

CASE NO. 21-3752

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

T.M., et al.,
Plaintiffs-Appellants,

v.

RICHARD DeWINE, in his official capacity as Governor of Ohio, et al.,
Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of Ohio,
Western Division, Case No. 1:20-cv-00944-MRB

**BRIEF OF AMICI CURIAE THE OHIO GRANDPARENT KINSHIP
COALITION, THE OHIO FAMILY CARE ASSOCIATION, CHILDREN'S
DEFENSE FUND-OHIO, POLICY MATTERS OHIO, THE OHIO
FEDERATION FOR HEALTH EQUITY AND SOCIAL JUSTICE, THE
NORTHEAST OHIO BLACK HEALTH COALITION, THE B.R.E.A.D.
ORGANIZATION, AND NORTHERN OHIOANS FOR BUDGET
LEGISLATION EQUALITY IN SUPPORT OF APPELLANTS**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rules 26.1 and 29(a)(4)(A) of the Federal Rules of Appellate Procedure, amici curiae state that they are each a 501(c)(3) non-profit organization. Amici curiae have no corporate parents and are not owned, in whole or in part, by any publicly held corporation.

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IDENTITY & INTEREST OF AMICI CURIAE¹

Amici curiae are eight Ohio-based organizations, ranging from a coalition of kinship caregivers, to a non-profit research institute, to an association of religious congregations. Despite their varied backgrounds, amici curiae share a conviction that Ohio’s continued, improper denial of federally mandated foster care maintenance payments to approved relative foster parents will cause undue harm to Ohio’s foster children and their related caregivers.

Founded in 1998, the Ohio Grandparent Kinship Coalition is the statewide organization for kinship caregivers and advocates of kinship care in Ohio. In addition to educating and advocating on behalf of kinship caregivers, the Coalition provides support and guidance to families navigating Ohio’s foster care system.

The Ohio Family Care Association (“OFCA”) has served, since 1976, as the statewide voice for thousands of foster children and their kinship caregivers. Guided by family-centered and child-oriented principles, OFCA uses education and advocacy to increase support and resources for Ohio’s families. OFCA believes that family care is best for the safety, stability, and well-being of children.

¹ Pursuant to Fed. R. App. P. 29(a)(4)(E), amici curiae state that no party’s counsel authored this brief, in whole or in part, that no party or party’s counsel contributed money that was intended to fund preparing or submitting this brief, and that no person, other than amici curiae and the undersigned counsel, contributed money that was intended to fund preparing or submitting this brief. Counsel for all parties have consented to the filing of this brief.

Policy Matters Ohio (“PMO”) is a non-profit research institute focused on creating a more vibrant, equitable, sustainable, and inclusive Ohio. Through data-driven research and analysis, PMO has determined that Ohio’s foster care maintenance payment policies result in inadequate and inequitable financial assistance for kinship caregivers, and disproportionately impact Black and other minority families.

Children’s Defense Fund-Ohio (“CDF-Ohio”) champions policies that lift Ohio’s children out of poverty and protect them from abuse and neglect. One of CDF-Ohio’s priorities is eradicating racial inequities within Ohio’s child welfare system, including inequities related to kinship care.

The Ohio Federation for Health Equity and Social Justice is a non-profit group working to improve health outcomes in Ohio’s minority communities. Given that minority children are disproportionately placed in Ohio’s foster care system, the Federation is concerned that racial health disparities will persist in Ohio if the state maintains its inequitable kinship care policies.

The Northeast Ohio Black Health Coalition (“NEOBHC”) also works to address health disparities in Ohio’s minority communities, particularly the state’s Black community. NEOBHC’s mission is to achieve health parity for Black children and adults by removing racial biases and inequities in health, education, housing, and child welfare.

The B.R.E.A.D. Organization, short for Building Responsibility Equality and Dignity, is an interfaith coalition of 44 congregations based in Columbus. B.R.E.A.D. solves major community problems through civic engagement campaigns. It is currently working on in its “Families First, Housing Now” campaign, which seeks to confront, among other issues, the lack of public support and affordable housing for kinship caregivers.

