
**COURT OF APPEALS
STATE OF NEW YORK**

THE CITY OF NEW YORK, E.V., J.O., A.J., T.B., T.V., S.V., and K.D., by
WILLIAM C. BELL, Commissioner of the New York City Administration for
Children's Services,

Plaintiffs,

- against -

THOMAS A. MAUL, as Commissioner of the New York State Office of Mental
Retardation and Developmental Disabilities,

Defendant.

L.J., A.S., C.B., L.O., D.C., E.V., J.C., S.H., R.P., L.N., T.T. and others similarly
situated,

Plaintiff-Intervenors and Plaintiffs-Respondents,

- against -

JOHN B. MATTINGLY, in his official capacity as COMMISSIONER, NEW YORK
CITY, ADMINISTRATION FOR CHILDREN'S SERVICES,

Defendant-Appellant,

- and -

THOMAS A. MAUL, in his official capacity, as COMMISSIONER, NEW YORK
STATE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL
DISABILITIES,

Defendant.

**BRIEF OF AMICI CURIAE
ADVOCATES FOR CHILDREN OF NEW YORK, BAZELON CENTER
FOR MENTAL HEALTH LAW, BRENNAN CENTER FOR
JUSTICE AT NYU SCHOOL OF LAW, THE BRONX DEFENDERS,
CHILDREN'S RIGHTS INC.,
*(amici curiae list and appearances continued inside)***

**CITIZENS' COMMITTEE FOR CHILDREN OF NEW YORK, COURT
APPOINTED SPECIAL ADVOCATES, INC., DISABILITY ADVOCATES,
INC., EMPIRE JUSTICE CENTER, LEGAL SERVICES OF CENTRAL
NEW YORK, MENTAL DISABILITY LAW CLINIC AT TOURO LAW
CENTER, MFY LEGAL SERVICES, INC., NATIONAL DISABILITY
RIGHTS NETWORK, NEW YORK CIVIL LIBERTIES UNION, NEW
YORK LEGAL ASSISTANCE GROUP,
AND URBAN JUSTICE CENTER**

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STATEMENT OF CORPORATE RELATIONSHIPS

Advocates for Children of New York, Bazelon Center for Mental Health Law, The Bronx Defenders, Children's Rights Inc., Citizens' Committee for Children of New York, Court Appointed Special Advocates, Inc., Disability Advocates, Inc., Empire Justice Center, Legal Services of Central New York, Mental Disability Law Clinic at Touro Law Center, MFY Legal Services, Inc., National Disability Rights Network, New York Civil Liberties Union, New York Legal Assistance Group, and Urban Justice Center are non-profit organizations with no parent companies and no subsidiaries or affiliates.

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INTEREST OF AMICI CURIAE

The Amici Curiae (“Amici”) are 16 national, state and local non-profit organizations that advocate for vulnerable children, adults and senior citizens, including people with mental and physical disabilities, individuals who have been abused or neglected, children in foster care, poor people, and immigrants. Many of these individuals rely on government compliance with federal and state laws mandating the provision of essential services and benefits. Some of the Amici have successfully prosecuted class actions that have achieved important reforms in cases like the one alleged here, where a persistent pattern of government failures to provide mandated services or benefits to vulnerable people is claimed to result from deficient government policies and practices. Amici, therefore, have a strong interest in assuring that the class action continues to be available in such cases in New York’s courts. To that end, Amici submit this Brief Amici Curiae in support of the certified class of children with developmental disabilities in this action, and urge affirmance. A list of the Amici is set forth in Addendum A.

SUMMARY OF ARGUMENT

Amici submit this brief to show that the class action is an indispensable judicial device because it is the most effective, efficient and economic means of addressing government violations of law that result from the

kind of institutional and systemic deficiencies alleged in this case. It is essential that the class action be preserved for use in cases like this one.

