

---

---

COMMON SENSE CASE  
FOR COMMON GROUND LAWMAKING:  
THREE CHEERS FOR *WHY CONSERVATIVE RELIGIOUS  
ORGANIZATIONS AND BELIEVERS SHOULD SUPPORT THE  
FAIRNESS FOR ALL ACT*

*Tanner Bean<sup>1</sup> and Robin Fretwell Wilson<sup>2</sup>*

In the midst of the COVID-19 pandemic, we are writing from our homes to respond to *Why Conservative Religious Organizations and Believers Should Support the Fairness for All Act* (the “Article”).<sup>3</sup> COVID-19 has eclipsed many of the political conflicts that have long vexed America, including those about how we worship or who we love.<sup>4</sup> Suddenly, our national discourse has gone quiet about the many “culture war” cases now pending before the Supreme Court, any one of which would have dominated headlines in the past. The cases canvas questions of great significance to both the LGBT and the faith communities: whether there are protections against sexual orientation and gender identity discrimination in employment,<sup>5</sup> the reach of the ministerial exception for religious employers facing

---

<sup>1</sup> Tanner Bean is an attorney at Fabian VanCott, a law firm in Salt Lake City, Utah. There, he focuses on employment law, litigation, and appellate matters. Over the course of the past few years, Tanner has also worked with the Fairness for All Initiative, in the intersecting areas of religious liberty and LGBT discrimination. In addition, Tanner serves on the J. Reuben Clark Law Society’s Religious Freedom Committee, is the founder of the Idaho Interfaith & LGBT Summit on Religious Liberty and Nondiscrimination, and runs the Workplace Religious Accommodations Database (WRAD) Pro Bono Project.

<sup>2</sup> Robin Fretwell Wilson is the Director of the Institute of Government and Public Affairs of the University of Illinois System. She is the Roger and Stephany Joslin Professor of Law and former Associate Dean for Public Engagement at the University of Illinois College of Law. The author of eleven books, Professor Wilson has ranked among the Top Ten Family Law Scholars in the United States for scholarly impact in each ranking done by the Leiter Report since 2010. She co-directs the University of Illinois College of Law’s Epstein Health Law & Policy Program and founded and co-directs its Family Law & Policy Program. Professor Wilson also founded and directs the Tolerance Means Dialogues and the Fairness for All Initiative, both which are made possible with private philanthropic support. Professor Wilson chairs the *Institute of Government and Public Affairs’* the Substance Abuse Disorder Working Group, is a founding member of the Genomic Security and Privacy Theme of the Carl R. Woese Institute For Genomic Biology at the University of Illinois Urbana-Champaign, and holds appointments at the University of Illinois College of Medicine Urbana-Champaign and the Carle Illinois College of Medicine. A member of the American Law Institute and a Fulbright Specialist, Professor Wilson has thrice been honored for her work with lawmakers on innovative laws.

<sup>3</sup> Chris Stewart & Gene Schaerr, *Why Conservative Religious Organizations and Believers Should Support the Fairness for All Act*, 46 J. LEGIS. 134 (2020).

<sup>4</sup> Robin Fretwell Wilson, *Bathrooms and Bakers: How Sharing the Public Square is the Key to a Truce in the Culture Wars*, in RELIGIOUS FREEDOM, LGBT RIGHTS, AND THE PROSPECTS FOR COMMON GROUND 402-20 (William Eskridge, Jr. and Robin Fretwell Wilson eds., 2019).

