

# A Place to Call Home

Improving Foster Care and Adoption Policy  
to Give More Children a Stable Family

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**social capital project**

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Family relationships are a fundamental source of social capital in a person's life. A stable and healthy family life is crucial to healthy child development and is associated with a variety of positive outcomes.<sup>1</sup> Unfortunately, some children experience only instability and family discord. Sometimes birth parents, knowing they are ill-equipped to provide the emotional and financial security a child needs, place their children in foster or adoptive families that provide enriching relationships and a stable home environment children would otherwise lack.

Tragically, the need for foster and adoptive families is great. In 2018, more than 400,000 children were in foster care, and 18,000 youth left foster care without a permanent home. While the nation's foster care caseload declined between 2000 and 2012 and the number of children who aged out of foster care without a permanent family has also decreased substantially since 2009, the foster care caseload began to increase steadily after 2012.<sup>2</sup> The number of children and youth in foster care is higher today than it has been in nearly a decade.<sup>3</sup>

Although sometimes foster children are subsequently able to reunite with their biological parents, some are not able to return to their biological parents and require a permanent, adoptive home. For these children stability is especially important, because children who go through multiple foster care placements are worse off than those who experience fewer placements.<sup>4</sup> Foster children who age out of the system without a permanent family experience substantial challenges in life.<sup>5</sup>

Fortunately, many Americans are willing to provide foster care, adopt foster children, or both. In fact, far more Americans are looking to adopt than there are children in need of adoption.<sup>6</sup> Although many children in the foster care system have special needs that make it more difficult for them to find families, many Americans are willing to provide foster care for these children and adoptions of special needs children have increased a great deal over the last few decades.<sup>7</sup> There are also many private organizations across the United States, including faith-based organizations, dedicated to helping foster children find good homes.

Still, there are several issues that stand in the way of connecting foster and adoptive children with loving homes. These include a child welfare system that is often unsupportive of foster parents, government actions that are pushing faith-based foster care and adoption providers out of service, child welfare systems that keep foster children languishing in temporary placements when they would benefit from permanent adoptive placements, and policies that fail to support infant adoption when

expectant parents do not desire a child or when it is unlikely expectant parents will be able to provide safe care.

Government and civil society should work together to help ensure that children in need find loving homes. This can be accomplished by increasing the pool of adoptive and foster parents, protecting faith-based adoption and foster care, providing qualifying foster children with permanent adoptive placements, and supporting infant adoption as a valid and loving option.

## **ISSUE 1: PROSPECTIVE AND CURRENT FOSTER AND ADOPTIVE PARENTS LACK AGENCY SUPPORT**

Many Americans are interested in or open to becoming foster or adoptive parents. Roughly a quarter of Americans say they have considered becoming a foster parent, and among Americans who have never adopted, roughly a quarter say they have considered it.<sup>8</sup> However, according to one study, only 8 percent of people who inquire about becoming foster parents eventually become licensed.<sup>9</sup> The majority of those who do become licensed foster parents cease their service relatively quickly. According to a study by the U.S. Department of Health and Human Services, roughly one half to two-thirds of foster parents discontinued their service within one year of having their first foster child placed in their home.<sup>10</sup> In another study, researchers found that 25 percent of new foster homes stop providing service in less than four months.<sup>11</sup>

While foster parents quit for many reasons, foster parents and prospective foster parents often report a lack of support from child welfare agencies.<sup>12</sup> In a 2007 Harris Interactive study researchers found that over half of respondents who had considered foster parenting or adopting reported that the social services agency was either not responsive at all or only slightly responsive.<sup>13</sup> The researchers also found that 75 percent of adults who had ever fostered or adopted reported dissatisfaction with the support they received from the child welfare agency either prior to or after placement.<sup>14</sup> Similarly, in a study of current and former foster parents, researchers found that the main reason foster parents dropped out of the system was a lack of responsiveness from caseworkers and a lack of agency support.<sup>15</sup>

Another issue is that although foster parents play a crucial role in the child welfare system, states use very little of their federal or state foster care funding for recruiting foster parents. This may reflect an overall lack of focus on foster parents by the child welfare system.<sup>16</sup> Furthermore, most states do not have benchmarks to measure agencies' success at recruiting and retaining foster parents. According to a 2002 U.S. Department of Health and Human Services survey of foster care program managers, only 21 of 41 managers said their states

had recruitment goals, and of the 21 managers reporting that their state had recruitment goals, only 13 states had developed indicators to measure the success of their recruitment strategies.<sup>17</sup> Furthermore, the federal Child and Family Services Review, conducted by the U.S. Department of Health and Human Services to examine state foster care agencies, does not measure recruitment and retention outcomes, such as success in licensing foster parents, the rate of foster parent attrition, or the percent of licensed foster parents who have children placed in their care.

Given the many poor reviews of the foster care system from former foster parents and prospective foster parents, it appears that states and agencies can do a better job of supporting the people who are providing or will potentially provide the day-to-day care for children under the agency's watch. Improving the system's treatment of foster parents would likely increase the number of prospective parents who become licensed as well as the number of licensed foster parents who continue to provide service, thus increasing the number of foster homes available to children.

## **RECOMMENDATION: IMPROVE THE FOSTER CARE SYSTEM TO BETTER SUPPORT FOSTER AND ADOPTIVE PARENTS**

States and agencies can implement several reforms to improve their relationships with foster parents to increase the likelihood foster parents will be successful.

