5</sup>

LGBT older adults, like many older Americans in the United States, rely on a network of service providers as they age. Many providers in the aging network receive federal and/or state funds—in the form of grants, contracts, or reimbursements through Medicare or Medicaid. For FY2020, for example, the federal government appropriated \$2.1 billion through the federal Older Americans Act, 73% of which (\$1.54 billion) is granted to state units on aging and area agencies on aging, which then provide and contract to provide critical services.<sup>6</sup> In 2018, nearly 11 million older adults each year were served by this funding, including the delivery of 146.8 million home-delivered meals, 73.5 million congregate meals, 20.3 million rides to medical appointments, grocery stores, and other activities, 47.8 million hours of personal care and in-home services, and 11.7 million hours of adult day care and health services, as well as family caregiver support, preventive health services, protection from abuse, and other services.<sup>7</sup>

**IN 2018, NEARLY 11 MILLION OLDER AMERICANS  
BENEFITED FROM THE OLDER AMERICANS ACT.  
THIS INCLUDES:**



**146.8 MILLION**  
Home-delivered meals



**73.5 MILLION**  
Congregate meals



**20.3 MILLION**  
Rides to medical appointments,  
grocery stores, and other activities



**47.8 MILLION**  
Hours of personal care and in-home  
services



**11.7 MILLION**  
Hours of adult day care  
and health services

As well as family caregiver support, preventive health services, protection from abuse, and other services.

## **The Threat of a Broad Religious Exemption to LGBT Older People**

Having private agencies contract with states for aging services makes sense; it allows states to partner with agencies that have expertise and it allows for agencies to meet the unique needs of the communities in which they operate, whether they are rural or urban, lower income, or primarily communities of color, for example.

Research finds that a majority of services that older people nationwide rely on are offered by religiously affiliated organizations. Many of these religiously affiliated facilities and agencies that contract with states provide quality care for millions of older adults. An analysis conducted in 2019 by LeadingAge and Ziegler, a Chicago investment bank, revealed that 82% of the

nation's largest continuing care retirement communities, some of which may provide healthcare services or receive federal Medicare funding, were religiously affiliated. An analysis by MergerWatch showed that, in 2016, 13.4% of hospitals in the United States were operated by non-profit religious organizations. Local service providers administer programs on the ground, including nutrition assistance like congregate meals, adult daycare, transportation assistance, and more, funded in part by the federal Administration for Community Living (ACL).<sup>8</sup> According to the ACL, 7% percent of all local service providers across ACL-funded programs are faith based. That said, religiously affiliated providers comprise the majority of emergency food assistance, including food pantries and soup kitchens, which may also be a source of meals for older adults.<sup>9</sup> The extent to which religiously affiliated agencies are part of the older adult service network varies by state. In Illinois, for example, of the 30 state-contracted agencies that provide adult day care/activity care for older people in the state, nine (30%) are religiously affiliated.<sup>10</sup> Similarly, in New York State, the Office for the Aging had contracts with 53 agencies in FY2020, of which nine are religiously affiliated.<sup>11</sup> Importantly, in Illinois, New York, and at least 22 other states, there are explicit non-discrimination protections for state-funded services.<sup>12</sup>



Many of these religiously affiliated agencies have their own robust non-discrimination provisions independent of the states' contract requirements and would continue to serve the older adults in their communities regardless of their clients' religion, sexual orientation, gender identity, or other characteristics, irrespective of how the U.S. Supreme Court rules in *Fulton*.

In short, just because agencies are religiously affiliated, it does not mean that they will opt to discriminate if the Court were to grant them permission to do so. But, how the Court rules in *Fulton* could mean that religiously affiliated agencies choose to only serve co-religionists or refuse to serve LGBT people, all while still receiving state contracts. This could be particularly harmful for LGBT older people and others who live in rural communities where there may only be one adult daycare facility or one emergency food pantry.