Northern Ohioans for Budget Legislation Equality (“NOBLE”), an affiliate of Organize! Ohio, is a Cleveland-based, grassroots community organization that focuses on bringing the voices of low-income people to Ohio’s budget process. NOBLE’s advocacy and organizing work centers around funding for health and human services, with particular attention given to kinship care.

SUMMARY OF ARGUMENT

This case concerns four foster children, who were removed from their homes due to alleged abuse and neglect and subsequently placed in the care of related foster parents. These relative caregivers, or kinship caregivers, are the children’s grandparents, aunts, and/or uncles. They have all been approved by the state of Ohio to act as foster parents.

But, despite that approval, Ohio refuses to provide these loving relatives with foster care maintenance payments, a form of federally mandated financial assistance designed to provide children with life’s basic needs.

By upholding Ohio's continued, improper refusal to provide foster care maintenance payments to approved kinship caregivers, the district court erred in several respects. In addition to the errors identified by appellants, the district court's decision conflicts with well-settled law and public policy that a family's care is the best care for children. This concept of family unity underlies not only the law at issue here, 42 U.S.C. § 672, but our entire societal structure. By sanctioning Ohio's unlawful and inequitable treatment of kinship caregivers, the district court disregarded this established policy of family first, and its decision should accordingly be reversed.

If the district court's decision stands, severe consequences will befall Ohio's foster children and their kinship caregivers. Foster care maintenance payments are, after all, designed to provide children with life's essentials. Without these payments, children and their related caregivers suffer from all sorts of undue harm, including the destruction of family relationships, physical health detriments, developmental regression, severe emotional distress, and even, in at least one case, tragic death.

Moreover, due to long-standing racial biases and inequities in family separation policies, Black and other minority children are disproportionately placed in Ohio's foster care system. As a result, Black and other minority families suffer most from the burdens of kinship care and the undue harms caused a lack of foster

care maintenance payments. This suffering is worsened due to the fact that these minority families are already struggling to overcome the burden of economic disadvantages forced upon them by racism and discriminatory policies.

Amici curiae urge this Court to reverse the district court's decision.

ARGUMENT

The district court erred by upholding Ohio's continued refusal to provide foster care maintenance payments to approved kinship caregivers. The improper denial of these federally mandated payments unduly harms Ohio's foster children and their related caregivers. This is especially true for Ohio's minority families.

I. Society's Preference For Family Care Of Children Entitles Ohio's Approved Kinship Caregivers To Foster Care Maintenance Payments.

It is beyond dispute that Ohio treats *approved* relative foster parents (*i.e.*, kinship caregivers) as unequal to *licensed* non-relative foster parents. Specifically, Ohio provides foster care maintenance payments to licensed foster parents, but refuses to provide the same financial support to approved kinship caregivers. Instead, Ohio forces kinship caregivers to “do much of the same work as their licensed foster caregiver counterparts, but on a fraction of the provided payment.” (Opinion & Order (“Order”), RE 57, Page ID # 1392.)

This “difference in payment due to a difference in placement” is unlawful. (*Id.*) As appellants explain, Ohio's practice of depriving kinship caregivers of foster care maintenance payments violates the plain text of Title IV-E of the Social

Security Act (the Child Welfare Act), specifically 42 U.S.C. § 672 (“Section 672”). (See Appellants’ Opening Brief at 23-34.) The practice also conflicts directly with this Court’s decision in *D.O. v. Glisson*, where the Court held: “To the extent the [] failure to make maintenance payments turns on the distinction between relative and non-relative foster care providers, it plainly violates federal law.” 847 F.3d 374, 383 (6th Cir. 2017). (See Appellants’ Opening Brief at 34-38.)

Furthermore, this “difference in payment due to a difference in placement” contravenes a foundational policy underlying Section 672 and our broader legal system: that family care for children is best. See 42 U.S.C. § 671(a)(19) (“the State shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child”); *Glisson*, 847 F.3d at 383 (in light of “Congress’s preference that children live with family members . . . the Act requires states to give preference to adult relative caregivers”).