### *Measure State Recruitment and Training Efforts*

Agencies should focus more on recruiting and retaining foster parents, setting benchmarks and regularly measuring their progress in these areas. A June 2020 executive order issued by President Trump requires that the secretary of the U.S. Department of Health and Human Services “develop a more rigorous and systematic approach to collecting State administrative data as part of the Child and Family Services Review.”<sup>18</sup> The executive order mentions specifically collecting data on the average retention rate of foster parents, the number of families available to foster, and the length of time it takes to complete foster care certification. The federal Child and Family Services Review should also measure the number of foster parents who become licensed and the percent of foster homes that have children placed in them.

Furthermore, while states spend very little of their federal or state foster care funding on recruiting or retaining foster parents, states spend a significant portion of their foster care funding on administrative costs. However, there is no correlation between administrative spending and outcomes for children or the quality of services agencies provide.<sup>19</sup> States that spend an excessive amount of funding on administrative costs without an improvement in recruiting and retaining foster parents or in increasing the proportion of children placed should receive less federal funding.

## *Improve Agency Engagement with Parents*

Agencies can work to improve their relationships with prospective and current foster parents. Several agencies throughout the nation have received grants to pilot various plans for improving foster parent recruitment. Agencies can learn from other states and implement strategies to improve their support of foster parents and to remove unnecessary barriers to becoming a foster parent.

***Use targeted recruitment strategies.*** Researchers have found that 35 percent of licensed foster parent homes do not have a child placed in them, possibly due to foster families not being willing or able to provide care to the particular children available, such as those with special needs.<sup>20</sup> Agencies may be able to improve the likelihood that foster parents have children placed in their care by using targeted recruitment strategies. They can focus their recruitment efforts on individuals who would be most likely to succeed in fostering the children in need of homes in their specific agencies. For example, some agencies have focused recruitment efforts on individuals with similar characteristics to those who have been successful foster parents in the past.<sup>21</sup>

Another way to improve the match between foster parents and foster children is by providing information to prospective foster parents early on about the children in need of homes. The Denver Department of Human Services developed a website, for example, to provide information to prospective foster parents about the children in need of care, as well as to provide realistic information about foster parenting. The agency found that the website was their most effective recruiting tool and that families recruited through the website were more likely to follow through with the licensing process because the information provided on the website was realistic and helpful.<sup>22</sup>

Furthermore, to improve and increase recruitment, some agencies have hired program coordinators to lead community-based recruitment teams, while others have assigned staff specifically to seek out family members and fictive kin who would be able and willing to foster.

***Improve service and treat parents as partners.*** Given the number of prospective and active foster parents who report poor communication with the child welfare agencies, improving customer service is likely an important area for agencies to focus on to improve recruitment and retention. Improving customer service could include hiring or assigning agency staff to work specifically with foster families as they navigate the application process, ensuring that families have the necessary support as they fill out forms and obtain required documents, and providing help to potential foster families to identify community resources available to them. Agencies can set goals to return phone calls to foster parents and prospective foster parents in a timely manner (e.g., within 24 hours), as well as implement customer service training for agency staff. Some agencies have put actions like these into place and seen improvements in the number of families who complete the application process and receive licensure.<sup>23</sup>

Agencies should also conduct exit interviews with families leaving the foster care system to get a better sense of what is impeding foster parents' success, as one agency in Texas did as part of their pilot strategy to improve recruitment.<sup>24</sup> Given the high rate of attrition in the foster care system, agencies should make sure they know why parents leave so they can address issues accordingly. This much-needed feedback loop does not exist for some agencies. Agencies can also conduct listening sessions to gather information on what type of support foster families need.<sup>25</sup>

Other potential ways to improve the relationship foster parents have with the agency as well as their satisfaction with foster parenting include giving foster parents a greater voice in children's case planning, keeping foster parents informed of children's court dates and allowing foster parents a voice in such proceedings, giving foster parents greater freedom in approving activities for children, and simply maintaining frequent contact with foster parents.<sup>26</sup> Furthermore, an agency can recruit and train a pool of respite care providers so that foster parents have others readily available to them to help provide support.<sup>27</sup>

***Involve private organizations.*** Private organizations can act as another useful resource in recruiting and supporting foster families. Agencies can partner with churches and other faith-based organizations, businesses, and universities, among others, to help find families who would be able and willing to provide care, to provide training, and to support foster families.

Churches and faith-based organizations generally believe in helping the needy and have provided care to orphaned children for generations. For example, a core Christian duty is to help the orphaned.<sup>28</sup> Faith leaders have access to and relationships with families from their congregations, which may make families more likely to be receptive to the invitation to foster or adopt. Families involved in a religious community have a built-in support network to help with the burdens foster parents shoulder, and congregations also usually have available volunteers who may be able to assist in recruiting, training, and supporting foster families.<sup>29</sup>

There are a variety of faith-based groups supporting foster efforts already. For instance, a faith-based group in Arkansas, The CALL, has helped recruit nearly half of the foster families in the state.<sup>30</sup> According to one study, over one third of the families recruited by The CALL said they would not have become foster parents without the organization.<sup>31</sup>

One Church One Child is another faith-based effort. It was founded in Chicago in 1980 by an African-American Catholic priest who was concerned about the number of African-American children in the foster care system. One Church One Child partners with churches to find adoptive homes for children, with the goal of finding at least one family per church to take in a child. The organization now has multiple locations throughout the country and has placed at least 140,000 children in adoptive homes.<sup>32</sup>

The support faith-based groups provide may result in more successful foster parenting. One study found that foster parents recruited through church or religious organizations foster 2.6 years longer than other foster parents.<sup>33</sup> Another study found that foster parents often indicate that religion or church support are resources that help them successfully foster parent.<sup>34</sup> Thus, partnerships with faith-based groups can prove valuable to helping foster parents have a successful experience and ultimately to help children have more stable placements.

