

U.S. Supreme Court Rules on Religious Liberty and Immigration

The U.S. Supreme Court ended its 2020-21 Term on June 30, issuing several significant cases before adjourning for the summer. In this issue of *Messenger*, the MCC highlights several cases of interest to the Catholic Church and its various ministries. The court ruled on a significant religious liberty case arising out of Catholic Charities' foster care work in Philadelphia. The Court also issued several opinions on immigration matters that will have an impact on migrant families living in the U.S., along with the Church's outreach to these vulnerable communities—we address one of those cases in this *Messenger*.

Fulton v. City of Philadelphia

On June 17th, the U.S. Supreme Court ruled 9-0 in the case of *Fulton v. City of Philadelphia* that city officials violated Catholic Social Service's (CSS) First Amendment rights by requiring CSS to certify same-sex couples to be foster parents to continue serving as a foster care provider. The case is considered a victory for religious liberty and an important statement from the court about how local government decisions in these matters will be viewed going forward.

The Catholic Church has served needy children in Philadelphia for over two centuries. In the late 18th century, a Catholic priest in the city organized an association to care for children orphaned when their parents died during a yellow fever epidemic. Catholic religious sisters opened homes for destitute youth in the 19th century and later began placing children with foster parents. CSS continues that work today and did so without complaint until a newspaper article reported that CSS would not certify same-sex couples as foster parents. The city investigated and refused to renew CSS' contract, even though no same-sex couple had come to CSS for certification and CSS agreed to refer any that did to other providers. The nine justices on the court unanimously agreed that the city's refusal to contract with CSS under these circumstances violated the Free Exercise Clause of the First Amendment.

CSS, a Catholic social service organization, believes that marriage is a

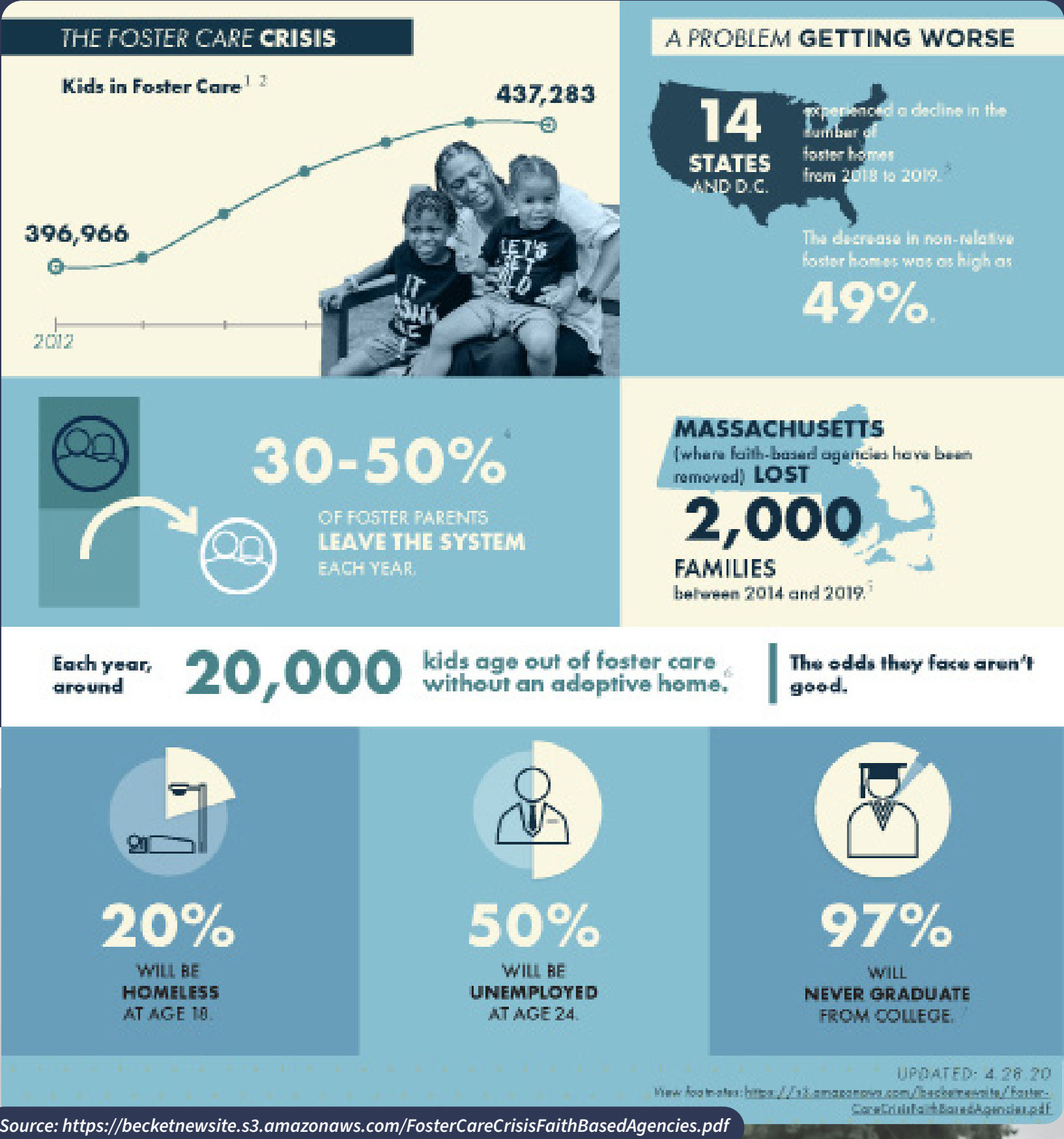
sacred bond between a man and a woman. CSS does not certify unmarried couples as foster families, nor does it certify same-sex couples. It does not object to certifying gay or lesbian individuals as single foster parents or refuse to find foster homes for gay or lesbian foster children. CSS successfully contracted with the city to provide foster care services for over 50 years operating in accord with these beliefs.