This preference for family is not an abstract goal that the district court was free to disregard. It is instead a “fundamental principle,” grounded in the fact that “relatives provide the most suitable environment for children.” *Miller v. Youakim*, 440 U.S. 125, 141-42, n.18 (1979).

This concept of family unity is entrenched in our national conscience. As the Supreme Court observed, “the institution of the family is deeply rooted in this Nation’s history and tradition.” *Moore v. City of E. Cleveland, Ohio*, 431 U.S.

494, 503 (1977). “It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural.” *Id.* at 503-04.

This family “tradition” extends beyond moms and dads; it includes “uncles, aunts, cousins, and especially grandparents,” for whether “[o]ut of choice, necessity, or a sense of family responsibility, it has been common for close relatives to draw together and participate in the duties and the satisfactions of a common home.” *Id.* at 504-05. This is true “[e]specially in times of adversity,” when “the broader family has tended to come together for mutual sustenance and to maintain or rebuild a secure home life.” *Id.* at 505.

The sanctity of the family is similarly ingrained in Ohio law and policy. Nearly a century ago, the Ohio Supreme Court declared that the family was “the foundation[] of society and state.” *State v. Phillips*, 85 Ohio St. 317, 324, 97 N.E. 976, 977 (1912) (“The unit of society is not the individual but the family; and whatever tends to undermine the family, by the irrevocable laws of nature will crumble and destroy the foundations of society and the state.”). More recently, in a letter to Governor DeWine urging him to grant foster care maintenance payments to kinship caregivers, Ohio Senator Sherrod Brown wrote, “[W]e must do more . . . Kinship caregivers are a vital resource in the fight to keep families together.”²

² U.S. Senator Sherrod Brown, *Brown urges DeWine to follow court order to make funds available for Ohio kinship caregivers*, (Jan. 24, 2020),

This wanting to “keep families together” explains why Ohio only permits two types of people to act as approved kinship caregivers: (i) “relative[s] by blood, adoption, or marriage,” (*see* Ohio Admin. Code § 5101:2-42-18(A)(1)), or (ii) nonrelatives qualified as fictive kin due to their “familiar and longstanding relationship or bond with the child or the child’s family” (*see* Ohio Admin. Code § 5101:2-42-18(A)(2); Ohio Rev. Code § 153.161). The common thread in these two categories—a familial relationship.

By allowing Ohio to continue to refuse foster care maintenance payments to approved kinship caregivers in violation of federal law and this Court’s precedent, the district court wrongly put others ahead of family. As a result, the district court committed reversible error.

II. Foster Care Maintenance Payments Are Essential.

The necessity of foster care maintenance payments is indisputable. The payments cover a child’s most basic needs, including “food, clothing, shelter, daily supervision, school supplies, . . . [and] reasonable travel.” 42 U.S.C. § 675(4)(A). In short, the payments provide “life essentials”—they are “concern[ed] with individual need in its most basic sense.” *New York State Citizens’ Coal. for Child. v. Poole*, 922 F.3d 69, 81 (2d Cir. 2019), *cert. denied*, 140 S. Ct. 956 (2020).

<https://www.brown.senate.gov/newsroom/press/release/brown-urges-dewine-to-follow-court-order-to-make-funds-available-for-ohio-kinship-caregivers->

In Ohio, these payments range from several hundred to several thousand dollars per child, per month, based on the county the child is in and the age and special needs of the child. For example, in Cuyahoga County, a licensed foster parent typically receives \$615 to \$2,731 per child, per month. (Complaint, RE 7, Page ID # 76-77.) In Hamilton County, FCMPs range from \$1,500 to \$9,667 per child, per month. (*Id.*)

Approved kinship caregivers in Ohio, however, do not receive these payments, even though they are “essential” to “child welfare” according to Governor DeWine,³ and “just as valuable” to the state as licensed foster parents per Kimberly Hall, the former Director of Ohio’s Department of Job and Family Services (“ODJFS”).⁴

Before the filing of this lawsuit, kinship caregivers were instructed to apply for child-only payments through Ohio Works First (“OWF”), a public benefits program.⁵ These OWF payments are a far cry from foster care maintenance

³ See Andrew Welsh-Huggins, *Ohio unveils limited plan to pay relatives caring for kids*, Associated Press (Jan. 7, 2021), <https://apnews.com/article/lawsuits-court-decisions-courts-ohio-laws-b37e78ce07a927d78a8aa5e194a9d71f>.

