

Wiley Helps Adoption Agency File Comments Opposing Federal Rule Allowing Discrimination In Adoption And Foster Services

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Washington, DC – On behalf of The Barker Adoption Foundation (“Barker”), a team of Wiley attorneys recently filed comments in response to proposed rulemaking that would amend a U.S. Department of Health and Human Services (HHS) regulation and negatively impact prospective LGBTQ parents and the children they seek to adopt or foster. The comments were signed by Sue Hollar, Barker’s Executive Director and CEO, and Cynthia Cubbage, Barker’s Director of Family and Post-Adopt Services. Wiley represents Barker in this matter on a pro bono basis.

The proposed amendment would remove current language that expressly prohibits individuals or organizations receiving HHS grants from discriminating based on “non-merit factors” – such as gender identity or sexual orientation – in the provision of adoption and foster services. Barker and all major child welfare advocacy organizations supported the addition of this protective language to the rule in 2016, in part because it proscribes the use of non-merit factors in the identification of prospective adoptive and foster parents.

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In urging HHS to reconsider its rulemaking, Barker commented that the removal of the regulation's protective language would invite discrimination against LGBTQ adoptive parents and lead directly to "health and economic disparities for children in foster care." It would reduce the pool of qualified parents able to provide homes to children and undermine the efforts of agencies like Barker to recruit families.

Barker cited HHS data that as of September 30, 2018, there were 437,283 children in foster care in the United States, 125,422 of whom were waiting to be adopted. With so many children waiting for families, Barker reasoned that "it is important that all qualified caregivers – regardless of their race, sexual orientation, religion, or gender identity – be given the opportunity to serve as foster or adoptive parents." LGBTQ individuals and couples are critical to the public child welfare system. More than 21 percent of same-sex couples are raising adopted children compared to just 3 percent of different-sex couples, and approximately 3 percent of same-sex couples are caring for children in foster care compared to 0.4 percent of different-sex couples. As Barker's comments concluded, the proposed rule significantly jeopardizes the chances of many foster children finding permanent homes.

Wiley partners Kathryn Bucher, Antonio J. Reynolds, and Rachel A. Alexander and associates Lukman S. Azeem and Douglas C. Dreier assisted Barker in drafting the comments, identifying numerous peer-reviewed studies that confirm the potential for significant harm to both LGBTQ children and prospective LGBTQ parents if the proposed rule is adopted.

Ms. Bucher, co-chair of Wiley's Health Care Practice, serves on Barker's board of trustees. Over the past decade, firm members have provided legal advice to the foundation on a full range of pro bono matters.

Barker, a nonprofit adoption agency licensed in Maryland, Virginia, and Washington, DC, provides comprehensive adoption-related programs and services and is built on the fundamental belief that all children deserve safe, loving, and permanent families. Barker has placed more than 7,500 children since 1945.

Wiley prides itself on a strong and rich tradition of service to the local and global community and encourages its attorneys and legal assistants to participate in pro bono activities.