Agencies can also work with businesses and universities to recruit foster parents, to encourage family leave policies for adoptive and foster parents, to collect and analyze data, and so forth. Furthermore, there are private organizations that specifically focus on matching foster children with families. For example, Family Share is an organization that maintains a database of parents licensed to provide foster care and adoption. They then use data analytics to match children with parents.<sup>35</sup> This approach can help improve the matches between foster parents and children, so that children are more likely to find a stable family situation as well as to find a family more quickly.

## **ISSUE 2: BURDENSOME REQUIREMENTS MAY DETER QUALIFIED FOSTER PARENTS**

Besides a lack of support from the foster care system, foster parents and prospective foster parents sometimes face burdensome requirements for becoming foster parents. This can include lengthy trainings, educational requirements, and bringing a home into compliance with state standards for foster homes. While it is important to ensure that children are placed in safe homes with competent foster and adoptive parents, some requirements seem unnecessary to providing safe care to children and may simply lead to fewer otherwise-qualified people being able to provide service.

### *Burdensome Foster Parent Trainings*

Most states require prospective foster parents to complete a specific number of hours of training before a child is placed in their home, as well as to complete a certain number of hours of training while in service. The number of hours vary, ranging from 6 to 36 hours for pre-service training, for example, although not all states have a specified number of hours of training required.<sup>36</sup>

While foster parents report that trainings can be useful, the extent of what is required may make it prohibitive for some people to serve as foster parents. In the 2002 report of foster care providers by the U.S. Department of Health and Human Services, 13 of the 41 foster care managers who responded said that training requirements can be a barrier to recruiting foster parents. In the 13 states reporting, the length of training for prospective foster care parents lasted between 9 and 12 weeks, and in 12 states the training period was greater than 12 weeks. The foster care managers also noted that foster parents in rural areas have limited accessibility to training sessions.<sup>37</sup>

### *Unreasonable Educational Requirements*

Education requirements may also be a barrier to foster parenting. There are a handful of states that require foster parents to hold a high school diploma or GED.<sup>38</sup> Virginia goes so far as to require foster parents either to hold a high school diploma or GED while having a year of experience providing care to children in the age range of children being placed in the home, or to hold a bachelor's degree in a field related to family services, child development, social work, or education.<sup>39</sup>

While it is necessary that foster parents demonstrate the maturity and skills needed to parent, as well as the ability to communicate with child welfare agency and medical providers, holding a particular educational degree is not needed to be a good parent. Furthermore, the majority of parents in the United States do not possess a college degree, let alone a college degree in a field related to social work or family science. It seems unnecessarily prohibitive to hold a foster parent to a standard that the vast majority of American parents do not meet.

### *Unnecessary Home Requirements*

Some foster parents and caseworkers report that requirements regarding the physical characteristics of the home can make it burdensome for people to provide foster care.<sup>40</sup> All states have such requirements. While some of these requirements make sense for protecting the child's wellbeing, others seem overly burdensome and exceed standards that would be required for most parents to provide a safe home for their children.

For example, Wyoming does not allow children of any age to share a bedroom if they are of the opposite sex. Some states not only require a foster home to have a fire extinguisher but they require fire extinguishers to be placed on every floor of the home. Other examples of strict home requirements include: locks for all medications in the household as well as for household chemicals; First Aid kits for the house and the car that contain a specific list of items; emergency contact information available in the vehicle in which children are transported; gates or doors to all stairways in the home unless a child is over the age of five; no cords on window coverings; foster children not being allowed to sleep on a bunk bed or trundle bed; and quarterly fire drills conducted by foster parents that must be reported to the agency.<sup>41</sup> Some states require that if the home a child will occupy is rented, the family have renters insurance.<sup>42</sup>

While states should be concerned with keeping foster children physically safe, some home requirements can and should likely be removed. It makes little sense why infants or toddlers of the opposite sex should not be allowed to share a bedroom. Furthermore, given that most renters in the United States do not hold renters insurance and many are good parents it is unclear why foster parents need to possess this type of insurance.<sup>43</sup> While preparing children to



know what to do in case of fire is important, it seems highly unlikely that even a small minority of families in the United States conduct quarterly fire drills with their children.

In 2019 the U.S. Department of Health and Human Services released model foster home standards.<sup>44</sup> States are not required to follow the standards, but they are required to submit an explanation if they do not.<sup>45</sup> The model standards may make foster parenting more feasible for families in urban areas, such as by not requiring foster parents to own a car or for their homes to meet certain square footage requirements. The standards also keep educational requirements to a minimum.<sup>46</sup> Some states have eased their requirements in response, such as by increasing the maximum number of foster children who can reside in a foster home simultaneously. On the other hand, the federal model standards are overly proscriptive in some areas. For example, they include specifics on swimming pool safety and physical exams for foster parents and require foster parents to have recycling service if it is available.<sup>47</sup>

## **RECOMMENDATION: ELIMINATE UNNECESSARILY BURDENSOME REQUIREMENTS FOR FOSTER PARENTING**

States and agencies should review requirements for foster parents and eliminate requirements that have little to do with being a committed parent that provides safe care. Burdensome requirements may have the benefit of incrementally safer and better experiences for foster children who find homes, but they have the cost of reducing the number who are placed.

