



March 30, 2026

Alex J. Adams, Assistant Secretary
Administration for Children and Families
U.S. Department of Health & Human Services
330 C Street, S.W.
Washington, DC 20201

Submitted via regulations.gov

**RE: Designated Placement Requirements Under Title IV-E and IV-B for
LGBTQI+ Children; Rescission, 91 Fed. Reg. 11017 (March 6, 2026)
RIN 0970-AD19**

Dear Assistant Secretary Adams,

Alliance Defending Freedom (“ADF”) respectfully submits this comment in support of HHS’s proposal to rescind 45 C.F.R. § 1355.22 (2024) and the requirements issued in the final rule, Designated Placement Requirements Under Title IV-E and IV-B for LGBTQI+ Children, 89 Fed. Reg. 34818 (April 30, 2024) (“2024 Rule”).

ADF is a nonprofit, public-interest legal organization dedicated to protecting free speech, religious liberty, parental rights, the sanctity of life, and marriage and family. ADF and its clients have a strong interest in ensuring that federal administrative rules and policies promote these interests and that agencies exercise only the authority Congress has conferred. As ADF discussed in its November 27, 2023, comment, the 2024 Rule would have infringed on religious liberty, excluded loving parents, and harmed children in foster care. *See* attached and posted at <https://www.regulations.gov/comment/ACF-2023-0007-4374>.

For two additional reasons, ADF supports HHS’s proposal to rescind the provisions added and modified in the 2024 Rule. *First*, as held by the court in *Texas v. United States Department of Health & Human Services*, No. 6:24-cv-00348-JDK (E.D. Tex.), the 2024 Rule’s requirements exceeded HHS’s statutory authority, so the 2024 Rule was contrary to law and properly vacated. *Second*, removing the 2024 Rule’s now-void provisions from the Code of Federal Regulations provides clarity for stakeholders and the public. But we recommend that HHS clarify that the Rescission’s cost savings flow from the federal court’s vacatur, which voided the 2024 Rule, rather than through this new agency action.

I. The 2024 Rule imposed radical gender ideology on foster care.

Using its Spending Power, Congress has made funds available to the States (and Indian Tribes) “[f]or the purpose of enabling each State to provide, in appropriate cases, foster care and transitional independent living programs for [eligible] children.” 42 U.S.C. § 670. To receive funds, a State must submit a “plan” for meeting requirements set out by statute. *Id.* § 671(a). If the plan meets the statute’s requirements, HHS must approve it. *Id.* § 671(b). One such requirement is providing for “the development of a case plan” for each child, *id.* § 671(16), which must “assur[e] that the child receives safe and proper care,” *id.* § 675(1)(B).

In the 2024 Rule, the agency promulgated a regulation adding special requirements for states’ plans when it comes to “LGBTQI+ children.” Under the 2024 Rule, the new regulatory term LGBTQI+ “include[es] children with lesbian, gay, bisexual, transgender, queer, or questioning, and intersex status or identity.” 45 C.F.R. § 1355.22 (2024). The 2024 Rule also would have required state foster care programs to offer “LGBTQI+ children” a “placement consistent with [a child’s] gender identity,” even in sex-specific institutions—meaning girls’ group homes would now house males who identify as female. *Id.* at 34837; 45 C.F.R. § 1355.22(f) (2024).

And “to appropriately serve LGBTQI+ children in foster care,” the 2024 Rule declared, prospective foster parents must, among other things, “commit to establishing an environment that supports the child’s LGBTQI+ status or identity.” 89 Fed. Reg. at 34819. By “support,” the agency means agreeing with the stated status or identity, to the point of requiring foster homes to affirm the legitimacy of a gender identity that differs from the child’s sex. The 2024 Rule’s examples of “support” included “using [the child’s] name and pronouns correctly,” and “supporting their gender expression.” 89 Fed. Reg. at 34820. So, to qualify as a placement, foster parents would have to accept and promote one side of hotly debated moral and political questions—the side that rejects traditional views of human sexuality and the binary nature of sex. That, or any child in the 2024 Rule’s new and amorphous category, “LGBTQI+ children,” would be kept from their care.

Last year, the Ninth Circuit held that the First Amendment likely prohibits Oregon from excluding prospective adoptive parents unless they agree to promote gender ideology in violation of their religious beliefs. The Oregon policy at issue requires *all* parents to agree they will “respect, accept, and support the sexual orientation, gender identity, and gender expression of adoptive children.” *Bates v. Pakseresht*, 146 F.4th 772, 777 (9th Cir. 2025) (citing Or. Admin. R. § 413-200-0308(2)(k)). ADF’s client, Jessica Bates, believes that God created every individual as either male or female and that asserting a gender identity that differs from one’s

sex is a rejection of God’s design. *See id.* Bates was told that she could not adopt unless she agreed to “positive affirmation of the state’s more fluid understanding of gender identity and the open promotion of same-sex relationships.” *Id.* at 786. Doing such things, Bates explained, would violate her freedom of speech and sincerely held religious beliefs. *Id.* at 782–83.