This case is not about isolated, random individual failures to provide the services which the New York City Administration for Children's Services ("ACS") and the New York State Office of Mental Retardation and Developmental Disabilities ("OMRDD") are obligated to provide. The thrust of the complaint is that, for decades, there has been a persistent, wide-spread pattern of such failures resulting from policies these agencies have adopted—or more accurately, failed to adopt. These include alleged failures to provide the training and guidelines needed to identify and properly and timely place eligible children with developmental disabilities, and a long-standing, unresolved inter-agency dispute about each agency's respective statutory responsibilities. These and other alleged systemic failures have harmed not just the individual named children who are serving as the class representatives in this case, but also have harmed, or threaten to harm, all children in the class who have developmental disabilities and are entitled to and dependent on these agencies' services.

These alleged institutional failures cannot be cured by individual actions because these failures go beyond the denial of services to any one individual child. An individual case-by-case approach, moreover, would force the courts to address the same violations of law over and over again, while generations

of current and future children with disabilities suffer the same injuries, which after-the-fact individual cases cannot fully repair. Individual actions would treat only the symptoms and ignore the causes. Only a class action, which can address the agencies' systemic failures and secure injunctive and declaratory relief to correct the causes of the agencies' persistent violations of law, can provide an effective remedy.

Moreover, because actions for class-wide injunctive and declaratory relief, like this one, are focused on government agency policies and practices affecting the entire class, rather than any particular individual, those policies and practices present common issues of law and fact which necessarily predominate over any individual's claim of actual entitlement to services. A class action is thus the most effective, efficient and economic means of remedying government violations based on the kind of deficiencies alleged in this case.

Finally, a class action is especially important to vindicate the rights of individuals likely to be unable to do so on their own. Many of the children in the class and their families may be indigent or unaware of their rights and therefore unlikely to initiate litigation or even to protest their mistreatment. Absent this class action, many of the children with developmental disabilities who comprise the class may simply suffer in silence.

For these reasons, courts have repeatedly recognized the need for, and propriety of, class actions in circumstances like those alleged in this case. Indeed, in the leading case involving similar allegations, *Baby Neal v. Casey*, 43 F.3d 48 (3d Cir. 1994), the United States Court of Appeals for the Third Circuit found that the denial of class certification was as an abuse of discretion. Certainly, the certification of the class on the facts alleged here was well within the broad discretion afforded to the Supreme Court by Article 9 of the CPLR (“Article 9”).

The same need for an effective remedy for the kind of violations of law alleged in this case also shows why this case is justiciable. Absent the class-wide injunctive and declaratory relief sought to address the alleged systemic deficiencies, the alleged violations of law by ACS and OMRDD will continue. It is precisely the role of courts to adjudicate claims of violations or threatened violations of law by government agencies. If the facts alleged here can be proven, a refusal by the court to intervene would amount to an abdication of its role as a check on unlawful government action.

The need for an effective remedy for these violations also shows why this case cannot be mooted merely by the resolution of some of the named class representatives’ individual claims, or by the fact that some of these children have aged out of the child welfare system during the pendency of this litigation. Even if these children were no longer entitled to individual forward looking relief, the

alleged violations or threatened violations resulting from the alleged institutional deficiencies affecting other children who belong to the class would continue. Treating the case as moot would mean that these violations or threatened violations would evade review, and provide a means for these agencies to avoid accountability for the systemic policy failures that allegedly have plagued the system and harmed children with developmental disabilities for so many years. Indeed, one of the values of the class action device is that it effectively precludes the government from mooting specific individuals' claims as a means of avoiding its statutory responsibilities. Under these circumstances, this case is not moot.

ARGUMENT

I.

THE CLASS ACTION IS AN INDISPENSABLE DEVICE FOR REMEDYING THE KIND OF SYSTEMIC GOVERNMENT DEFICIENCIES ALLEGED HERE

This case usefully demonstrates why the class action is an indispensable device for addressing government violations of law which result from systemic deficiencies.