<sup>5</sup> Adam Liptak & Jeremy W. Peters, *Supreme Court Considers Whether Civil Rights Act Protects L.G.B.T. Workers*, N.Y. TIMES (Oct. 8, 2019), <https://www.nytimes.com/2019/10/08/us/politics/supreme-court-gay-transgender.html>; Emma Green, *America Moved on from Its Gay-Rights Moment—And Left a Legal*

discrimination lawsuits from employees with varying religious functions,<sup>6</sup> the extent religious adoption and foster care agencies may accept government funding while only placing children into homes compatible with religious doctrine,<sup>7</sup> and permissible exemptions for religious organizations from the Affordable Care Act's contraceptive coverage mandate.<sup>8</sup>

Some fear that the LGBT rights movement has stalled amidst the COVID-19 pandemic, leaving individuals at risk of losing jobs, housing, and access to public places for no reason other than who they love or how they identify.<sup>9</sup> Many in the faith community are also experiencing existential crises—they worry that they cannot gather, that they cannot minister to others safely for the foreseeable future, and that their concerns have been met with disrespect and ridicule.<sup>10</sup> Needless to say, the coronavirus has emptied American discourse and politics of nearly everything but discussion of the pandemic.<sup>11</sup>

In this moment of crisis, our most core values and needs have been laid bare. Consider the conversations we routinely have now. We ask each other about family when we did not always do so before. We make accommodations for each other's needs as we try to navigate a common enemy. We are seeing old wrongs through new lenses.

As the pandemic ravages the economy, LGBT Americans are taking some of the worst hits, not only because they face additional hurdles to obtaining healthcare,<sup>12</sup> but also because until June 2020, across two-thirds of the landmass of America, no law protected LGBT persons from being fired, and still today no law

---

*Mess Behind*, ATLANTIC (Aug. 17, 2019), <https://www.theatlantic.com/politics/archive/2019/08/lgbtq-rights-america-arent-resolved/596287/>.

<sup>6</sup> Amy Howe, *Argument Analysis: Justices Divided in Debate Over "Ministerial Exception,"* SCOTUSBLOG (May 11, 2020), <https://www.scotusblog.com/2020/05/argument-analysis-argument-analysis-justices-divided-in-debate-over-ministerial-exception/>.

<sup>7</sup> Kelsey Dallas, *In Battle Over Faith-based Adoption Agencies and LGBTQ Rights, Advocates Clash Over What's Best for Kids*, DESERET NEWS (Feb. 24, 2020), <https://www.deseret.com/indepth/2020/2/24/20978357/supreme-court-lgbt-religion-foster-care-faith-based-adoption>.

<sup>8</sup> Ariane de Vogue, *Supreme Court Hears Obamacare Contraceptive Mandate Challenge Via Telephone*, CNN (May 6, 2020), <https://www.cnn.com/2020/05/06/politics/supreme-court-little-sisters-of-the-poor-contraceptive-mandate/index.html>.

<sup>9</sup> *Five Ways COVID-19 Impacts Global LGBTQ Advocacy*, HUMAN RIGHTS CAMPAIGN (Mar. 23, 2020), <https://www.hrc.org/blog/five-ways-covid-19-impacts-global-lgbtq-advocacy>; Suyin Haynes, *'There's Always a Rainbow After the Rain.' Challenged by Coronavirus, LGBTQ Communities Worldwide Plan Digital Pride Celebrations*, TIME (May 7, 2020), <https://time.com/5814554/coronavirus-lgbtq-community-pride/>.

<sup>10</sup> For more on the climate, see Robin Fretwell Wilson, Brian A. Smith & Tanner J. Bean, *Defiant Congregations in a Pandemic: Public Safety Precedes Religious Rights*, CANOPY FORUM ON THE INTERACTIONS OF LAW & RELIGION, CENTER FOR THE STUDY OF LAW AND RELIGION AT EMORY UNIVERSITY (Mar. 21, 2020), <https://canopyforum.org/2020/03/21/defiant-congregations-in-a-pandemic-public-safety-precedes-religious-rights/>; Tom Gjelten, *Opposing Church Closures Becomes New Religious Freedom Cause*, NPR (Apr. 17, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/17/837698597/opposing-forced-church-closures-becomes-new-religious-freedom-cause>.

<sup>11</sup> *Coronavirus Search Trends*, GOOGLE TRENDS (June 1, 2020), [https://trends.google.com/trends/story/US\\_cu\\_4Rjdh3ABAABMHM\\_en](https://trends.google.com/trends/story/US_cu_4Rjdh3ABAABMHM_en).