### *Improve the Foster Parent Training Process*

Agencies can work to make sure training sessions for prospective and current foster parents are useful and that the length of time required for trainings is not overly protracted. Making trainings more accessible—such as through providing trainings online, streamlining trainings into fewer sessions, and implementing listening sessions and gathering feedback from foster parents to determine whether trainings are useful—can improve the training experience for prospective and current foster parents.<sup>48</sup>

States could also offer dual licensing for people who are interested in both foster parenting and adoption so that interested individuals have the option of qualifying for both simultaneously. A dual licensing strategy can cut down on redundancy for many families, considering that 50 percent of children adopted from foster care are adopted by their foster family.<sup>49</sup>

### *Remove Unnecessary Education and Home Qualifications*

Keeping foster children safe while in care is important, but some of the requirements for parents as well as some of the home safety standards go beyond the mark. For example, while it is important for agencies to ensure that foster parents are able to provide competent care for children, some requirements, such those requiring a particular education degree, seem excessive. If a person can successfully complete the application process, trainings, home study, background checks, and so forth, it makes little sense that a foster parent should be required to hold a particular education degree. States should remove requirements for foster or adoptive parents to hold a diploma or degree. Furthermore, they should examine other personal requirements for foster parents and eliminate those that are excessive.

Furthermore, while agencies have a clear interest in ensuring that a foster child is placed in a physical dwelling that is safe, some state requirements seem simply to be unnecessary barriers. States should reexamine their standards and determine which requirements are excessive or unnecessary and remove or reform those requirements that may simply be standing in the way of good potential foster parents. States should have the flexibility to set their own standards and any federal or national model standards should keep requirements to a minimum.

## **ISSUE 3: FAITH-BASED PROVIDERS HAVE BEEN EXCLUDED FROM PROVIDING FOSTER CARE AND ADOPTION SERVICES**

For much of the nation's history, faith-based foster care and adoption agencies have played an active role in helping children in need find homes.

Faith-based providers—many of them quite large—continue to fill this role today.<sup>50</sup> For example, Bethany Christian Services has more than 100 offices in 33 states and the District of Columbia, as well as several locations internationally.<sup>51</sup> Bethany Christian Services placed nearly 6,500 children in foster or adoptive homes in the United States in 2018 and provided pregnancy counseling services to nearly 3,000 clients.<sup>52</sup> Catholic Charities provides similar services nationwide. Between 2006 and 2016 it provided adoption services to 82,000 children.<sup>53</sup> In 2016, 45 percent of adoption placements made by Catholic Charities were for children with special needs.<sup>54</sup> Beyond providing placement services, faith-based groups are also involved in foster care and adoption through activities such as providing trainings for prospective foster and adoptive parents, providing financial support to foster and adopted children, and recruiting foster and adoptive parents.<sup>55</sup>

However, in some states and cities, faith-based foster care and adoption providers have been compelled to stop providing these services. This is due to sexual orientation and gender identity laws that would require them to place children with same-sex couples, which would conflict with these providers' religious beliefs about marriage.

Catholic Charities in Boston stopped providing foster care and adoption placements in 2006, due to sexual orientation laws and the state's legalization of same-sex marriage that would require them to place children with same-sex couples.<sup>56</sup> Catholic Charities in Washington, D.C. ceased their foster care and adoption services in 2010 for the same reason.<sup>57</sup>

A few years later, in 2011, Illinois started requiring foster care and adoption providers to place children with unmarried couples, including same-sex couples. As a result, Catholic Charities ended its contract with the state and foster children were sent to other agencies.<sup>58</sup>

More recently, in 2018, the city of Philadelphia told Catholic Social Services that the agency must either be willing to place children with same-sex couples or stop providing foster care services. Because Catholic Social Services would not agree to the city's request that the agency place children with same-sex couples, Philadelphia ultimately ended its partnership with the organization.<sup>59</sup> This occurred the same year that Philadelphia experienced an increase in their foster care caseload and had issued an urgent call for 300 more foster families.<sup>60</sup> Catholic Social Services filed a lawsuit against the city but lost at both the federal district and appeals courts. Earlier this year, however, the Supreme Court announced it would hear the case in fall of 2020.<sup>61</sup>

Faith-based foster care providers in Michigan are also embroiled in lawsuits involving similar matters.<sup>62</sup> Although Michigan passed a law in 2015 to accommodate faith-based foster care and adoption providers' beliefs about marriage, the state is no longer enforcing the law.<sup>63</sup> The fate of Michigan's religious liberty protection for faith-based foster care and adoption providers hangs in the balance as the Supreme Court considers the Philadelphia case.

It is difficult to know for sure what the effect of losing faith-based adoption and foster care providers has been on outcomes such as the number of foster care placements and the number of available foster homes, but it is likely to be substantial. In Illinois, as a result of the state ending its work with faith-based foster care and adoption providers, between 2,000 and 3,000 children were displaced from faith-based adoption agencies and moved into other agencies.<sup>64</sup> As noted earlier, a faith-based group in Arkansas, The CALL, is responsible for recruiting nearly half of the foster families in the state, and a third of foster families recruited by the organization said they would not have become foster parents without the organization.<sup>65</sup>

Besides challenges at the state level, federal challenges to faith-based adoption and foster care providers also exist. The Obama Administration implemented a rule that made federal foster care funding contingent on an agency being willing to place children with same-sex couples.<sup>66</sup> However, in the fall of 2019, the Trump Administration issued a new rule to reverse the Obama Administration's regulation.<sup>67</sup>

In 2019, the U.S. House of Representatives passed the Equality Act, which would prohibit federal funds from going to agencies that do not comply with sexual orientation and gender identity laws (and are thus unwilling to place children with same-sex couples).<sup>68</sup> Furthermore, the House Ways & Means Committee held a hearing in late February of 2020 investigating a faith-based organization that had received an exemption from the Obama era rule, as well as examining the Trump Administration's ruling to undo the Obama regulation.<sup>69</sup>

