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Adoption Attorneys**

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**TESTIMONY**

of

**MARK T. McDERMOTT\***

on behalf of the

**AMERICAN ACADEMY OF ADOPTION ATTORNEYS**

concerning

**BILL 18-0547**

**ADOPTION REFORM AMENDMENT ACT OF 2009**

on

**MARCH 4, 2010**

before the

**COUNCIL of the DISTRICT of COLUMBIA  
COMMITTEE on HUMAN SERVICES**

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## Statement of the American Academy of Adoption Attorneys

Mr. Chairman and members of the committee, my name is Mark McDermott. I am the Legislative Chairman for the American Academy of Adoption Attorneys. I am also a past president of the Academy. I am honored to have been asked to speak to you on behalf of the Academy. Bill 18-0547 is legislation which promotes the adoption of children in need of permanent homes and protects the rights of the citizens of D.C. involved in the process of adoption. Thank you for your attention to this important legislation.

The Academy is a non-profit association of over 300 attorneys, judges, and law school professors from around the country and Canada. The mission of the Academy is to encourage the study and improvement of adoption law and practice standards. Our members represent adoptive parents, birth parents, adoption agencies, and others involved in adoptions. Like many of the members of the Academy, I am an adoptive parent. Thus, I have a personal interest in adoption issues. One of the Academy's highest priorities is to do what we can to encourage and assist in the passage of legislation such as Bill 18-0547 which will improve the adoption system.

**TITLE I** of the bill would formalize the ability of the parties to an adoption to enter into post-adoption contact agreements. Such agreements are presently used in adoptions in D.C., but the use of these agreements to date has been on an informal level, i.e. the agreements are moral commitments which may not be enforceable in court. The general experience with these agreements has been favorable and not associated with much controversy. The agreements enable birth parents to maintain some level of contact with the adoptee and the adoptive family. The contact typically involves written communication and photographs but can include actual face-to-face contact. It has been

the experience of myself and other members of the Academy that it is quite rare for an adoptive parent not to stand by contact agreements.

This bill will make post-adoption contact agreements enforceable in court. Enforceability is a trend which has been embraced by jurisdictions outside of D.C. For example, Maryland passed legislation in 2006 to make such agreements enforceable by statute. Before 2006, the agreements were enforceable in Maryland based upon case law. In Virginia, new legislation was enacted in 2006 which made the agreements enforceable in public agency adoptions. Currently, legislation is pending in Virginia to extend the law to cover all types of adoption.

The Academy supports making post-adoption contact agreements enforceable in court. The proposal before this body, however, can be improved with some modifications. Suggestions for improvements are being made in separate testimony by Professor Cynthia R. Mabry of Howard University School of Law, who is an honorary member of the American Academy of Adoption Attorneys.

**TITLE II** of this bill would remove the existing cap on fees in agency adoptions. The Academy strongly supports this part of the bill. The bill would amend D.C. Code §4-1410 which presently provides that agencies may charge a fee “not to exceed the average costs incurred” and that “average costs and prescribed limits [are] to be determined in accordance with rules and regulations” promulgated by the Mayor (in accordance with D.C. Code §4-1403). The bill would change the above to provide for a “reasonable fee” determined by a “sliding fee scale.”

The regulations governing licensed child placement agencies are found in Chapter 16 of Title 29 of the D.C. Municipal Regulations. Section 1608 addresses fees. As the regulation currently stands, there is a \$7500 cap on adoption fees for D.C. residents for all fees associated with a domestic adoption [D.C. Mun. Regs. Tit. 29, §

1608.1]. A child-placing agency is only allowed to charge more than the \$7500 cap to an adoptive parent for actual costs of the following: (a) legal fees, (b) costs of locating an absent birth parent, (c) living and medical expenses of the birth mother, (d) foster care expenses and other costs for alternative placement of the child prior to the adoption, and (e) expenses involved with obtaining documents required to complete the homestudy assessment [D.C. Mun. Regs. Tit. 29, § 1608.2, 3].

The \$7500 cap is also applicable to international adoption, with the child-placing agency only able to charge for the actual expenses related to international adoption, except that the additional fees shall not be charged unless the agency pays the fee on behalf of the adoptive parent or directly provides the service that is subject to fee, including the following: (a) fees charged by the foreign source, (b) fees for overseas foster care, (c) translation fees, (d) costs to travel to and from the foreign country and lodging, and (e) escort and passport fees [D.C. Mun. Regs. Tit. 29, § 1608.4, 5]. While the current regulations are in place to help prevent a financial burden from inhibiting adoptions, the unintended consequences of the rules are causing out-of-District agencies not to service adoptive parents inside D.C. due to the restrictive nature of the regulations.

By comparison, Maryland's adoption fees are determined on a sliding scale using family income. Within the "reasonable fee" system, the child placement agency may not charge a fee unless it has provided the applicant with the following: (a) the fee and refund policy, (b) an estimate of the maximum fee for specific services, (c) information regarding public and private subsidies, and (d) the overall sliding-income scale [Md. Code. Regs. 07.05.03.07]. This regulation is similar to Virginia.

The fee cap in D.C. has been amended at least twice. On July 19, 1985, the maximum fee was raised from \$2,500 to \$5,000. On January 3, 1995, the cap was raised

to \$7,500 (see 44 D.C. Register 59). The cap has not been changed over the last 15 years since 1995.

D.C. is the only jurisdiction in the United States which has a cap on agency fees. While the cap on agency fees was intended to protect the citizens of D.C. and make adoptions more affordable, the existence of a cap has worked to the detriment of those citizens. Fewer agencies are licensed in D.C. than in other jurisdictions. Those agencies which are licensed in D.C. are not motivated to promote adoptions due to the economic disincentives. Agencies that are licensed by other jurisdictions frequently choose not to place children for adoption by D.C. residents due to the fee cap. Consequently, there is a significant need to eliminate the fee cap in D.C.

**TITLE III** of the bill would create a voluntary adoption registry to facilitate contact between adult adoptees and birth parents. Participation in the proposed registry is voluntary, and it is restricted to use by adults. The Academy supports this provision.

**TITLE IV** would eliminate the necessity for an extra judicial proceeding for families that have adopted children from other countries. A judicial proceeding in D.C. would not be necessary in cases in which (1) there has been a final adoption in the country of the child's origin and (2) the child has been granted an IR-3 Visa by the United States government. In cases in which an adoptive family chooses to undergo a judicial proceeding in D.C. or in which such a proceeding is required because (1) a final decree has not been issued by the country of origin and/or (2) an IR-3 Visa has not been granted, the legal process in D.C. will be simplified. These measures make sense in terms of conserving the resources of the D.C. courts and in terms of lessening the burden on adoptive families who have already gone through very detailed and laborious

legal procedures in the country of origin and in the system imposed by the United States government.

In summary, the Academy supports Bill 18-0547 and urges its passage.