<sup>12</sup> See, e.g., Press Release, Nat'l Ctr. For Lesbian Rights, Trump Administration to Eliminate LGBTQ Healthcare Anti-Discrimination Protections (May 23, 2019), <http://www.nclrights.org/about-us/press-release/trump-administration-to-eliminate-lgbt-healthcare-anti-discrimination-protections/>.

protects LGBT persons from being refused housing or being told to “get out” of a business that serves the public.<sup>13</sup> Meanwhile, religious communities are confronting crises of faith, faced with impossible choices between, on the one hand, receiving holy sacraments<sup>14</sup> and accomplishing their service missions to feed and house the poor and, on the other hand, complying with stringent social distancing orders.<sup>15</sup>

At this time, our common humanity has never been more apparent.

The core intuition behind Representative Chris Stewart’s Fairness for All Act (“FFA”)<sup>16</sup> is that reasonable compromise is necessary if we are to live together as one American people despite our divisions on questions of faith, sexuality, and marriage. Representative Stewart introduced into Congress in December 2019 the first federal approach to common ground lawmaking at the intersection of religious freedom and LGBT rights.<sup>17</sup> No one doubts that the FFA bill will see future amendments.<sup>18</sup> Nonetheless, we should pause to recognize Representative Stewart’s stunning accomplishment in locating consensus where many assumed none could be found.

In the Article, Representative Stewart joins co-author Gene Schaerr, a seasoned appellate lawyer versed in crafting religious liberty legislation. They pitch largely to a conservative religious and political audience.<sup>19</sup> In doing so, they urge practicality rather than the aggressive pursuit of one-sided measures that mainly respond to only one constituency—what we elsewhere have termed a “purity” model.<sup>20</sup>

The Article is fascinating for what it offers about process, as well as substance. It pulls back the curtain around negotiations that resulted in the FFA bill.

---

<sup>13</sup> Petruce Jean-Charles, *LGBTQ Americans Are Getting Coronavirus, Losing Jobs. Anti-gay Bias is Making it Worse for Them.*, USA TODAY (May 9, 2020), <https://www.usatoday.com/story/news/nation/2020/05/09/discrimination-racism-fuel-covid-19-woes-lgbtq-americans/3070036001/>. See also Robin Fretwell Wilson, *Bathrooms and Bakers: How Sharing the Public Square is the Key to a Truce in the Culture Wars*, in RELIGIOUS FREEDOM, LGBT RIGHTS, AND THE PROSPECTS FOR COMMON GROUND 402-20 (William Eskridge, Jr. and Robin Fretwell Wilson eds., 2019); Robin Fretwell Wilson & Tanner Bean, *Why Jack Phillips Still Cannot Make Wedding Cakes: Deciding Competing Claims Under Old Laws*, BERKLEY FORUM (June 28, 2018), <https://berkeleycenter.georgetown.edu/responses/why-jack-phillips-still-cannot-make-wedding-cakes-deciding-competing-claims-under-old-laws>; Robin Fretwell Wilson, *Common Ground Lawmaking: Lessons of Peaceful Coexistence from Masterpiece Cakeshop and the Utah Compromise*, 51 CONN. L. REV. 3 (2019).

<sup>14</sup> Emma Green, *Orthodox Jewish Women Are Facing an Impossible Choice Right Now*, ATLANTIC (Apr. 19, 2020), [https://www.theatlantic.com/politics/archive/2020/04/orthodox-jews-mikvah-immersion-covid-19/610204/?utm\\_content=edit-promo&utm\\_source=facebook&utm\\_term=2020-04-19T09%253A00%253A04&utm\\_campaign=the-atlantic&utm\\_medium=social&fbclid=IwAR3U8QS\\_ckXX60cGRM2uTRP7qgWHSABLMh2TyfkUUTh1WwlyY6w7wja\\_V1XQ](https://www.theatlantic.com/politics/archive/2020/04/orthodox-jews-mikvah-immersion-covid-19/610204/?utm_content=edit-promo&utm_source=facebook&utm_term=2020-04-19T09%253A00%253A04&utm_campaign=the-atlantic&utm_medium=social&fbclid=IwAR3U8QS_ckXX60cGRM2uTRP7qgWHSABLMh2TyfkUUTh1WwlyY6w7wja_V1XQ).