⁴ See Andrew Welsh-Huggins, *Ohio plans to increase payments to relatives caring for kids*, Associated Press (Oct. 23, 2019), <https://apnews.com/article/3a3871700d3e4373bdce3841b971cd98>.

⁵ See Ohio Dep’t. of Job and Family Services (“ODJFS”), *Kinship Care Versus Foster Care*, <https://fosterandadopt.jfs.ohio.gov/wps/portal/gov/ofc/kinship-care/resources-for-kinship-caregivers/kinship-vs-foster-care>.

payments. They are capped at \$306 per month for one child and \$417 per month for two children, with no allowance for a child's special needs.⁶

So, for example, in Butler County, where a licensed foster care provider receives up to \$4,563 in foster care maintenance payments per month, per child, an approved kinship caregiver living in the same county and caring for the same child would be entitled to just \$306 in OWF payments per month.⁷ If these respective caretakers were responsible for two children, the difference in payment is astonishing—the licensed foster care provider could receive over \$9,100 in foster care maintenance payments, whereas the approved kinship caregiver would get just \$417 in OWF payments.⁸

Ohio's new Kinship Support Program ("KSP"), which was signed into law after the filing of this lawsuit,⁹ merely continues Ohio's "unequal" treatment of

⁶ See ODFJS, *Action Change Transmittal Letter No. 282*, (Nov. 23, 2020), <https://emanuals.jfs.ohio.gov/CashFoodAssist/CAM/ACT/ACT-282.stm> (charting OWF payments as of January 2, 2021); see also Will Petrik, *Support Ohio children by funding kinship care*, Policy Matters Ohio, 5-6 (Nov. 2020), available at <https://www.policymattersohio.org/files/news/11.18.2020-kinshipcare.pdf> (charting historical differences between FCMPs and OWF payments; concluding "[a]pproved kinship caregivers in Ohio receive far less support").

⁷ See Petrik, *supra* note 6, at Table 1; see also ODJFS, *supra* note 6.

⁸ See Petrik, *supra* note 6, at Table 1; see also ODJFS, *supra* note 6.

⁹ See ODJFS, *Ohio Resource Guide for Relatives Caring for Children*, 16 (July 2021), <http://www.odjfs.state.oh.us/forms/num/JFS08146/pdf/> (KSP "was signed into law on December 29, 2020. The purpose of the program is to provide payments to eligible kinship caregivers who care for children placed in their home.").

kinship caregivers, as the district court acknowledged. (*See* Order, RE 57, Page ID # 1391 (noting KSP provides “unequal payment[s]” to kinship caregivers “when compared to [] licensed foster caregiver counterparts”). Rather than bridge funding gaps, KSP “creates another two-tiered program where approved relative caregivers generally receive less financial support than licensed foster caregivers.”¹⁰

Under KSP, kinship caregivers can now receive \$10.20 per child, per day, which equates to roughly \$320 per child, per month.¹¹ In other words, just \$14 more dollars than OWF payments. And, like OWF payments, KSP payments do not adjust for a child’s location, age, or special needs. Even worse, KSP payments are not guaranteed, but rather subject to appropriation,¹² and they stop after six months from the date of placement.¹³

¹⁰ *See* Will Petrik, *Budget Bite: Security for children & kinship families*, Policy Matters Ohio, 1 (May 2021), available at <https://www.policymattersohio.org/files/research/bbkinship2.pdf>.

¹¹ *See* ODJFS, *Kinship Support Program (KSP) Frequently Asked Questions*, 2 (Aug. 4, 2021), <https://jfs.ohio.gov/ocf/KinshipSupportProgramFAQ.stm>.