When the city learned that CSS would not certify same-sex couples, however, it refused to refer additional children to CSS for placement. The city argued that their contract with CSS prohibited discrimination on the basis of sexual orientation, as did a city ordinance. Writing for the majority, Chief Justice John Roberts explained as a preliminary matter that the city's actions burdened CSS's religious exercise "by putting it to the choice of curtailing its mission or approving relationships inconsistent with its beliefs." The city argued that certification of foster parents does not involve a religious decision, but Roberts explained that CSS believes certification is tantamount to endorsement of the relationship. Quoting from a prior court decision, Roberts wrote for the majority that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." The unanimous court decision was inspired, in part, by a provision in the city contract which gave the city commissioner discretion to allow an exception to the non-discrimination provision.

The city maintained that it had no intention of granting an exception to CSS, but the court ruled that because the city had discretion to grant an exception, it couldn't deny CSS an exception, since doing so burdened CSS's religious exercise. As Chief Justice Robert's explained, "CSS seeks only an accommodation that will allow it to continue serving the children of Philadelphia in a manner consistent with its religious beliefs; it does not seek to impose those beliefs on anyone else."

While the court's decision was narrowly drawn, with three Justices writing separately that the majority didn't go far enough to protect religious liberty, it is the MCC's hope that the unanimous court decision will send the message that religious service providers should be permitted to continue to serve in accord with their religious beliefs going forward.

By the Numbers: Foster Care & Faith Affirming Agencies





Sanchez v. Mayorkas

On June 7th, the U.S. Supreme Court ruled 9-0 that immigrants with Temporary Protected Status (TPS) who originally entered the country unlawfully are not eligible to become a lawful permanent resident (LPR) of the United States. Justice Elena Kagan, writing for the unanimous court, stated that TPS status, by itself, does not guarantee that an individual meets the requirements to become an LPR.

Jose Santos Sanchez entered the United States unlawfully from El Salvador in 1997. In 2001, the government granted Sanchez TPS because of unsafe living conditions in that country. In 2014, Sanchez sought an “adjustment” of his status to an LPR. His application for adjustment was denied by the United States Citizenship and Immigration Service (USCIS) because his original entry to the U.S. was without inspection. He appealed to the district court, which ruled in his favor. The Third Circuit Court of Appeals reversed, and Sanchez appealed to the U.S. Supreme Court.

Current immigration law provides that the Secretary of Homeland Security may designate a foreign country for TPS due to conditions in the country that temporarily prevent the country’s nationals from returning safely. The USCIS can grant TPS to eligible nationals of certain countries who are already in the United States, such as Mr. Sanchez.

In order to apply for LPR status, however, an individual must have been “inspected and admitted or paroled” into the United States at the time of entry. An “admission” is defined in immigration law as “the lawful entry of the alien into the United States after inspection and authorization by an immigration

officer.” Admission occurs in most cases when someone presents themselves at a port of entry with valid immigration documents and is formally admitted to the U.S. In three Circuits (the Sixth, Ninth, and Eighth), however, a grant of TPS has been considered as a valid admission. Mr. Sanchez contended that because a TPS recipient is considered a “nonimmigrant” under the law, it follows that he must also be considered as admitted.

The Supreme Court disagreed. Writing for the unanimous Court, Justice Kagan held that immigration law clearly distinguishes the concepts of lawful status and admission, and that the TPS program “gives foreign nationals nonimmigrant status, but does not admit them.” While Mr. Sanchez had established lawful status, it did not change the fact that he had not been legally admitted to the U.S. “[B]ecause a grant of TPS does not come with a ticket of admission, it does not eliminate the disqualifying effect of an unlawful entry”, wrote Justice Kagan.

The Court did note that there was legislation pending in Congress that would change its result and allow a TPS holder, such as Mr. Sanchez, to get a green card even if he entered the United States without admission or inspection. This change would bring some consistency to the law, as currently TPS holders such as Mr. Sanchez are not eligible for LPR, while someone who was admitted legally but, for instance, overstayed his visa could be eligible for LPR. However, as Justice Kagan pointed out, the Supreme Court “does not get to say that [what the current law does] is not enough.” In other words, the Court cannot make law, as that power is reserved to the Legislative branch.

MCC Annual Assembly Goes Virtual (Again!)

The MCC Annual Assembly is coming to your favorite coffeehouse—or your car, maybe your kitchen—wherever your favorite podcast listening spot might be. The 2021 Annual Assembly will once again be held in a virtual format, this year featuring opening remarks from Archbishop Mitchell T. Rozanski. Keep an ear out for six new episodes of MCC from the Capitol; we invite you to tune in to this year's episodes to hear even more engaging conversations about topics important to Missouri Catholics: religious freedom, immigration, pro-life issues, race relations, and more. While you wait for the next series to be released, catch up on episodes you may have missed by scanning the QR code at the bottom of the page.



MCC FROM THE

CAPITOL

Public policy from a Catholic perspective



New Episode of MCC from the Capitol

In an accompanying new episode of our podcast, MCC from the Capitol, MCC Executive Director Tyler McClay continues the discussion of *Fulton v. Philadelphia* with Lance Kinzer of the First Amendment Partnership, and MCC lobbyist Jamie Morris joins in to discuss *Sanchez v. Mayorkas*. Scan the QR code to listen right now!*

*to scan a QR code, open the camera app on your phone, and focus the camera on the QR code. A link will appear directing you to the available content.

Scan here to listen now



*Subscribe to MCC from the Capitol via
your favorite listening app today and
never miss an episode!*