## **RECOMMENDATION: PROTECT THE RELIGIOUS LIBERTY OF FAITH-BASED FOSTER CARE AND ADOPTION PROVIDERS**

There are a variety of bills that have already been introduced in Congress to protect religious liberty that would support faith-based organizations' ability to serve foster and adoptive children. Furthermore, in the June 2020 Executive Order on foster care, President Trump required that the secretary of the U.S. Department of Health and Human Services provide guidance to federal, state, and local agencies making it clear that faith-based agencies are eligible to partner with government agencies on an equal basis, according to the First Amendment.<sup>70</sup>

Members of Congress have introduced legislation to protect religious liberty regarding individuals' and organizations' beliefs about marriage. For example, Senator Mike Lee (R-UT) introduced the First Amendment Defense Act in 2018, which would prohibit the federal government from discriminating against individuals or organizations based on their religious or moral beliefs about the definition of marriage.<sup>71</sup> Specifically, the act would prohibit the federal government from considering an individual or organization's beliefs about marriage for purposes of providing grants, granting accreditation or licensure, or determining an organization's tax status.<sup>72</sup>

Furthermore, Senator Michael Enzi (R-WY) and Representative Mike Kelly (R-PA) introduced the Child Welfare Provider Inclusion Act in 2019. This act would prohibit states that receive federal Title IV foster care funding from discriminating against foster care and adoption providers based on their religious or moral beliefs about marriage.<sup>73</sup>

Finally, states should pass laws to protect organizations' and individuals' free exercise of religion in regards to their beliefs about marriage. Several states have passed such laws and others should follow suit.

## ISSUE 4: CHILDREN LANGUISH IN FOSTER CARE WHEN THEY WOULD BE BETTER SERVED BY PERMANENT PLACEMENT

Foster care plays an important role for children who need to be removed from their homes due to abuse or neglect. But foster care is not a permanent placement and children should not be left to languish in temporary care. Children who remain in the foster care system for long periods of time are more likely to drift through multiple foster care placements or to age out of foster care without a permanent family, both of which are associated with lower wellbeing.<sup>74</sup>

When a child enters foster care, child welfare agencies should take steps expeditiously to determine a permanency plan for the child. Making a timely case plan is especially important for very young children who are in the developmental stage of forming attachment with their caregiver.<sup>75</sup> (The largest age group of children entering the foster care system are children under the age of one.)<sup>76</sup>

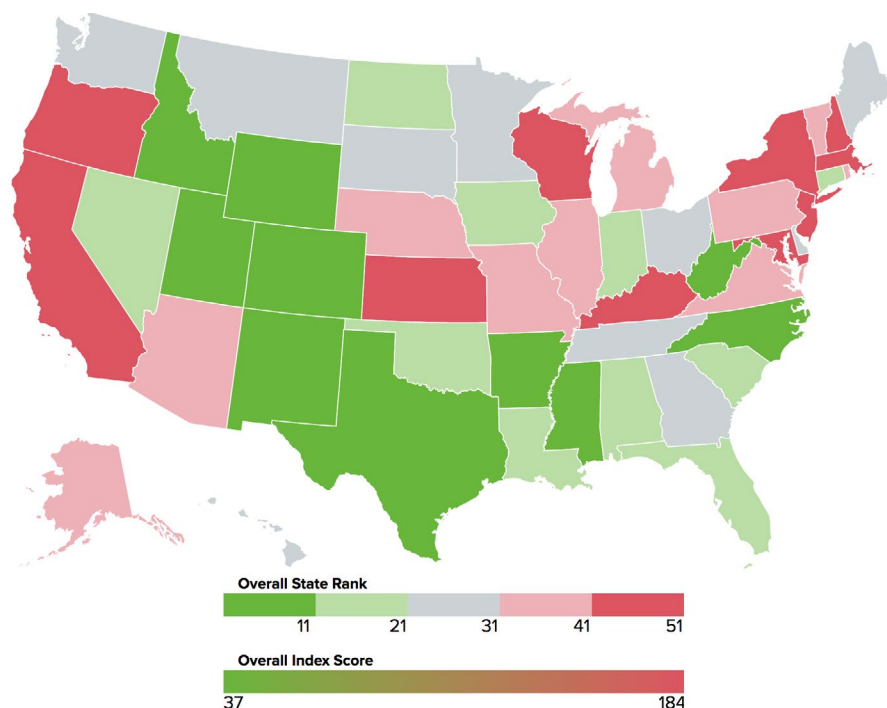
Under federal law, children are required to receive a permanency hearing within 12 months of being placed in the foster care system, in which the court determines whether the child's case plan will be reunification with his or her parents, termination of parental rights and adoption, legal guardianship, or "another planned permanent living arrangement."<sup>77</sup> However, some states report that it can take months to get a trial scheduled due to backup in the system.<sup>78</sup>

Some states do better than others at moving children to permanency (see Figure 1). For example, the median length of stay for children in foster care is 5.6 months in New Mexico, according to the most recent data, whereas it is 24.1 months in Washington, D.C. When it comes to moving children into adoptive homes, in Utah 47 percent of children are adopted in under two years, whereas in Illinois only 33 percent of children are adopted in less than two years. In Wyoming only 1 percent of foster youth age out of the system without a permanent placement, whereas in Washington, D.C. 51 percent do.

In states that are less effective at moving children to permanency, three issues may be to blame: weak enforcement of the *Adoption and Safe Families Act*, poor incentives in the Title IV-E foster care funding, and non-compliance with the *Multiethnic Placement Act*.

Figure 1. Foster Care Ranking Variables by State, 2018

Median length of stay in foster care, percent of children adopted in less than two years, percent of children who age out of foster care without a permanent placement, and percent of foster care entries that are re-entries



Source: U.S. Department of Health and Human Services, Administration for Children and Families, Child Welfare Outcomes Report Data, 2017, <https://cwoutcomes.acf.hhs.gov/cwodatasite/sixOneLessThan12/index>.