¹² *See* Ohio Rev. Code § 5101.881 (“There is hereby established the kinship support program. The department of job and family services shall coordinate and administer the program to the extent funds are appropriated and allocated for this purpose.”); Ohio Rev. Code § 5101.885 (“[KSP] payments . . . shall be ten dollars and twenty cents per child, per day, to the extent funds are available.”).

¹³ *See* ODJFS, *supra* note 11, at 1 (“Eligible kinship caregivers will receive KSP payments . . . For not more than six months from the date of placement when the child is placed in the kinship home on or after September 30, 2021.”); *see also* ODJFS, *supra* note 9, at 16-17.

In short, not only are Ohio’s OWF and KSP payments inadequate—they are inequitable. Such payments represent a fraction of foster care maintenance payments, and such unequal treatment amongst equal types of foster parents cannot stand. As one county official admitted following the state’s passage of KSP, “[c]ompared to what we pay our foster parents, which is about \$900 a month [in foster care maintenance payments], we still have a ways to go to support our kinship providers.”¹⁴

III. Without Foster Care Maintenance Payments, Undue Harms Befall Ohio’s Children And Their Approved Kinship Caregivers.

Given the essential nature of foster care maintenance payments, it is unsurprising that, without them, Ohio’s foster children and their kinship caregivers suffer from undue harms.

A. Harms Suffered By Ohio’s Children.

Foster children are “one of Ohio’s most helpless and vulnerable populations.” (Order, RE 57, Page ID # 1391.) Today, that population exceeds 15,000 children, and over 3,900 of those children have been placed in kinship care.¹⁵ Cuyahoga County has the most children in kinship care (815), followed by

¹⁴ See “Kinship Households” now will receive some funding, WTRF.com (Jan. 12, 2021), <https://www.wtrf.com/belmont-county/kinship-households-now-will-receive-some-funding/> (quoting Jeff Felton, Executive Director of Belmont County Job and Family Services).

¹⁵ See ODJFS, *Point in Time Count of Children in Care*, <https://data.jfs.ohio.gov/FamChild/ChildWelfare.stm> (last accessed Dec. 16, 2021).

Franklin (658) and Hamilton (498) counties.¹⁶

Not having foster care maintenance payments presents real harm to these 3,900 children, for “a foster child’s need for food, clothing, shelter, daily supervision, school supplies, personal incidentals, and travel does not vary by the licensure status of the home in which the children lay their heads at night.” (Order, RE 57, Page ID # 1391-1392.)

Beyond the deprivation of life’s essentials—which by itself leads to irreparable damage to a child’s development¹⁷—the absence of foster care maintenance payments can result in an end to kinship care all together. That means a child, who has likely suffered abuse or neglect and has been removed from a parent, will be forced to be removed again from a home with people they know and trust. That child may be subjected to further trauma, lose his or her ability to maintain family ties, and may be forced to live with unsuitable foster parents or foster siblings.¹⁸

Multiple studies confirm that maintaining kinship care is in the best interest of children. One recent study found that “[c]hildren in kinship care . . . have

¹⁶ See ODJFS, *supra* note 15.

¹⁷ See Plaintiffs’ Mem. in Support of Mot. for Preliminary Injunction, RE 21-1, Page ID # 219-220 (describing how appellants’ physical, mental, and emotional development have been “jeopardize[d]” by not having foster care maintenance payments).

¹⁸ See Cailin Wheeler, Linda Newton-Curtis, Alli Schisler, Justin Vollet, *ProtectOHIO Final Evaluation Report*, Human Services Research Institute, 134

increased stability, fewer placement changes, better behavioral and mental health outcomes, and are less likely to re-enter foster care after returning to their birth parent.”¹⁹ Other studies have similarly found that “best evidence suggests that children in kinship care may do better than children in traditional foster care in terms of their behavioral development, mental health functioning, and placement stability,”²⁰ and “[c]hildren placed into kinship care had fewer behavioral problems three years after placement than children who were placed into foster care.”²¹

In Ohio, social scientists have observed several positive benefits to kinship care when compared to traditional foster care. These benefits include, among others, that children placed with kin “were significantly less likely to experience

(Feb. 2016), *available at* <https://www.hsri.org/publication/final-evaluation-report-protectohio-third-waiver-period> (“Child welfare agencies in Ohio and around the country share a common belief that placing a child with kin significantly reduces the amount of trauma that children face by minimizing disruption in their lives, placing them in a familiar setting closer to the family, neighborhood, and culture they know best.”).