A. Only A Class Action Can Provide Relief Adequate To Secure The Rights Of All Of The Children With Disabilities Being Denied The Services That ACS And OMRDD Are Obligated To Provide

The class of children with developmental disabilities certified in this case seeks injunctive and declaratory relief to remedy an alleged widespread pattern of persistent violations by ACS and OMRDD of their statutory obligations

to provide services to children with developmental disabilities. These children, who are entitled by law to services from ACS and OMRDD because they are foster children with developmental disabilities, allege that these violations are caused by a number of systemic deficiencies including:

- (i) an unresolved inter-agency dispute about each agency's respective responsibilities to implement its statutory duty to provide residential, planning and other support services;
- (ii) ACS's failure to develop adequate policies or programs to identify children with developmental disabilities to be considered for referral to OMRDD for adult placement;
- (iii) ACS's failure to adequately train staff to recognize developmental disabilities;
- (iv) ACS's failure to develop written guidelines concerning referral for and placement with OMRDD;
- (v) ACS's failure to train staff on preparing complete referral packages;
- (vi) the absence of a formal process for resolving disputes and a failure to give the children's guardian or

family notice of their right to a hearing where services are denied; and

(vii) ACS's failure to investigate facilities in which children are placed.

(Respondents' Brief at 1, 9, 11-15, 17-18).

Individuals are likely to be incapable of remedying such systemic deficiencies through individual actions. Individuals are unlikely to have the resources or incentive to secure relief that would extend beyond their own individual situations. And government agencies are likely to resolve individual claims, if and when brought, without reaching or remedying the underlying institutional deficiencies causing the widespread violations of law that harm or threaten to harm all of the class members.

More specifically, courts are often reluctant to entertain claims by individuals that go beyond their individual situations, to provide the kind of discovery needed to address systemic deficiencies, or to provide the systemic relief needed to cure those systemic deficiencies. If limited to hearing individual actions, courts would be required to deal with the consequences of the persistent violations alleged here over and over again, without addressing the underlying institutional causes for such violations.

The class action is also more efficient and economic. By focusing on the institutional deficiencies rather than individual claims, it addresses matters that commonly affect all class members in a single proceeding. It can reduce the number of individual cases filed with the courts by effecting reforms that may diminish future violations.

The class action can also provide relief which can be more effectively monitored by the courts and the members of the class.

In contrast to an individual action, a class action seeking class-wide injunctive and declaratory relief can provide an adequate remedy in circumstances such as those alleged here. By addressing the underlying causes of the government's violations, a court can provide relief that protects all class members against current and future violations, including those who are too poor or vulnerable to initiate individual actions, or who may be unaware of their rights to do so.

B. The Class Action Is Recognized As An Indispensable And Superior Device For Remediating Systemic Deficiencies

The superiority of class actions for addressing such systemic deficiencies – especially where the victims of such deficiencies are children, persons with mental or physical disabilities, or persons who are poor – is well recognized.

For example, in *Armstrong v. Davis*, 275 F.3d 849 (9th Cir. 2001), the Ninth Circuit, in affirming the district court's decision to grant system-wide injunctive relief to a class of prisoners and parolees with disabilities who had been injured by a systemic failure to accommodate their disabilities, explained in terms directly applicable here:

System-wide relief is required if the injury is the result of violations of a statute or the constitution that are attributable to policies or practices pervading the whole system (even though injuring a relatively small number of plaintiffs), or if the unlawful policies or practices affect such a broad range of plaintiffs that an overhaul of the system is the only feasible manner in which to address the class's injury.

