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## Second Circuit Ruling Advances Claim for Increased Support for Children in New York’s Foster Care System

NEW YORK, NY: Almost a decade ago, Morrison & Foerster, acting pro bono, brought suit on behalf of the Adoptive and Foster Family Coalition of New York (formerly the New York State Citizens Coalition for Children) to bring New York’s foster care reimbursement rates into compliance with the federal Child Welfare Act (CWA). Thanks to an April 19th ruling by the United States Court of Appeals for the Second Circuit, the case can finally move forward and the prospect of increased support for the state’s children in foster care is on the horizon.

The CWA requires states that accept federal child welfare funds, like New York, to provide foster parents with monthly payments that “cover the cost (and the cost of providing)” basic necessities such as food, clothing, and shelter. But New York’s reimbursement rates fall woefully short of these requirements. In 2012, the Morrison & Foerster team presented evidence to the trial court on summary judgment that New York’s rates fall between 25% and nearly 40% below what it actually costs to provide these necessities. Nonetheless, in 2014, the district court dismissed the Coalition’s case, holding that the CWA provides no private right of action to challenge inadequate foster care payments.

On August 14, 2014, Morrison & Foerster appealed that decision to the United States Court of Appeals for the Second Circuit. On April 19, 2019, the Court of Appeals—following Supreme Court and Second Circuit precedent—ruled in the Coalition’s favor to allow the merits of the lawsuit to be determined. The Court of Appeals also ruled that the Coalition is an appropriate organization to bring the claim on behalf of foster parents.

“We are pleased that at long last our challenge to New York’s inadequate payments to foster parents can proceed. When this case started nearly a decade ago, the reimbursement rates in New York wouldn’t cover the costs of caring for any child—let alone a child who has endured severe neglect and abuse,” said Morrison & Foerster partner Brian Matsui, who argued the appeal before the Second Circuit. “There still is much to be done to bring New York’s rates into compliance with federal law and to cover the cost of raising children in foster care. We hope that this decision can be a step toward change.”

Richard Heyl de Ortiz, the Coalition’s executive director, added, “We know that family-based foster care is best for children whose parents cannot, even temporarily, care for them. We ask foster parents across our state to step up to nurture and provide safety and security to traumatized, neglected children. It is a cause and challenge from which foster parents do not shy away. Worrying about how to ‘afford’ children

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in their care should not be part of their experience. We need—and the children in their care need—the full attention of foster parents to be focused on healing and nurturing.”

Heyl de Ortiz continued, “Equally important is the support our state provides to children. Young people in foster care get many messages that they are ‘less than’ other children. Adequate support that is compliant with federal law will mean that children in foster care will not have to settle for ‘less than.’ They should have and they deserve access to all the opportunities of childhood that build strong, healthy adults.”

This case marks Morrison & Foerster’s third success in pro bono litigation to increase support for children in foster care. The firm won the first such case on behalf of California foster parents, California State Foster Parent Association v. Wagner, 624 F.3d 974 (9thCir. 2010) and last year achieved a settlement in Hawaii that increases support for children in foster care there by \$86 million over the next ten years, Sheehy v. Bhanot, No. CV13-663 (Order Approving Amended Settlement May 25, 2018).

The Second Circuit case is New York State Citizens’ Coalition for Children v. Poole, No. 14-2919 (2d Cir.). In addition to Brian Matsui, the Morrison & Foerster litigation team includes Grant Esposito, Adam Hunt, and Chanwoo Park.

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*Founded in 1975, The Adoptive and Foster Family Coalition of New York provides support, information and advocacy for foster, kinship and adoptive families and related professionals in New York State. AFFCNY is the direct service provider of post-adoption and post-guardianship services in nineteen counties, has almost 80 affiliated parent and youth support groups throughout the state, is the host of the state’s annual Foster Care and Adoption Conference and offers a free, 24/7 HelpLine for foster, kinship and adoptive parents and families.*

*The Coalition’s vision and ultimate goal is that no foster, kinship or adoptive family feel alone or unsupported and that all such families have the tools and resources they need to nurture the children they love and to be role models for others.*