The Ninth Circuit agreed. Oregon’s rule “restricts certain speech by adoptive parents on the topic of sexual orientation and gender identity, while requiring speech that aligns with the state’s perspective on these intensely debated issues.” *Id.* at 785. And it burdens religious exercise: “From using preferred pronouns to facilitating gender-related hormonal treatment, Oregon’s policy directs Bates to go against her religious commitments.” *Id.* at 790. The policy failed to satisfy strict scrutiny, so the Ninth Circuit held it could not properly be enforced to prohibit Bates from adopting a child from foster care. *See id.* at 801.

In Vermont, the Department of Children and Families amended its similar policy rather than defend ADF’s appeal on behalf of four foster parents whose licenses were revoked for the same reasons. *See* Joint Stipulation of Dismissal, *Wuoti v. Winters*, No. 25-678 (2d Cir. Feb. 20, 2026), Dkt. No. 113.1, <https://adflegal.org/wp-content/uploads/2026/02/wuoti-v-winters-2026-02-20-stipulated-dismissal.pdf>.

The 2024 Rule created similar harms. If allowed to take effect, it would have infringed on First Amendment rights and harmed children. Rescinding the 2024 Rule likewise protects against gender ideology’s invasion of government programs.

II. The 2024 Rule was correctly held unlawful and vacated.

Last year, the Northern District of Texas correctly concluded that the 2024 Rule exceeds the agency’s statutory authority. *Texas v. U.S. Dep’t of Health & Human Servs.*, 770 F. Supp. 3d 940, 948–49 (E.D. Tex. 2025); *see* Order and Final Judgment, No. 6:24-cv-00348-JDK (E.D. Tex. June 13, 2025), Dkt. No. 37 (adopting preliminary findings in final judgment and vacating the 2024 Rule). Congress said that State foster-care systems must have a plan to ensure “safe and proper care” for each child. 45 U.S.C. § 675(1)(B). It did not authorize HHS to declare that espousing the Biden administration’s ideologically motivated viewpoint on human sexuality and gender is the only “safe and proper care” for a struggling child.

Reviewing the 2024 Rule under the APA, the court explained that the statute gives HHS “only limited administrative review of States’ foster-care systems—not the authority to create a new category of foster children and require new and untested methods in fostering them.” *Texas*, 770 F. Supp. 3d at 945. The agency

lacks statutory authority “to promulgate rules altering, interpreting, or expanding upon federal law, including States’ requirements under [42 U.S.C. § 671(a)].” *Id.* at 948. The 2024 Rule’s novelty is telling—HHS has never before “created a category of foster children with special requirements.” *Id.* at 949. The court concluded, “Congress did not delegate to HHS the authority to compel States to support and affirm ‘LGBTQI+ foster children’ under a general statutory guarantee of ‘safe and proper care,’” *id.* at 952–53, or any other statutory provision cited by HHS, *id.* at 953 n.2. Under the major questions doctrine, courts should hesitate to read ambiguous statutory text to give an agency authority to resolve questions of “great political significance” or to “intrude into an area that is the domain of state law.” *Id.* at 950 (citing, *inter alia*, *West Virginia v. EPA*, 597 U.S. 697, 723 (2022)). The 2024 Rule, the court observed, would do both. *Id.*

The court explained that “‘safe and proper care’ for foster children as that term is used in Title IV-E does not include providing the means to facilitate, support, and affirm a child’s perceived sexual orientation or claimed gender identity or status.” *Id.* at 952. The 2024 Rule’s interpretation is hardly the phrase’s common meaning—to this day, “it is very much disputed that the ‘safe and proper care’ of a child would include affirming the child’s ‘gender identity’ when it’s inconsistent with the child’s biological sex.” *Id.* And under current law, courts afford no deference “to HHS’s mere assertion that the Final Rule falls within a permissible interpretation of ‘safe and proper care.’” *Id.* at 952 (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024)). The district court ultimately vacated the 2024 Rule’s requirements under APA section 706(a). Order and Final Judgment, *Texas v. U.S. Dep’t of Health & Human Services*, No. 6:24-cv-00348-JDK (E.D. Tex. June 13, 2025), Dkt. No. 37. HHS and the Department of Justice did not appeal the final judgment.