Id. at 870. See also *People United For Children, Inc. v. City of New York*, 214 F.R.D. 252, 266 (S.D.N.Y. 2003) (holding that class certification "is appropriate where broad, class-wide injunctive and declaratory relief is necessary to redress group-wide injury") (internal quotation and citation omitted).¹

¹ This Brief Amici Curiae cites federal cases decided under Rule 23 of the Federal Rules of Civil Procedure ("Rule 23"). Such cases are persuasive because Article 9 is modeled on, and largely adopts, the class action requirements of Rule 23. See, e.g., *Friar v. Vanguard Holding Corp.*, 78 A.D.2d 83, 93, 434 N.Y.S.2d 698, 705 (2d Dep't 1980); *Colt Indus. S'holder Litig. v. Colt Indus., Inc.*, 77 N.Y.2d 185, 194, 565 N.Y.S.2d 755, 760 (1991). Additionally, it is commonplace for New York courts to rely on federal precedent when interpreting and applying the requirements of Article 9. See, e.g., *Friar*, 78 A.D.2d at 93-94, 434 N.Y.S.2d at 705-06; *Stern v. Carter*, 82 A.D.2d 321, 325-26, 441 N.Y.S.2d 717, 722 (2d Dep't 1981); *Geiger v. Am. Tobacco Co.*, 181 Misc.2d 875, 878-79, 696 N.Y.S.2d 345, 348 (Sup. Ct. N.Y. Cty. 1999).

As described below, courts, scholars and advocates have identified numerous practical and procedural reasons why class actions are necessary and appropriate in situations such as those alleged here.

1. Absent A Class Action, Many People Will Have No Remedy For Government Violations Of Their Rights

First, a representative proceeding such as a class action “guarantees a hearing for individuals ... who by reason of ignorance, poverty, illness or lack of counsel may not have been in a position to seek one on their own behalf.” *United States ex rel. Morgan v. Sielaff*, 546 F.2d 218, 222 (7th Cir. 1976). It is important, therefore, to ensure that individuals who are poor and otherwise vulnerable—such as the children here, whose parents cannot provide care for them—have access to the courts through the class action device.

Second, systemic agency failures are unlikely to be remedied through political or legislative means because the individuals harmed by an agency’s failures often have little, if any, political power. For example, children in foster care “do not vote ... [and] lack the developmental ability to organize. Their voices ... cannot be heard. Whatever happens to them, therefore, happens outside the zone of public scrutiny.” Michael B. Mushlin, *Unsafe Havens: The Case for Constitutional Protection of Foster Children from Abuse and Neglect*, 23 HARV. C.R.-C.L.L. REV. 199, 214 (1988). See also Scott J. Preston, “Can You Hear Me? ”: *The United States Court of Appeals for the Third Circuit Addresses the*

Systemic Deficiencies of the Philadelphia Child Welfare System in Baby Neal v. Casey, 29 CREIGHTON L. REV. 1653, 1706 (1996) (noting that “[f]oster children, commonly representing disadvantaged and minority groups, lack the necessary influence to compel a legislative or executive branch to take action”).

Accordingly, for many persons, the class action is the only vehicle by which they can realistically secure protection against the failure of government agencies to fulfill their legal obligations.²

2. Class Actions Are Necessary To Address Systemic Deficiencies For Procedural Reasons

In addition to the practical realities that necessitate a class action in circumstances such as those alleged here, a class action for declaratory and injunctive relief is often procedurally necessary where the problems to be remedied are systemic agency failures. System-wide relief cannot be obtained through individual actions for several reasons.

First, individual actions “tend to focus attention, myopically, on individual culpability for past actions instead of on detection and correction of

² Many commentators have discussed the importance of the class action for persons who are poor or otherwise vulnerable. *See, e.g.*, Henry Rose, *Class Actions and the Poor*, 6 PIERCE L. REV. 55, 68-72 (2007); Daniel Tenny, *There is Always a Need: The “Necessity Doctrine” and Class Certification Against Government Agencies*, 103 MICH. L. REV. 1018, 1034-35 (2005); Joshua D. Blank and Eric A. Zacks, *Dismissing the Class: A Practical Approach to the Class Action Restriction on the Legal Services Corporation*, 110 PENN. STATE L. REV. 1, 10-14 (2005); Marie A. Failinger and Larry May, *Litigating Against Poverty: Legal Services and Group Representation*, 45 OHIO ST. L. J. 1, 8-9 (1984).

institutional deficiencies.” Mushlin, *Unsafe Havens*, 23 HARV. C.R.-C.L. L. REV. 199, 250. *See also* Marcia Robinson Lowry & Sara Bartosz, *Why Children Still Need a Lawyer*, 41 U. MICH. J. L. REFORM 199, 212 (2007) (explaining that the “elements of systemic relief fall beyond the narrow and individualized parameters of judicial relief” available on an individual basis in family court).

