

# Placing Politics Above Children?



By Paul Engel

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- Should foster parents see Department of Children and Families as partners or adversaries?
- Can an otherwise excellent candidate for foster children be denied the chance because of their religious beliefs?
- When the state takes responsibility for children, can they place politics above their welfare?

Studies show that the best outcomes for children is when they live in a home with their married parents. If the world were perfect, then all children would have that chance. The world isn't perfect though, and either by accident or as the consequences of the actions of adults, children will be in need of people to step in for their parents. In our modern society, the role of finding homes for these children has been filled by the state governments. What happens when those government entities place politics above the needs of their charges? A recent case in the U.S. District Court for Massachusetts deals with that very topic. Plaintiffs Michael and Catherine Burke claim that the State of Massachusetts Department of Children and Families (DCF) discriminated, for religious reasons, against their application to become foster parents. When I looked at the case what I saw wasn't simply religious discrimination, but DCF placing political viewpoints above not only the Constitution of Massachusetts, but what is best for the children in their care.

## **Foster Care**

When I moved from New York City to a small town upstate, my very first friend was a boy my age who was in foster care. The details do not matter, but I remember his first foster family took care of him, but seemed distant and cold. A couple of years later, he was placed with another foster family, and I watched as my friend changed for the better. His new family was loving and kind, and helped him grow from a scared child into a young man. Along the way, I got a small glimpse into the foster care system, which is not easy for either children or parents. It takes a lot to open your home to a child, with no guarantees as to what personality traits, or even medical and psychological issues, they may bring. For people prepared to be parents and families to those who either don't have one or whose families are dysfunctional, I tip my hat. While I am sure there are those in the foster care system more interested in the check than the child, from what I've seen they are the small exception. I've also seen reports of people in Child Services, under many different names, who seem to place what they think best above the needs of the child. This appears to be the situation in the case [Burke v. Walsh](#).

### **Burke v. Walsh**

Michael and Catherine Burke are described as a loving couple. After finding out they were infertile, they decided to become foster parents, hoping they may eventually adopt a child into their family.

The Burkes applied to become foster parents through the Massachusetts Department of Children and Families (DCF). They went through thirty hours of training, lengthy interviews, and assessments of their home, health, and family life.

In the end, DCF "[a]cknowledged" the "family['s] strengths, this including their willingness to parent a child w/ moderately significant medical, mental health and behavioral

needs.” ... One interviewer praised how they “really seem[] to understand adoption/foster care.” ...

### [Burke v. Walsh et. al. – Complaint](#)

The process of becoming foster parents is not easy. There’s training to take, interviews to sit through, and numerous intrusive assessments of just about every part of the applicant’s life. All of which the Burkes appeared to pass with flying colors. Not only did one interviewer praise the Burkes’ understanding of the adoption and foster care system, but they were willing to take an otherwise difficult to place child, one with medical, mental, or behavioral needs. Sounds like the perfect candidates, don’t they?

But DCF denied the Burkes a foster care license, and, as such, their last opportunity to become parents.

Only one reason was given for that denial: they “would not be affirming to a child who identified as LGBTQIA.”

### [Burke v. Walsh et. al. – Complaint](#)

I’m not sure of the statistics in Massachusetts but, in general, most foster care systems are desperate to find foster families. Mostly because there are so many more children in the system than parents willing to care for them, especially if the child has special needs. One would think that DCF would jump at the chance to have a family not only so well qualified, but willing to take on some of their more difficult cases. DCF’s reason about not affirming an “LGBTQIA” child seems quite ridiculous for a couple of reasons. First, what percentage of children in foster care in Massachusetts identify as “LGBTQIA”? Again, I don’t have numbers, but by looking at the rest of the population, my guess is only a relatively small number of children would be effected if they were to be fostered by the Burkes. Second, while not an expert on the subject, I don’t believe Massachusetts law would require DCF to place children with a family that they believe

would not be philosophically compatible.

Of course, the Burkes believe there is more to them being denied a foster care license.

As DCF recorded, "Kitty and Mike are devoutly Roman Catholic and not only attend church with regular frequency, they both also work for local churches as musicians." ...

As faithful Catholics, the Burkes believe that all children should be loved and supported, and they would never reject a child placed in their home. They also believe that children should not undergo procedures that attempt to change their God-given sex, and they uphold Catholic beliefs about marriage and sexuality.

Because of those decent and honorable beliefs, DCF decided the Burkes were not "affirming," and therefore prohibited from fostering any child in Massachusetts.