<sup>15</sup> Tim Bath, *Food Pantries Grapple with Challenges of Serving in Social Distancing*, KOKOMO TRIBUNE (Apr. 24, 2020), [https://www.kokomotribune.com/news/covid-19/food-pantries-grapple-with-challenges-of-serving-in-social-distancing/article\\_62282938-857a-11ea-99d5-2f257814ae80.html](https://www.kokomotribune.com/news/covid-19/food-pantries-grapple-with-challenges-of-serving-in-social-distancing/article_62282938-857a-11ea-99d5-2f257814ae80.html).

<sup>16</sup> H.R. 5331, 116th Cong. (2019), <https://www.congress.gov/bill/116th-congress/house-bill/5331>.

<sup>17</sup> Tanner Bean, *Fairness for All Act Seeks to Balance LGBTQ, Religious Rights*, IDAHO STATESMAN (Dec. 17, 2019), <https://www.idahostatesman.com/opinion/readers-opinion/article238429983.html>.

<sup>18</sup> Even the authors here identify that FFA’s proposal is not perfect. Stewart & Schaerr, *supra* note 3, at 156-57.

<sup>19</sup> *Id.* at 140-50, 196-206.

<sup>20</sup> Wilson, *Bathrooms and Bakers*, *supra* note 13.

---

---

Stakeholders in the religious liberty and LGBT rights communities have been discussing compromise approaches for years, but especially after 2015. Utah, then the single most conservative state in America, enacted a pair of bills that gave more protections against discrimination to the full LGBT community in state law than that community had at the time in New York.<sup>21</sup> Utah showed that profound differences can be set aside when all act in good faith to protect others as much as themselves.<sup>22</sup>

Rarely, however, does anyone stop to explain such legislative miracles. Here, Representative Stewart and Schaerr give a remarkably candid report of how *any* legislation comes to be, let alone legislation aimed at resolving such deep divides.<sup>23</sup>

In the Article, the authors distinguish FFA from one-sided purity models like the Equality Act<sup>24</sup> or the First Amendment Defense Act.<sup>25</sup> Both acts, now pending before Congress, in their own way award the public square to *either* conservative religious groups *or* the LGBT community.<sup>26</sup> As we show elsewhere, such purity models are short sighted and self-defeating.<sup>27</sup>

The authors explain at length exactly how brokering a common ground deal, with common sense appeal, requires a reboot of older laws written without modern clashes in mind.<sup>28</sup> They elaborately chart the adjustments that both sides were willing to agree to in order to overcome our hurtful divides: changes to the complex legal regimes that govern employment, housing, public accommodations, education, medical services, tax exemption, public financing, and foster care and adoption placement services. The Article will serve as a guidebook to FFA's thoughtful design.

Not only does the Article give the *how* of finding consensus,<sup>29</sup> it also gives the *why* we should try.<sup>30</sup> The authors point again and again to FFA's north star: pluralism.<sup>31</sup> That value, which aims for a "society in which members of diverse ethnic, racial, religious, or social groups maintain and develop their traditional culture or special interest within the confines of a common civilization,"<sup>32</sup> animates every protection included in FFA. FFA, the authors show, would be pluralism-expanding.

---

<sup>21</sup> S.B. 296, 61st Leg., Gen. Sess. (Utah 2015); S.B. 297, 61st Leg., Gen. Sess. (Utah 2015); Wilson, *Common Ground Lawmaking*, *supra* note 13.

<sup>22</sup> Stewart & Schaerr, *supra* note 3, at 150-56.

<sup>23</sup> *Id.* at 156-96.

<sup>24</sup> H.R.5, *Equality Act*, 116th Cong. (2019-2020), <https://www.congress.gov/bill/116th-congress/house-bill/5/text>.