### *Weak Enforcement of the Adoption and Safe Families Act “15 of 22” Rule*

Federal law requires that if a child has been in the foster care system for 15 of the past 22 months, the agency must file for termination of parental rights so that a child can be adopted. There are exceptions to this rule: for instance, states can exempt children from the 15 of 22 rule if a child is living with kin, the agency has not made sufficiently reasonable efforts to reunify the child with his or her parents, or the court determines that it is not in the best interest of the child for parental rights to be terminated.<sup>79</sup>

Congress established the 15 of 22 rule in the *Adoption and Safe Families Act* of 1997. The act was implemented as part of the Title IV-E foster care program, which provides funding to state foster care systems. Policymakers were concerned about the major growth of children in foster care that took place in the 1980s and 1990s and feared that children were remaining in the system too long.<sup>80</sup>

Prior to the *Adoption and Safe Families Act*, Congress passed the *Adoption Assistance and Child Welfare Act* of 1980, which mandated that states make reasonable efforts to rehabilitate biological parents before terminating their

parental rights. The *Adoption and Safe Families Act* of 1997 defined what “reasonable efforts” are and exceptions to the requirement for aggravated circumstances, such as in cases of chronic abuse, abandonment of the child, or sexual abuse.<sup>81</sup> Proponents of the 1997 legislation argued that the 1980 law leaned too heavily towards rehabilitating parents, leaving too many children to languish in the system when it was unlikely a parent would be fit to provide care again or be able to do so within a reasonable amount of time. They also argued that children were too often returned to unsafe family situations.<sup>82</sup>

After the 15 of 22 rule was implemented as part of the *Adoption and Safe Families Act*, more children were adopted and the foster care caseload began to decline.<sup>83</sup> While these were promising changes, there is room for improvement. As of 2018, the median length of stay in the foster care system was still 13.2 months, and the mean length of stay was much higher (19.2 months). This indicates that there are outliers who remain in the foster care system for much longer than the median length of time.<sup>84</sup> Relatedly, a substantial number of youth age out of the foster care system without finding a permanent placement: 18,000 youth aged out of the foster care system in 2018.

States are not required to collect data on agencies’ compliance with the 15 of 22 rule, thus it is challenging to determine how often the rule is bypassed and for what reasons.<sup>85</sup> However, a 2002 report from the Government Accountability Office (GAO) indicates that in nine states that provided data (only nine states were able to provide data because most had not collected it), the 15 of 22 rule was bypassed more than it was applied. Furthermore, researchers find that states rarely used the aggravated circumstances provision to expedite termination of parental rights.<sup>86</sup>

Although states are not required to collect data on agencies’ use of the 15 of 22 provision, the federal government does collect some information on how this rule is applied. As part of the federal Child and Family Services Review, the Children’s Bureau reviews a minimum of 65 foster care cases per state per review period. (Reviews have taken place between 2001 and 2004, 2007 through 2010, and 2015 through 2018.) During the latest review period, reviewers found that states filed for termination of parental rights in just over half—52 percent—of applicable cases they reviewed. In 26 percent of applicable cases where termination of parental rights was not filed, no reason was given regarding why an exemption was made.<sup>87</sup> Furthermore, in the U.S. Department of Health and Human Services 2010-2013 report to Congress on Child Welfare Outcomes, the department reported that in 2013, of the cases who had been in the foster care system for at least 15 of the past 22 months, only 14 percent had seen the termination of parental rights so that the child could become legally free for adoption.<sup>88</sup>

In the 2002 GAO report, seven states provided data on their reasons for bypassing the 15 of 22 rule. These reasons included: they believed parents would rehabilitate soon, the child was in the care of relatives, the child would not consent to termination of parental rights, the parent had not received sufficient

services, or the child was living in long-term foster care, where the child welfare agency retains care of the child rather than seeking more permanent options, like adoption or reunification.<sup>89</sup> While these may be appropriate reasons for exempting a case from the time limit, they may be problematic at times. A court may expect a parent to rehabilitate soon but that might not happen. A state may commonly fail to provide services to a parent in a timely manner. Or long-term foster care—which is a last resort—may too often be the default plan rather than seeking an adoptive home for the child.

Some argue that the allowable exceptions to the 15 of 22 rule make the rule too weak and that such exceptions should be removed or tightened.<sup>90</sup> Others argue that parents should have more time to rehabilitate.<sup>91</sup> The frequency with which agencies and courts bypass the time limit suggests that states have sufficient ability to make exceptions.

The field of social work typically views terminating parental rights negatively, seeing it as a failure and a tool of last resort.<sup>92</sup> This perspective likely contributes to the frequency with which agencies fail to file for termination of parental rights in accordance with the 15 of 22 rule. While it may be appropriate in some cases to allow parents more time to reform, agencies must not fail to consider a child's sense of time and his or her developmental needs, which may not fit with the parent's recovery timeline. It is common for parents of children in foster care to have to work through drug addiction, for example, which can be a long process and one that varies in length by individual.<sup>93</sup> If a parent is not progressing through the various stages of recovery or is failing to comply with their recovery plan, children should not be required to languish in temporary placements.

It is especially important agencies do not delay permanency for infants. Developing a secure attachment to a caregiver during infancy is critical to healthy child development.<sup>94</sup> Languishing in a temporary foster care setting can interfere with this stage. Earlier versions of the *Adoption and Safe Families Act* included timelines for termination of parental rights based on a child's age, but this provision ultimately failed.<sup>95</sup> However, states have the authority to implement shorter timelines for termination of parental rights than the federal law dictates.