This harm is not theoretical. According to a nationally representative survey by the Center for American Progress in conjunction with NORC at the University of Chicago, conducted in June 2020, one in five (19%) of LGBTQ Boomers experienced discrimination in the past year.<sup>13</sup> One in 10 LGBTQ boomers said they'd avoided needed services to



1 in 5 LGBTQ Boomers experienced discrimination in 2020

avoid discrimination, including those who have incomes of less than \$50,000 each year. Of Boomers who experienced discrimination of any kind in the past year, one in four (28%) reported avoiding needed

services to avoid discrimination. One in four LGBT older adults of color in a 2014 SAGE survey reported experiencing housing discrimination based on race, as did 13% of all LGBT older adults based on sexual orientation, and 25% based on gender identity.<sup>14</sup>

The outcome of *Fulton* could drastically upend the ways in which LGBT older people—as well as people of faith, unmarried couples, and others—access taxpayer-funded aging supports ranging from meal services to home health care to senior centers and residential facilities. The Court could rule that religiously affiliated agencies can be exempt from state contracting terms such as those prohibiting discrimination based on sexual orientation and gender identity, marital status, religion, or sex. This would jeopardize the wellbeing of millions of older adults, including LGBT older people. Examples of how LGBT older people may be harmed include:

- A religiously affiliated agency receiving taxpayer dollars could refuse to transport an older lesbian to a doctor's appointment because she wants to bring her wife with her.
- A religiously affiliated agency, which contracts with the state, could turn away a transgender older adult from a congregate meal site, like a senior center.
- A taxpayer-funded religiously affiliated agency could refuse to provide chore assistance or respite care to a same-sex married couple.

Taxpayer-funded aging services and supports are critical and lifesaving. For populations like LGBT older people, who are more likely to be single, more likely to be estranged from families of origin, and less likely to have children than the population at large, aging services and supports can be a lifeline. It's more than a ride to the doctor and more than a meal that's at stake. For example, congregate meals and in-home meal delivery provide both nutrition and social connection. Allowing agencies that receive these funds to choose whom they serve could jeopardize the health and wellbeing of millions of people, including LGBT older people. A bad decision in *Fulton* could cut the lifeline. This is what's at stake in *Fulton* for LGBT older people and others if agencies are permitted to discriminate.

## Endnotes

1 Karen I. Fredriksen-Goldsen. 2016. "[The Future of LGBT+ Aging: A Blueprint for Action in Services, Policies, and Research.](#)" *Generations: Journal of the American Society on Aging* 40, no. 2.

2 Michael Adams. 2016. "[An Intersectional Approach to Services and Care for LGBT Elders.](#)" *Generations: Journal of the American Society on Aging* 40, no. 2.

3 Ilan H. Meyer and Soon Kyu Choi. 2020. "[Vulnerabilities to COVID-19 among Older LGBT Adults in California.](#)" The Williams Institute.

- 4 Hyun-Jun Kim, Sarah Jen, and Karen I. Fredriksen-Goldsen. 2017. "[Race/Ethnicity and Health-Related Quality of Life Among LGBT Older Adults.](#)" *The Gerontologist* 57, no. S1 (2017).
- 5 Movement Advancement Project and Center for American Progress. 2015. "[Paying an Unfair Price: The Financial Penalty for LGBT People of Color in America.](#)"
- 6 Congressional Research Service. 2020. "[Older Americans Act: Overview and Funding.](#)"
- 7 Ibid.
- 8 Lois Uttley and Christine Khaikin. 2016. "[Growth of Catholic Hospitals and Health Systems: 2016 Update of the Miscarriage of Medicine Report.](#)" MergerWatch.
- 9 Kara Clifford Billings. 2020. "[The Emergency Food Assistance Program \(TEFAP\): Background and Funding.](#)" Congressional Research Service.
- 10 Illinois Department of Aging. "[Provider Search.](#)"
- 11 New York State Office of the Comptroller. "[Open Book New York: Contract Search.](#)"
- 12 Movement Advancement Project. "[Equality Maps: State Non-discrimination Laws.](#)"
- 13 Center for American Progress and NORC at the University of Chicago online survey, June 2020, on file with authors.
- 14 Robert Espinoza. 2014. "[Out and Visible: The Experiences and Attitudes of Lesbian, Gay, Bisexual and Transgender Older Adults, Ages 45-75.](#)" SAGE.