#### [Burke v. Walsh et. al. – Complaint](#)

In short, the Burkes believe they are being denied a foster care license because they are faithful Roman Catholics. This seems to be supported by something the author of their license study wrote.

As the author of their license study put it, while the Burkes are "lovely people," "their faith is not supportive and neither are they."

#### [Burke v. Walsh et. al. – Complaint](#)

In other words, it was not what the Burke's said, but the fact that their faith appears unsupportive that the author of the study concluded that they are not supportive. However, I can understand why the author of the Burke's license study may have felt they had to see things that way. Massachusetts regulations require licensed adoptive or foster parents...

to promote the physical, mental, and emotional well-being of a child placed in his or her care, including supporting and respecting a child's sexual orientation or gender identity;

[110 CMR 7.104\(1\)\(d\)](#)

Yes, Massachusetts regulations require adoptive and foster families respect and support a child's sexual orientation or gender identity. However, the complaint also noted:

Yet at the same time, DCF regulation and policy—and the Massachusetts Foster Parent Bill of Rights—all prohibit religious discrimination against potential foster parents.

[Burke v. Walsh et. al. – Complaint](#)

The Burke's attorney points to Massachusetts law, but not their constitution. Specifically, Part the First, (that's how they title it), Article II:

It is the right as well as the duty of all men in society, publicly, and at stated seasons to worship the Supreme Being, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship.

[MA Constitution, Part the First](#), Article II

Wouldn't being denied a foster care license fall under the Burke's being 'hurt' or 'restrained' in their liberty?

### **Claims for Relief**

The Burke's case lists five counts of violation of the First Amendment of the U.S. Constitution, four of the Free Exercise

Clause, and one of the Free Speech Clause. In all counts, the claim is that the law is not generally applicable, a requirement under the Supreme Court's strict scrutiny doctrine. The first four counts focus on the consideration of the Burke's religious beliefs and using those beliefs as a justification for treating them differently than others. The last count deals with the law's coercive requirement that adoptive/foster parents express an idea that may violate their religious beliefs. While the complaint claims that the First Amendment is incorporated against the states under the Fourteenth Amendment, I have repeatedly shown that the language of the latter amendment does not change the scope of the former.

The Burkes are asking the court to declare that DCF stop discriminating against them and any others who hold similar religious beliefs, that DCF be enjoined from withholding the Burke's foster care license, and for legal costs & damages.

## **Conclusion**

As this is just the initial stages of the suit, we'll have to wait to see how things proceed. Since this case is likely to be appealed, it may take years before we get a final decision. To me, there are a couple of interesting things we should consider.

First, while I do not subscribe to the Supreme Court's strict scrutiny doctrine, it's most likely what the courts will use to help decide this case. I would think DCF could not prove that this was the least restrictive means necessary to achieve what the Commonwealth of Massachusetts is most likely to claim as a compelling government interest in the mental and emotional well-being of the children in foster care. After all, I would think there are plenty of children in the foster care system who would not be disturbed by the Burke's religious beliefs, thereby allowing them to provide what appears to be a desperately needed service without harming a

child. Furthermore, by denying a license to anyone with a sincere Roman Catholic faith the Commonwealth of Massachusetts is denying the mental and emotional well-being of children who share that faith.

Second, as the lawsuit points out:

As faithful Catholics, the Burkes believe that all children should be loved and supported, and they would never reject a child placed in their home. They also believe that children should not undergo procedures that attempt to change their God-given sex, and they uphold Catholic beliefs about marriage and sexuality.

### [Burke v. Walsh et. al. – Complaint](#)

With the recent attempts by the Commonwealth of Massachusetts to promote not only sexualized lifestyles in children, including denying the sex of these children, the question must be asked: Is the Commonwealth of Massachusetts placing their political agenda above the needs of the children in their care? Why does the Commonwealth appear to be focusing on the few confused children with mental health issues, to the detriment of the others? It also seems that the Commonwealth is ignoring 110 CMR 7.104(1)(e) in favor of their transgender agenda.

to respect and make efforts to support the integrity of a child's racial, ethnic, linguistic, cultural and religious background;

### [110 CMR 7.104\(1\)\(d\)](#)

How can the Commonwealth claim to be promoting the mental and emotional well-being of the children, when they place their politicized sexual agenda above broader mental, emotional, or religious needs?

It makes me wonder if DCF is more concerned with a child's

ability to mutilate their body rather than the overall health and welfare of the child? Which begs, another question: Who is more dangerous? Religious families or the Commonwealth of Massachusetts?

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