### *Poor Incentives in the Federal Foster Care Funding Structure*

Another factor leading to increased time in foster care may have to do with how federal Title IV-E foster care funding is allocated to states. Title IV-E is an open-ended entitlement, meaning that states receive funding based on the number of children in their foster care system. Because states receive more funding for having a larger foster care caseload, states may be incentivized to keep their foster care caseloads high rather than to move children into permanent placements in a timely manner.<sup>96</sup>



### *Non-Compliance with the Multiethnic Placement Act*

Furthermore, some agencies' failure to comply with the *Multiethnic Placement Act* may increase the time children spend in foster care. The *Multiethnic Placement Act* was passed in 1994 and prohibits delaying or denying adoption placements based on race, color, or national origin. Although some research indicates that children adopted by parents of a different race may struggle with their racial identity, researchers also find that children in transracial adoptions have similar levels of self-esteem compared to children adopted by parents of the same race.<sup>97</sup> Overall, the research appears to indicate that children in transracial adoptions adjust as well as children adopted by same-race parents.<sup>98</sup> Agencies have violated the *Multiethnic Placement Act* at times, however, and anecdotal evidence suggests that some agencies continue to circumvent this law.<sup>99</sup>

In the early 2000s, the U.S. Department of Health and Human Services' Office of Civil Rights found that Ohio and South Carolina were violating the *Multiethnic Placement Act* in various ways, including subjecting parents to a higher level of scrutiny if the parent was a different race than the child, assessing the racial composition of the neighborhood of prospective foster families, and matching children with parents based on skin tone.<sup>100</sup> Prospective foster parents complain of similar problems happening today in some agencies.<sup>101</sup> In a 2008 study of social workers in child welfare, researchers found that nearly two-thirds said that using race as a factor in adoption placement is an ongoing practice.<sup>102</sup> Unfortunately, failure to comply with this law could leave children to languish in foster care longer than necessary or even deny children an adoptive home.

## **RECOMMENDATION: PROVIDE QUALIFYING FOSTER CHILDREN WITH PERMANENT ADOPTIVE PLACEMENTS**

Federal and state governments can implement several reforms to increase the number of qualifying foster children in permanent adoptive placements.

### *Require States to Collect Data on Use of the 15 of 22 Rule and Implement Fast-Track Provisions for Young Children*

While the Child and Family Services Review asks states to report on their use of the 15 of 22 rule, states are not required to collect data on agencies' compliance with the rule. States should be required to collect and report data regarding how the 15 of 22 rule is used and be held accountable for violating the rule. President Trump's June 2020 executive order on foster care requires the secretary of the U.S. Department of Health and Human Services to assess states' compliance with federal timelines for termination of parental rights and reiterates that when states are not in compliance the secretary shall make use of his authority to withhold funding if states do not improve.<sup>103</sup>

In addition, Congress should hold hearings to understand how the 15 of 22 rule in the *Adoption and Safe Families Act* is being implemented. They should examine whether the frequent use of exceptions to the 15 of 22 rule is appropriate or whether states are bypassing the rule in cases when it should be applied. Furthermore, Congress should examine why states rarely use the aggravated circumstances provision, which allows states to fast-track termination of parental rights when children have experienced extreme situations, such as chronic abuse or abandonment.

For infants in the foster care system, timely permanency is especially crucial, given the importance for infants to develop a secure attachment with a caregiver. States should implement shorter timelines for termination of parental rights for infants, rather than requiring infants to wait in foster care for 15 months out of a 22 month period. As an example, in Arizona drug abused infants are required to have a permanent placement within one year of entering the foster care system.<sup>104</sup>

#### *Reform Funding to Improve Incentives*

The nature of Title IV-E funding should be changed so that it does not present a perverse incentive for states to maintain children in the foster care system. Rather than basing a state's foster care funding on the number of foster care children in their system, states should receive a fixed amount of funding based on the population of children in the state.

In addition, Congress should continue the Adoption Incentives Program, which is part of the *Adoption and Safe Families Act* of 1997. This program rewards states for increasing the number of children adopted from foster care above a baseline.

In 2014, Congress expanded this program to add rewards for increasing the number of children placed in guardianships.<sup>105</sup> However, adoption placements are usually better than guardianships, since guardianships do not confer full parental rights. Congress should return this program to solely an adoption incentives program, or at least make the reward for a guardianship placement substantially less than the amount rewarded for an adoption.

#### *Enforce the Multi-Ethnic Placement Act*

The *Multiethnic Placement Act* prohibits child welfare agencies from delaying or denying placement on the basis of race, color, or national origin. President Trump's June 2020 executive order on foster care requires the secretary of the U.S. Department of Health and Human Services to conduct a study on how the *Multiethnic Placement Act* is being implemented nationwide, and also requires the secretary to update guidance on the implementation of the *Multiethnic Placement Act*.<sup>106</sup> These are good steps forward. Additionally, Congress should require states to collect data on courts' compliance with the *Multiethnic Placement Act* and report that data to the U.S. Department of Health

and Human Services. States that fail to comply with the requirements of the *Multiethnic Placement Act* should have their Title IV funding reduced proportional to the frequency with which their courts are failing to comply with the law.

#### *Ensure that Foster Parents Are Aware of the Laws*

If foster parents are aware of the 15 of 22 rule and the provisions of the *Multiethnic Placement Act*, they will be able to help keep agencies accountable, as foster parents are one of the parties directly affected by these laws. If foster parents are informed, they can be whistleblowers if agencies fail to terminate parental rights in a timely manner or if agencies are delaying or denying foster or adoption placements on the basis of race. President Trump's June 2020 executive order on foster care requires the secretary of the U.S. Department of Health and Human Services to "publish guidance regarding the rights of parents, prospective parents, and children with disabilities (including intellectual, developmental, or physical disabilities)."<sup>107</sup> In addition to this, Congress should require agencies to inform prospective and current foster parents about the *Multiethnic Placement Act* and the 15 of 22 provision in the *Adoption and Safe Families Act*.