¹⁹ See Shadi Houshyar, *A Critical Resource at Risk: Supporting Kinship Care During the COVID-19 Pandemic and Beyond*, Center for the Study of Social Policy, 2-3 (May 2020), *available at* <https://cssp.org/wp-content/uploads/2020/05/Policy-Kinship-Care-CSSP.pdf>.

²⁰ See Marc Winokur, Amy Holtan, Deborah Valentine, *Kinship Care for the Safety, Permanency, and Well-Being of Children Removed from the Home for Maltreatment*, Campbell Systematic Reviews, 4 (Jan. 21, 2009), *available at* <https://onlinelibrary.wiley.com/doi/full/10.4073/csr.2014.2>.

²¹ David Rubin, Kevin Downes, Amanda O’Reilly, Robin Mekonnen, Xianqun Luan, Russell Localio, *The Impact of Kinship Care on Behavioral Well-Being of Children in Out-of-Home Care*, 6 ARCH. PEDIATR. ADOLESC. MED. 550, 550 (June 2008).

subsequent abuse or neglect,” “spent significantly fewer days in out-of-home care,” and “were significantly less likely to re-enter out-of-home care.”²²

Without kinship care, these benefits vanish. And without foster care maintenance payments, kinship care is jeopardized. Tragedy may even strike.

Such was the case for Ma’Khia Bryant, a 16-year-old girl, who was shot and killed by a police officer in Columbus, Ohio in April 2021.²³ At the time of her death, Ms. Bryant was living with licensed non-relative foster parents, after being shuffled through five different foster homes in two years.

Prior to entering licensed foster care, Ms. Bryant and her siblings were cared for by their grandmother, Ms. Jeanene Hammonds. But, after assuming responsibility for her grandchildren, Ms. Hammonds was unable to pay for her grandchildren’s basic needs while still being able to afford rent. Ms. Hammonds was consequently forced out of her apartment, and compelled to leave Ms. Bryant and her siblings in the hands of the state’s foster care system.²⁴

Following her granddaughter’s death, Ms. Hammonds said this of Ohio’s failure to provide adequate financial support: “[If] [t]hey could’ve just given me

²² Wheeler, et al., *supra* note 18, at 210.

²³ See Nicholas Bogel-Burroughs, Ellen Barry, Will Wright, *Ma’Khia Bryant’s Journey Through Foster Care Ended With an Officer’s Bullet*, N.Y. TIMES, May 8, 2021, available at <https://www.nytimes.com/2021/05/08/us/columbus-makhia-bryant-foster-care.html>.

²⁴ *Id.*

what they give one foster parent, []then I could've gotten housing, taken care of the kids and done what I needed to do . . . [Ma'Khia] didn't want to leave me."²⁵

B. Harms Suffered By Ohio's Kinship Caregivers.

As the death of Ms. Bryant and the struggles of Ms. Hammonds show, a lack of foster care maintenance payments also causes real, direct harms to kinship caregivers.

In contrast to licensed foster parents, who voluntarily choose when to become involved in the system, kinship caregivers abruptly assume responsibility for a child, finding themselves “unexpectedly raising a family for the second time.”²⁶ As Governor DeWine's office admits, “[m]any kinship caregivers are asked to take on the full-time care of youth with little notice and minimal information. They often receive no training, little or no financial support, and insufficient information regarding the youth they are being asked to care for.”²⁷

²⁵ *Id.*; see also Ronald Browder, Barbara Turpin, *Opinion: Ma'Khia Bryant's case highlights why Ohio's family members who take on kin in state custody need equal payment*, THE COLUMBUS DISPATCH, June 3, 2021, available at <https://www.dispatch.com/story/opinion/columns/guest/2021/06/03/opinion-makhia-bryants-case-highlights-why-ohios-family-members-who-take-kin-state-custody-need-equa/7475111002/> (“Had Ma'Khia's grandmother received equal foster care payments that could have funded adequate housing for her to maintain her expanded foster household, Ma'Khia might very well be alive.”).

