



MASSACHUSETTS FAMILY INSTITUTE

*Dedicated to Strengthening the Family*

Administration for Children and Families  
U.S. Department of Health & Human Services  
330 C Street, S.W.,  
Washington, D.C. 20201

**Re: Comment on Proposed Rule Change: “Safe and Appropriate Foster Care Placement Requirements for Titles IV-E and IV-B,” RIN: 0970-AD03**

Dear Sir or Madam,

My name is Sam Whiting and I am a staff attorney for Massachusetts Family Institute (MFI), a nonprofit organization dedicated to strengthening the family in Massachusetts. I am submitting this comment on behalf of MFI.

MFI is deeply concerned about the impacts that this proposed rule change will have on both religious families and foster children in Massachusetts and across the country. In particular, we are concerned about the language in this rule change that would force foster families to unquestioningly “affirm” the lifestyle choices of foster children who identify as LGBTQ. Part IV(1) of the proposed rule states that,

“In meeting the proposed requirement, the agency must not place LGBTQI+ identifying children with a provider who unreasonably limits or denies a child's ability to express their sexual orientation, gender identity, or gender expression. For example, to be considered a safe and appropriate placement, a provider is expected to utilize the child's identified pronouns, chosen name, and allow the child to dress in an age-appropriate manner that the child believes reflects their self-identified gender identity and expression.”

This rule will force many religious foster parents out of the foster care system because it will require them to abandon their religious beliefs about sex and gender in order to accommodate sexual and gender confusion on the part of foster children. In disqualifying such religious parents, the rule will also greatly reduce the amount of available foster families for children who desperately need to be placed in loving homes.

These concerns are not merely theoretical; here in Massachusetts, the type of anti-religious discrimination that this rule would impose has already reared its ugly head. Last year, Mike and Kitty Burke, a devout Catholic couple who felt called by God to foster children in need, applied to become foster parents in Massachusetts. The Burkes underwent extensive training, interviews, and a home study, and passed with flying colors. But solely because the Massachusetts Department of Children and Families (DCF) ultimately determined that their



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Catholic faith would prevent them from being “supportive” of LGBT children, they were denied the opportunity to foster.

In Massachusetts, the message is loud and clear: Catholics need not apply to foster children. Yet, at the same time, DCF admits that they are facing a crisis-level shortage of parents who want to foster. Children have been housed in hospital rooms because the state has nowhere else to put them. But DCF would rather have a child be homeless than be housed by Catholic parents.

There is no compelling reason to discriminate against religious foster families in this manner. While this proposed rule is predicated on the assumption that to be “safe,” LGBTQ-identified children must be “affirmed” in their identities, the data do not support such a conclusion. Take the example used in the proposed rule, of families being required to use opposite-sex names, pronouns, and dress for a child who identifies as transgender. The most reliable studies conducted on transgender-identifying children show that between 80-95% of such children will cease to identify as transgender by the time that they are 18 years old, if their parents take a “watchful waiting” approach and do not encourage gender transition. *See* Peggy T. Cohen-Kettenis et al., *The Treatment of Adolescent Transsexuals: Changing Insights*, 5 J. Sex. Med. 1892, 1893 (2008). On the other hand, children whose are socially transitioned in adolescence are more likely to persist in their transgender identity and to undergo irreversible medical and surgical interventions that can leave them with lifelong physical and mental scars. *See* Thomas D. Steensma et al., *Factors Associated with Desistence and Persistence of Childhood Gender Dysphoria: A Quantitative Follow-Up Study*, 52 J. Am. Acad. Child Adolescent Psych. 582, 588 (2013). Therefore, even if gender “affirmation” were right for some children, it is *not* right for all children. But this rule requires a one-size-fits-all approach that will lead to many children being harmed, especially children in foster care who are more likely to struggle with mental health co-morbidities that increase their risk of experiencing sexual and gender confusion.

This rule also implies that parents, including biological parents, who do not unquestioningly “affirm” sexual and gender confusion are actually engaged in “hostility, mistreatment, and abuse” of their children.

Finally, this proposed rule will have serious legal implications. In Massachusetts, Mike and Kitty Burke have filed a federal lawsuit to vindicate their Constitutional rights to be free from anti-religious discrimination. Enacting this proposed rule would invite these same types of lawsuits, and the rule would very likely be struck down as unconstitutional.

In sum, MFI urges the Department to reject this proposed rule change because it discriminates against religious foster parents, it will harm foster kids who need a home, and it will waste taxpayer resources in costly lawsuits.



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Very truly yours,

A handwritten signature in purple ink that reads "Sam Whiting". The signature is fluid and cursive.

Samuel J. Whiting, Esq.  
Staff Attorney  
Massachusetts Family Institute