The district court’s judgment is supported by other recent cases. As the Ninth Circuit put it, policies like the 2024 Rule’s fall at a “crossroads of competing visions of family and faith, for which people of goodwill in our country can have different perspectives.” *Bates*, 146 F.4th at 783. Congress did not authorize HHS to block all access to one of those roads.

III. Vacatur obliterated the 2024 Rule, and its removal from the Code of Federal Regulations is appropriate.

HHS should make clear that its rescission of the 2024 Rule’s requirements is a housekeeping measure, albeit one that HHS has chosen to submit to the public for notice and comment. The 2024 Rule has already been “[held] unlawful and set aside,” 5 U.S.C. § 706(a), and that means its provisions are already void.

“When a federal court sets aside an agency action” under 5 U.S.C. § 706, “the federal court vacates that order—in much the same way that an appellate court vacates the judgment of a trial court.” *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 830 (2024) (Kavanaugh, J., concurring). Vacatur, like a stay of a court’s judgment, voids “the source of authority to act—the order or judgment”—or here, regulation—“in question.” *Nken v. Holder*, 556 U.S. 418, 428–29 (2009). That can happen because the APA “empower[s] the judiciary to act directly against [a] challenged agency action.” *Griffin v. HM Fla.-ORL, LLC*, 144 S. Ct. 1, 2 n.1 (2023) (mem.) (Kavanaugh, J., statement respecting the denial of application) (quoting Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 Va. L. Rev. 933, 1012 (2018)). And “[o]nce [a] rule is vacated, there is no rule to enforce; vacatur obliterates [it].” Mila Sohoni, *The Power to Vacate a Rule*, 88 Geo. Wash. L. Rev. 1121, 1131 (2020) (citation modified). It’s “treated as though it had never [been promulgated].” *Griffin*, 144 S. Ct. at 2 n.1 (Kavanaugh, J.) (quoting Mitchell, *supra*, at 1012–13).

A federal court’s vacatur has “obliterated” 45 C.F.R. § 1355.22 and the 2024 Rule’s other modifications to the Code of Federal Regulations. But these provisions still appear in the code. Correcting it to reflect current law will promote clarity for the public and stakeholders. *Cf.* 44 U.S.C. § 1510(e) (Code of Federal Regulations “shall be prima facie evidence of the text of the documents and of the fact that they are in effect on and after the date of publication”). It will prevent confusion for State and tribal officials preparing plans and for HHS staff reviewing them for approval. This will help ensure that no child or prospective foster parent is mistakenly harmed by the 2024 Rule’s unlawful requirements.

IV. HHS should clarify the legal significance of its cost savings estimate.

HHS proposes to account for the cost savings of removing the 2024 Rule’s requirements for purposes of Executive Order No. 14192 of January 31, 2025, *Unleashing Prosperity Through Deregulation*, 90 Fed. Reg. 9065 (Feb. 6, 2025), by categorizing the Rescission as a deregulatory action. *See* 91 Fed. Reg. at 11018. It is fully within the administration’s prerogative to interpret and apply Executive Order 14192 as the President sees fit, including by deeming this rule one that qualifies for relevant calculations of cost savings or repeals of burdensome regulations.

The final Rescission should, however, clarify that for purposes of real-world legal impact on regulated entities, the cost savings of eliminating the 2024 Rule flow from the federal court’s vacatur, not from the cleanup of the text of the CFR. This will reduce litigation risk for HHS. If entities opposed to this Rescission attempt to challenge it in court, they could allege that because HHS attributes cost savings to this rule, it causes a pocketbook impact on those entities, giving them

standing to bring a legal challenge. *Cf. Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100, 114 (2025) (“[M]onetary costs ‘are of course an injury’” that supports Article III standing.). But that would be incorrect.

The calculations HHS may make concerning cost and deregulation for the purposes of Executive Order 14192 are distinct from the legal and financial impact of *this Rescission* on regulated entities. The vacatur has already obliterated the 2024 Rule, and therefore its legal and financial impact on regulated entities. If HHS chooses to calculate cost savings and deregulatory effects of this Rescission *for purposes of Executive Order 14192*, we recommend that HHS clarify that the Rescission has no legal or financial impacts on regulated entities for the purpose of Article III’s case or controversy standing precedent, because it yields no legal or financial effect beyond the vacatur.

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Rescinding the Biden administration’s unlawful 2024 Rule reflects HHS’s support for family values, religious liberty, the well-being of children in foster care, and good government. ADF applauds the Rescission and urges HHS to remove 45 C.F.R. § 1355.22 and the 2024 Rule’s other modifications from the code.

Respectfully Submitted,

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