<sup>25</sup> S.2525, *First Amendment Defense Act*, 115th Cong. (2017-2018), <https://www.congress.gov/bill/115th-congress/senate-bill/2525/text>.

<sup>26</sup> Stewart & Schaerr, *supra* note 3, at 143-47.

<sup>27</sup> *Why Find Common Ground?*, FAIRNESS FOR ALL INITIATIVE, <https://www.fairnessforallinitiative.com/why-find-common-ground> (last visited June 22, 2020).

<sup>28</sup> Wilson, *Bathrooms and Bakers*, *supra* note 13.

<sup>29</sup> Stewart & Schaerr, *supra* note 3, at 156-96.

<sup>30</sup> *Id.* at 150-56. *See also* Wilson, *Common Ground Lawmaking*, *supra* note 13.

<sup>31</sup> *Id.* at 147, 149, 151, 156, 157, 159, 168, 182-84, 186, 190, 199.

<sup>32</sup> *Pluralism*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/pluralism> (last visited June 08, 2020).

The FFA proposal comes at a critical moment. Just six months after FFA's introduction, the U.S. Supreme Court, in *Bostock v. Clayton County*, held Title VII of the 1964 Civil Rights Act's ban on sex discrimination extends to sexual orientation and gender identity discrimination, too.<sup>33</sup> To be certain, with this giant win for the LGBT community, the delicate balance of risks that may have brought parties to the legislative table has been disrupted.<sup>34</sup> When risks and benefits are roughly at equipoise, deals can be reached over religious liberty and LGBT rights, deals that make both "sides" better off.<sup>35</sup> Even as we cheer for this hard-wrought victory for the LGBT community, our fear is that nationally after *Bostock* conservatives suddenly find themselves without nearly enough to give, sapping the motivation to chart common ground.

Despite this disruption, what remains certain is that common ground is forged in statehouses, while purity models are fought in the courts. The foolishness of purity models and the accompanying antagonism of public litigation can be avoided for issues where common ground lawmaking remains possible, as the authors of the Article show for foster care and adoption, as well as for the various other culture war fronts the Article covers.

All over the country, loving couples who want nothing more than to foster or adopt a child in need of a home have been turned away while being told that they are less than.<sup>36</sup> This has included same-sex couples and couples who do not share the faith of the agency, whether Jewish or Catholic. And religious social services agencies have been told they cannot any longer serve according to their faith—that allowing them to assist with foster care and adoption would be tantamount to giving them a state-funded "license to discriminate."<sup>37</sup> Both outcomes—couples being turned away and agencies being told to close—are tragic.<sup>38</sup>

As an adopted child, one of us worked for years on FFA's good faith attempt to take children out of the culture war.<sup>39</sup> FFA picks up that work.

The Article demonstrates that under FFA the foster care and adoption system can meet two critical principles: (1) ensuring a loving couple can care for children without being humiliated and (2) ensuring every agency that can help make

---

<sup>33</sup> *Bostock v. Clayton County*, No. 17-1618 (2020).

<sup>34</sup> Yonat Shimron, *Religious Conservatives Look to the Next Supreme Court Rulings on Religious Liberty*, RELIGION NEWS SERVICE (June 17, 2020), <https://religionnews.com/2020/06/17/religious-conservatives-turn-their-sights-to-upcoming-supreme-court-rulings-on-religious-liberty/>; Sarah Pulliam Bailey, *Christian Conservatives Rattled After Supreme Court Rules Against LGBT Discrimination*, WASH. POST (June 15, 2020), <https://www.washingtonpost.com/religion/2020/06/15/bostock-court-faith-conservatives-lgbt/>.

<sup>35</sup> Michael O. Leavitt, *Shared Spaces and Brave Gambles, in RELIGIOUS FREEDOM, LGBT RIGHTS, AND THE PROSPECTS FOR COMMON GROUND* 460 (William Eskridge, Jr. and Robin Fretwell Wilson eds., 2019).