²⁶ ODJFS, *supra* note 9, at 6.

²⁷ See Governor's Office of Children Services Transformation, *Final Recommendations of the Children Services Transformation Advisory Council*, 15 (Nov. 2020), available at

On top of that, “many kinship caregivers are left to care for children who may be dealing with issues resulting from the absence of their parents, prior abuse or neglect, behavioral problems or mental health needs.”²⁸

This life-altering shift leads to “overwhelming” problems, as ODJFS explains in its guide “for Relatives Caring for Children.”²⁹ “Kinship caregivers may be unable to obtain public assistance to buy food and clothing, to qualify and re-certify for public housing, to obtain medical care, or to enroll the children under their care in school.”³⁰ In turn, kinship caregivers regularly suffer from severe “economic problems” and “serious emotional stress.”³¹

These problems and stress are then exacerbated by the fact that kinship caregivers tend to be older, poorer, and less educated than licensed foster parents.³² Indeed, many kinship caregivers are grandparents, and as Ohio Senator Sherrod Brown recently noted, these “[g]randparents are deferring retirement, draining their

https://content.govdelivery.com/attachments/OHOOD/2020/11/19/file_attachments/1606570/Transformation%20Final%20Report%20FINAL.pdf.

²⁸ See ODJFS, *supra* note 9, at 6.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*; see also Plaintiffs’ Mem. in Support of Mot. for Preliminary Injunction, RE 21-1, Page ID # 216-219 (explaining that “risks and challenges [faced by kinship caregivers] are well-established in the child welfare literature”).

³² See ODJFS, *supra* note 9, at 6; see also Petrik, *supra* note 6, at 4-5.

savings, and continue working, with some taking on second or third jobs,” all so that they can “provide for their grandchildren.”³³

To understand how hard kinship care can be, one simply needs to watch the interview of Denise Harris, an Ohio grandmother who was asked by the Ohio Department of Aging to talk about her experience as a kinship caregiver. Ms. Harris’s words demonstrate the struggle of kinship care:

You know, I got [my granddaughter] on a Friday and I had to go to work on Monday. Babysitter? What the heck am I doing now? . . . It is imperative to surround yourself with people who are going through the same kinds of situations that you are and [to] know that you are not alone because it can be very disturbing and cause many nights of no sleeping, and . . . sometimes just [] pulling out your hair you know, trying to figure out what am I doing? What am I? And, what’s best for, best for [my granddaughter]?³⁴

In sum, kinship caregivers, like Ms. Harris, “deserve more” from Ohio. (Order, RE 57, Page ID # 1391.) That they must “do much of the same work as their licensed foster caregiver counterparts, but . . . on a fraction of the provided payment” is beyond “[un]satisfactory,” it is inequitable and unlawful. (*Id.* at Page ID # 1392.)

³³ Brown, *supra* note 2.

³⁴ See *Finer With Age-Kinship Care, Adult Day Services, and Voting Prepared & Aware, Interview of Denise Harris and Daija Roberts*, The Ohio Channel (Aug. 8, 2008), <https://www.ohiochannel.org/video/finer-with-age-kinship-care-adult-day-services-and-voting-prepared-aware>.

C. Minority Families Are Disproportionately Harmed By An Absence Of Foster Care Maintenance Payments.

Another troubling consequence of the district court's erroneous decision and Ohio's continued refusal to provide foster care maintenance payments to kinship caregivers is that the resultant harms disproportionately impact Black and other minority families.