Second, unlike discovery in a class action, discovery in an individual action is limited to information that is relevant to a plaintiff’s individual claims. An individual plaintiff “may be able to obtain discovery of a defendant’s practices and procedures with respect to himself, but not with respect to other persons’ cases, as he would be able to do in a class action.” Laura K. Abel & David S. Udell, *If You Gag the Lawyers, Do You Choke the Courts? Some Implications for Judges when Funding Restrictions Curb Advocacy by Lawyers on Behalf of the Poor*, 29 FORDHAM URBAN L. J., 873, 884 (2002). Individual plaintiffs, therefore, often would be prevented from obtaining the evidence needed to establish the existence of a system-wide agency failure, even if they were inclined to do so.

Third, in many instances courts have declined to grant class-wide relief if no class has been certified. *See, e.g., Seittelman v. Sabol*, 158 Misc.2d 498, 512, 601 N.Y.S.2d 391, 400 (Sup. Ct. N.Y. Cty. 1993), *aff’d as modified*, 217 A.D.2d 523, 630 N.Y.S.2d 296 (1st Dep’t 1995) (holding that “unless this court grants class certification, its directives concerning entitlement ... will only apply to

the individual named plaintiffs”); *Zepeda v. United States Immigration and Naturalization Serv.*, 753 F.2d 719, 728 n.1 (9th Cir. 1985); *Bowers v. National Collegiate Athletic Ass’n*, 118 F.Supp.2d 494, 503 (D.N.J. 2000).

Additional procedural considerations make clear that a class action is far superior to a multitude of individual actions where systemic agency failures have caused class-wide injury.

As we noted, an individual case-by-case approach forces courts to address the same injury repeatedly without ever addressing the defective policies that are the root cause of the problem. Such an approach would be “an obvious waste of judicial resources.” *Friar*, 78 A.D.2d at 98-99, 434 N.Y.S.2d at 708. *See also Brown v. Wing*, 170 Misc.2d 554, 561, 649 N.Y.S.2d 988, 992 (Sup. Ct. Monroe Cty. 1996), *aff’d*, 241 A.D.2d 956, 663 N.Y.S.2d 1025 (4th Dep’t 1997) (it would be “an affront to basic principles of judicial economy” to deny class certification and thereby invite a multitude of parallel proceedings); Abel & Udell, *If You Gag the Lawyers*, 29 FORDHAM URBAN L. J. at 884 (where a court cannot “learn the complete facts about the defendant’s relevant practices and procedures,” as would occur in a class action, “similarly situated individuals will have to return to court repeatedly with the same problem, thus increasing the burden on the courts”).

Further, while an individual action may “compensate for an individual injury which has already occurred,” a class action for declaratory and injunctive relief “seeks to prevent harm from occurring in the first instance.” Mushlin, *Unsafe Havens*, 23 HARV. C.R.-C.L. L. REV. at 250.

Finally, even if a court in an individual action “rules that a defendant has acted unlawfully with respect to one plaintiff, the defendant may not cease its unlawful behavior with respect to similarly situated individuals”. Abel & Udell, *If You Gag the Lawyers*, 29 FORDHAM URBAN L. J., at 883. See also Tenny, *There is Always a Need: The “Necessity Doctrine” and Class Certification Against Government Agencies*, 103 MICH. L. REV. at 1034-35 (“an agency ... might not apply a non-class judgment to other similarly situated people”). Accordingly, an individual action may create precedent, but it typically would not provide any non-party with enforceable relief. In contrast, a class action provides all class members with relief that may be enforced through a contempt proceeding, thereby forestalling any need for subsequent, individual litigations. See *Nehmer v. United States Veterans’ Admin.*, 118 F.R.D. 113, 119 (N.D. Cal. 1987). See also Lowry & Bartosz, *Why Children Still Need a Lawyer*, 41 U. MICH. J. L. REFORM at 211 (noting that a class action “provides a platform for enforceable reform that lives beyond election cycles and enables a long term strategy for systemic improvement that looks beyond a particular administration or leadership”).