<sup>36</sup> Julie Moreau, *Lesbian Couple Sues Health and Human Services After Foster Care Application Rejected*, NBC NEWS (Feb. 22, 2018), <https://www.nbcnews.com/feature/nbc-out/lesbian-couple-sues-health-department-after-foster-care-application-rejected-n850371>.

<sup>37</sup> Kate Schellnutt, *Foster Ministry Gets to Keep Protestants-Only Policy—and Federal Funds*, CHRISTIANITY TODAY (Jan. 25, 2019), <https://www.christianitytoday.com/news/2019/january/south-carolina-christian-foster-hhs-trump-miracle-hill.html>.

<sup>38</sup> *Foster Care & Adoption*, FAIRNESS FOR ALL INITIATIVE, <https://www.fairnessforallinitiative.com/foster-adoption> (last visited June 22, 2020).

<sup>39</sup> *Infra* note 40.

this happen by drawing families forward—including the religious agencies—remains in the marketplace doing the importance work they do for children.<sup>40</sup> To date, across America, states have chosen to implement only one of those two goals, with little thought for the other value at stake.<sup>41</sup> In contrast, FFA keeps all hands on deck. In this, FFA borrows an approach credentialed by one of us, namely, to place families in the driver’s seat, rather than the state picking agencies.<sup>42</sup>

FFA would allow families to choose the agency that best meets their needs. As the authors explain, under FFA, “qualified families will receive a certificate that entitles them to certain services assisting them in having a child placed in their home for adoption or foster care, and a family can use that certificate at the agency of its choice.”<sup>43</sup> Some families may choose LGBT friendly agencies, some may choose agencies that specialize in certain kinds of placements (like siblings), and some may choose faith-based organizations. And that is their prerogative. To provide the full benefits of the new scheme, the state will need to play a bigger informational role so that families can self-direct.

This self-directing mechanism has served families well in other venues. The certificate program is modeled on a pre-existing, successful program that provides funding for child care.<sup>44</sup> The program has been used successfully through five different administrations, from Bush to Trump.

Along with newly imposed nondiscrimination standards<sup>45</sup> and strong financial incentives for states to participate in this new structure,<sup>46</sup> FFA’s restructuring of the antiquated funding system we now have is a model of pluralism. As the authors demonstrate, modernizing our antiquated funding structure should result in more agencies available to meet the needs of big and small communities across the country.<sup>47</sup> Today’s funding structure favors large agencies that can bear the high upfront costs associated with identifying and recruiting families. Distributing this

---

<sup>40</sup> Stewart & Schaerr, *supra* note 3, at 185. See also Robin Fretwell Wilson, *Top of Mind with Julie Rose: Children Caught in the Culture War of Adoption*, BYU RADIO (Jan. 17, 2019), <https://www.byuradio.org/episode/1fb62857-84fd-4bad-837a-3dfc6bcd198e/top-of-mind-with-julie-rose-adoption-discrimination-penicillin-allergies-potential-shooter>; *Solomon’s Decree: Conflicts in Adoption and Child Placement Policy*, CATO INSTITUTE (July 19, 2018), [https://www.cato.org/events/solomons-decree-conflicts-adoption-child-placement-policy?utm\\_source=Cato+Institute+Emails&utm\\_campaign=ee6cfa56b3-20180719-event-conference&utm\\_medium=email&utm\\_term=0\\_395878584c-ee6cfa56b3-142858405&goal=0\\_395878584c-ee6cfa56b3-142858405&mc\\_cid=ee6cfa56b3&mc\\_eid=12257d5831](https://www.cato.org/events/solomons-decree-conflicts-adoption-child-placement-policy?utm_source=Cato+Institute+Emails&utm_campaign=ee6cfa56b3-20180719-event-conference&utm_medium=email&utm_term=0_395878584c-ee6cfa56b3-142858405&goal=0_395878584c-ee6cfa56b3-142858405&mc_cid=ee6cfa56b3&mc_eid=12257d5831); Gillian Friedman, *Why Children Have the Most to Lose in the Latest Battle Over LGBT and Religious Rights*, DESERET NEWS (July 10, 2018), <https://www.deseret.com/2018/7/11/20649291/why-children-have-the-most-to-lose-in-the-latest-battle-over-lgbt-and-religious-rights>; Brian Miller, *How Vouchers Can End the Culture War Over Adoption*, FORBES (July 24, 2018), <https://www.forbes.com/sites/briankmiller/2018/07/24/how-vouchers-can-end-the-culture-war-over-adoption/#1896e41e68e1>; Gillian Friedman, *Religious Liberty and LGBT Rights: Solutions Elusive in Adoption Conflict*, DESERET NEWS (July 26, 2018), <https://www.deseret.com/2018/7/26/20649755/religious-liberty-and-lgbt-rights-solutions-elusive-in-adoption-conflict>.