## **ISSUE 5: INFANT ADOPTION IS MISUNDERSTOOD AND UNDER-SUPPORTED**

The largest age group of children entering the foster care system are children under the age of one.<sup>108</sup> In FY 2018, 19 percent of children entering foster care were less than a year old. Furthermore, children under the age of one are the most likely to be maltreated and approximately half of all fatalities from child abuse are among children under the age of one.<sup>109</sup> While many infants who enter the foster care system will reunite with their parents, many will be placed in adoptive homes.<sup>110</sup> Over a quarter of the children in the foster care system waiting for adoption are children who entered foster care when they were less than a year old.

While infants make up a large portion of children who enter the foster care system, infant adoption is rare, and infant adoption has dropped significantly over the last several decades.<sup>111</sup> Only five percent of children adopted from foster care were under the age of one in 2018.

Some children who end up in foster care within their first year of life would likely have been better off if they would have been placed for adoption at birth rather than removed from their homes shortly thereafter due to abuse or neglect. While there were about 18,000 infant adoptions in the United States in 2014, more than twice that number—45,535 children under the age of one—entered foster care that year.<sup>112</sup>

Helping women understand that adoption is a potentially beneficial option when they are not prepared or willing to parent may help reduce the number of infants

who end up in the foster care system or experience abuse or neglect. Women sometimes express negative perspectives on adoption, however, although their concerns may be based on a lack of information.<sup>113</sup> Researchers find that expectant mothers who prefer not to be a parent (in that they were seeking an abortion but were denied one because they were too far along in their pregnancy) often believe it is not right to give up their child or that there are already too many children waiting for adoption. Some women also express fear that they would constantly be worried about their child's wellbeing.<sup>114</sup>

It may help expectant mothers to know that the vast majority of adoptions today are open adoptions or semi-open adoptions, meaning that birth mothers can have at least some contact with their child.<sup>115</sup> Furthermore, expectant mothers may be more likely to consider adoption when they know that there are many families looking to adopt. According to the 2015-2017 National Survey of Family Growth, over 900,000 women are currently seeking to adopt, which is far more than the number of infant adoptions that take place (just over 18,000 in 2014).<sup>116</sup> Also, it may help women to know that while mothers who place their child for adoption do report grief, the majority ultimately say they are satisfied overall with their decision.<sup>117</sup>

## **RECOMMENDATION: SUPPORT INFANT ADOPTION AWARENESS**

The federal government used to fund the Infant Adoption Awareness Training program, which was implemented to address a lack of adoption awareness among pregnancy counselors.<sup>118</sup> The program was established in the *Public Health Services Act* of 2000 for the purpose of providing information about adoption to expectant mothers who receive services from government and private pregnancy clinics “on an equal basis with all other courses of action included in nondirective counseling for pregnant women.” The program provided funding for staff in public and non-profit health clinics that serve pregnant women, including Title X family planning clinics and federally funded health clinics.

However, in 2011 the Obama Administration shifted funding for the Infant Adoption Awareness Training program into the Adoption Opportunities program, which focuses on various strategies to promote adoption, such as promoting adoption for children in foster care. Unlike its predecessor, Adoption Opportunities is not designed specifically to support training on infant adoption for expectant mothers. In FY 2017 the Trump Administration authorized \$750,000 in Adoption Opportunities funding for Hospital-Based Adoption Support Services. This grant supports training for hospital staff who provide pregnancy and adoption information and referrals, and the grantee uses a curriculum from the Infant Adoption Awareness Training program.<sup>119</sup>

Congress should consider whether the Adoption Opportunities program is effective and whether some of its funding should be diverted back to the Infant

Adoption Awareness Training program. Providing expectant mothers who have crisis pregnancies with information about adoption might help women who are not prepared or willing to parent avoid having their children placed in foster care down the road.

In addition to adoption counseling in health centers, states and communities could fund media campaigns to address common concerns or myths about adoption as well as to promote adoption as a positive option.

Some states require public schools to teach students about adoption, sometimes including this information in family life education or sexuality education courses.<sup>120</sup> More states should include information about adoption in their curriculums to help students understand that adoption can be a positive choice for those who may not be in place where they can parent. Utah, Virginia, Nebraska, Michigan, and Louisiana all have some type of adoption education requirement in their schools.<sup>121</sup>

## CONCLUSION

Hundreds of thousands of American children are in the foster care system and are in need of loving homes. Fortunately, many Americans are willing to provide care to children in need, and many private organizations throughout the United States, including faith-based organizations, lend their efforts to serve these children on a daily basis. Unfortunately, the system designed to help children sometimes presents significant barriers to connecting children with those willing to provide loving homes. Furthermore, by threatening the religious liberty protection for faith-based foster care and adoption providers, many state governments are hampering civil society's efforts to serve these children.

Child welfare agencies should work to support foster parents rather than neglecting them or making it harder for them to serve as foster parents. Federal, state, and local government should protect faith-based organizations' ability to provide foster care and adoption services to children in need. Furthermore, courts and child welfare agencies should work to move children into permanent placements in a timely manner, rather than allowing children to languish in the foster care system. Leaders should also support and promote infant adoption as a positive option when expectant parents are unlikely to be able to provide safe homes.

Children in the foster care system face a significant social capital deficit. Fortunately, many Americans are willing to open their hearts and homes to enrich the lives of these children and to see that they are not permanently left alone. Increasing the opportunity for disconnected children to find loving bonds should be a priority of civil society and government.

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