3. **Class Actions Have Proved An Effective Means For Rectifying Systemic Deficiencies That Cause Persistent Government Violations Of Law**

Class actions against government agencies have yielded critically important results. *See, e.g.,* Lowry & Bartosz, *Why Children Still Need a Lawyer*, 41 U. MICH. J. L. REFORM at 210 (“[C]lass actions have a proven track record of producing measurable positive results in reforming large child welfare systems, on which so many fragile lives are dependent.”); Michael Waterstone, *A New Vision of Public Enforcement*, 92 MINN. L. REV. 434, 456-57 (2007) (“[T]he effectiveness of structural litigation in reforming institutions cannot be disputed. Structural litigation campaigns have desegregated schools, reformed prisons, attacked deplorable health care conditions in institutions, challenged police abuse, and targeted discrimination in large private employers.”).

The experiences of the Amici organizations reinforce the conclusion that the class action serves as an essential tool to secure relief when government agencies defy the law. For example, in *Brad H. v. City of New York*, 185 Misc.2d 420, 712 N.Y.S.2d 336 (Sup. Ct. N.Y. Cty. 2000), *aff’d*, 276 A.D.2d 440, 716 N.Y.S.2d 852 (1st Dep’t 2000), a case brought by Amicus Urban Justice Center, the court certified a class of current and future prisoners, and later approved a settlement between the plaintiffs and the City that benefited both the class members and the broader community by promoting released prisoners’ access to

mental health treatment. The settlement required the City to provide “mentally ill inmates access to treatment they need to maintain psychiatric stability after their release.” Susan Saulny, *City Agrees to Help Care for Mentally Ill Inmates After Release*, N.Y. TIMES, Jan. 9, 2003, available at <http://www.nytimes.com/2003/01/09/nyregion/city-agrees-to-help-care-for-mentally-ill-inmates-after-release.html>.

Similarly, *Marisol A. v. Giuliani*, 126 F.3d 372 (2d Cir. 1997) and *Kenny A. v. Perdue*, 218 F.R.D. 277 (N.D. Ga. 2003), class actions brought by Amicus Children’s Rights, Inc. to redress continuing illegalities in two child welfare systems, both produced settlements that corrected the pattern of agency disregard for the law, to the enduring benefit of the children served by these systems. The settlement reached after class certification in *Marisol A.* resulted in lower caseloads for social workers, additional funding for new foster care placements and an improved data management system. See *Marisol A. v. Giuliani Fact Sheet*, available at http://www.childrensrights.org/wp-content/uploads/2008/06/ny_marisol_fact_sheet.pdf. A consent decree in *Kenny A.* required the government defendants to revise their practices concerning the provision of health care, investigation of maltreatment allegations, court reviews, caseload limits, training, and licensing of foster homes. *Kenny A. v. Perdue (Child*

Welfare Reform Lawsuit) Fact Sheet, available at http://www.childrensrights.org/wp-content/uploads//2009/01/2009-01-27_ga_state_fact_sheet.pdf.

Finally, *D.S. v. New York City Dep't of Educ.*, 255 F.R.D. 59 (E.D.N.Y. 2008), a class action brought by Amicus Advocates for Children on behalf of high school students who had been excluded from educational services, also led to a favorable settlement. The students had suffered injuries caused by defendants' policies, such as shortened class schedules and a denial of instruction. The settlement provided access to compensatory education (without cost), including high school diploma options, career training, tutoring, guidance services, and assistance with reading skills in a literacy program. See Thomas Adcock, *'Hard-Fought' Settlement Reached*, N.Y. TIMES, Dec. 5, 2008, available at http://www.advocatesforchildren.org/ny_times_hard_fought.pdf.