It is well-established that minority children are overrepresented in Ohio's foster care system.³⁵ This is especially true for Black children, who represent just 12% of Ohio's population, yet account for 30% of children in foster care.³⁶ In fact, when compared to white children, Black children are: "2.2 times more likely to be referred to children services"; "2.8 times more likely to have a report screened for investigation"; and "3 times more likely to enter out-of-home care."³⁷ This racial disparity is due to "injustices and implicit biases" that have long plagued foster care in Ohio, as Governor DeWine's office admits.³⁸

³⁵ See Petrik, *supra* note 6, at 3-4 and Chart 2 (showing the overrepresentation of Black and other minority children in Ohio's foster care system).

³⁶ See Public Children Services Assoc. of Ohio, *PCSAO Factbook*, 14-15 (2019), <https://www.pcsao.org/pdf/factbook/2019/StateOfOhioProfile.pdf>; see also Will Petrik, *What if we honored all families*, Policy Matters Ohio (June 7, 2021), available at <https://www.policymattersohio.org/blog/2021/06/07/what-if-we-honored-all-families> (noting that Ohio's Black children represent 15% of child population, yet account for 29% of foster care placements).

³⁷ Governor's Office of Children Services Transformation, *supra* note 27, at 11.

³⁸ *Id.*; see also Petrik, *supra* note 36 ("[D]ue to a long history of public policy choices that excluded Black people from housing, education and job opportunities, and a criminal justice system that disproportionately targets and separates Black

These same racial disparities are even more exaggerated when it comes to kinship care. While white children account for 71% of Ohio’s overall child population, they make up just 51% of children in kinship care.³⁹ On the other hand, Black and multi-racial children represent 20% of the state’s overall child population, but account for nearly half (48%) of all kinship care placements.⁴⁰

Due to this overrepresentation of Black and other minority children, the burdens of kinship care and the undue harms attributable to an absence of foster care maintenance payments disproportionately impact minority families. Couple those burdens and harms with the fact that these families are already struggling to overcome economic disadvantages due to centuries of racism and discrimination,⁴¹

families,” “Black children in Ohio are more likely to be removed from their parents[.]”).

³⁹ See Petrik, *supra* note 36.

⁴⁰ *Id.*

⁴¹ See Christina McClurg Riehl, Tara Shuman, *Children Placed in Kinship Care: Recommended Policy Changes to Provide Adequate Support for Kinship Families*, 39 CHILD.’S LEGAL RTS. J. 101, 109 (2019), available at https://www.childrenslegalrightsjournal.com/childrenslegalrightsjournal/volume_39_issue_1?pg=106#pg106 (“African American kinship caregivers have the lowest levels of annual income and are also the least likely to own their own home.”); see also Elisa Minoff, *Entangled Roots: The Role of Race in Policies that Separate Families*, Center for the Study of Social Policy, 4-5 (Oct. 2018), available at <https://cssp.org/wp-content/uploads/2018/11/CSSP-Entangled-Roots.pdf> (“Racism has both motivated policies that separate children from their parents and it has been institutionalized in the systems that carry on these policies. This is how racial injustice works.”).

tremendous suffering is caused by the state's continued refusal to provide foster care maintenance payments to approved kinship caregivers.

CONCLUSION

Without reversal of the district court's decision, Ohio's foster children and their related caregivers will suffer from undue harms. This is especially true for Ohio's minority families. Amici curiae therefore urge this Court to reverse the decision below.

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CERTIFICATE OF COMPLIANCE

As required by Fed. R. App. P. 32(g) and Sixth Circuit Rule 32(a), I certify that this brief complies with the type-volume limitation in Fed. R. App. P. 29(a)(5) because it contains 4,776 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Sixth Circuit Rule 32(b)(1).

I further certify that this brief complies with the typeface and type styles requirements of Fed. R. App. P. 32(a)(5)-(6) because it has been prepared in 14-point Times New Roman font using Microsoft Word.

/s/ Guenther Karl Fanter

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing brief on December 16, 2021, using the Court's electronic filing system, which will generate notice of its filing to all counsel of record.

/s/ Guenther Karl Fanter
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