<sup>41</sup> *Foster Care & Adoption*, *supra* note 38 (see map).

<sup>42</sup> Wilson, *supra* note 40.

<sup>43</sup> Stewart & Schaerr, *supra* note 3, at 186.

<sup>44</sup> Wilson, *supra* note 40.

<sup>45</sup> Stewart & Schaerr, *supra* note 3, at 186-88.

<sup>46</sup> *Id.* at 192.

<sup>47</sup> *Id.* at 186, 190.

---

---

work to a larger number of providers not only gives families greater diversity when finding the right agency for them, it will ease the “chokepoint” that has made it difficult for LGBT couples and others to take children into their care.<sup>48</sup> And we desperately needs more actors in this space.<sup>49</sup> By one estimate, there are 670,000 kids awaiting permanent families right now.<sup>50</sup> These kids deserve a forever family.

FFA will spare LGBT couples the humiliation of being rejected by agencies picked by and paid for by the state. Indeed, LGBT groups’ primary disagreement with religious adoption and foster care agencies is that they only serve a select religious population, turning away others that do not fit their profile, despite receiving state money.<sup>51</sup> FFA’s rewrite of the foster care and adoption funding provisions directly answers this concern, with couples directing money to agencies of their choice through certificates.

Ultimately, for foster care and adoption, as well as the various other areas FFA covers, the authors conclude that the “best response to conservative critics [of FFA] is a reality check” because conservatives have “no realistic alternative” to FFA, especially after *Bostock*, absent “a massive and highly improbable cultural change” against LGBT rights.<sup>52</sup> Even though LGBT rights advocates have no reason to bargain given the recent gains and losses, we do live in one America and we do have to put these division to rest.

For too long, instead of forging common ground, we have witnessed repeated train wrecks in this area.<sup>53</sup> It is time for legislators to create long-term solutions like FFA by harnessing the political power of the many Americans tired of a continuous culture war. We applaud Representative Stewart, Gene Schaerr, and all those who have spent countless hours trying to find a decent way forward out of the culture war.

---

<sup>48</sup> *Id.*

<sup>49</sup> Wilson, *supra* note 40.

<sup>50</sup> *Waiting Children*, ADOPT AMERICA NETWORK, <https://www.adoptamericanetwork.org/waiting-children> (last visited June 22, 2020).

<sup>51</sup> Oscar Lopez, *In Good Faith? U.S. Legal Battle Over Gay Adoption Intensifies*, REUTERS (Mar. 25, 2020), <https://www.reuters.com/article/us-usa-lgbt-adoption/in-good-faith-u-s-legal-battle-over-gay-adoption-intensifies-idUSKBN21D011> (“‘We’re talking about government contractors who are receiving federal funding to do this work,’ said Karen Loewy, an attorney with Lambda Legal, the LGBT+ rights group that is suing the government on behalf of Marouf and Esplin. ‘If you’re going to enter into this space ... you don’t get to claim a religious objection to providing equal treatment to all people.’”).

<sup>52</sup> Stewart & Schaerr, *supra* note 3, at 196-206.

<sup>53</sup> *Why Find Common Ground?*, *supra* note 27.