In sum, judicial precedent, scholarship and experience persuasively demonstrate why it is essential to preserve the class device as a remedy for systemic deficiencies that are the underlying cause of violations of law by government agencies, especially in cases like this one where the persons harmed by these violations—children with developmental disabilities seeking essential placements and care—are poor and have physical or mental disabilities.

II.

COURTS CONSISTENTLY APPROVE OF THE USE OF CLASS ACTIONS FOR INJUNCTIVE AND DECLARATORY RELIEF FROM SYSTEMIC DEFICIENCIES IN SIMILAR CASES

Courts repeatedly endorse the use of class actions, like this one, that seek injunctive and declaratory relief for alleged systemic deficiencies that cause or threaten harm to the class members' rights. Challenges to certification on the ground that such actions fail to meet commonality requirements have been repeatedly rejected in similar cases. Many of these cases involve classes of children denied the benefits of government programs. These cases recognize that where, as here, the requested injunctive and declaratory relief seeks to remedy systemic deficiencies, the focus of the action is on the government's practices and policies, rather than individual claims, and that accordingly commonality requirements are satisfied.

Thus, in *Baby Neal v. Casey*, 43 F.3d 48 (3d Cir. 1994), the Third Circuit reversed, as an abuse of discretion, the denial of certification of a class of children within Philadelphia's child welfare system who sought declaratory and injunctive relief to remedy systemic deficiencies in that system. Much as ACS does here, the government defendants argued that the commonality requirement could not be met because of individual circumstances particular to each class member. *Id.* at 57. The court rejected this argument, holding that where

declaratory and injunctive relief is sought against a defendant engaging in a common course of conduct, there is “no need for *individualized* determinations of the propriety of injunctive relief.” *Id.* (emphasis in original). The court explained that class certification had been granted in a “legion of civil rights cases where commonality findings were based primarily on the fact that defendant’s conduct is central to the claims of all class members irrespective of their individual circumstances and the disparate effects of the conduct.” *Id.*

Similarly, in *Marisol A. v. Giuliani*, 126 F.3d 372 (2d Cir. 1997), the Second Circuit affirmed certification of a class of “[a]ll children who are or will be in the custody of [ACS] and those children who, while not in the custody of ACS, are or will be at risk of neglect or abuse and whose status is or should be known to ACS.” *Id.* at 375. The Court rejected ACS’s argument that individual differences among class members defeated commonality and upheld the district court’s decision to certify the class because ACS’s actions were neither isolated nor discrete instances, but part of an alleged pattern of behavior that commonly affected all class members. *Id.* at 376-77.

In *Kenny A. v. Perdue*, 218 F.R.D. 277 (N.D. Ga. 2003), a case involving alleged agency failures remarkably similar to those in this case, plaintiffs sought certification of a class of children in foster care seeking system-wide declaratory and injunctive relief. *Id.* at 283, 301. Some of the failures alleged by

the plaintiffs in *Kenny A.* are nearly identical to those alleged in this case. For example, the plaintiffs alleged that state and county foster care agencies and officials had failed to “develop administrative controls such as an information management system that ensures plaintiff children are expeditiously placed in a foster home matched to meet the children’s specific needs,” failed to “provide timely and appropriate permanency planning, including failing to provide services that would enable plaintiffs to achieve their permanency planning goals,” and failed to “provide appropriate and necessary mental health, medical, and education services to children in their custody.” *Id.* at 286.

Although defendants maintained that differences among individual class members defeated commonality, the court found such differences irrelevant:

all putative class members claim entitlement to the same legally mandated rights and services under state and federal law, and all seek the same system-wide declaratory and injunctive relief requiring [defendants] to address and remedy their violations of foster children’s common legal rights and to provide legally mandated care, protection, services, and treatment. This is plainly sufficient to satisfy the commonality requirement.

Id. at 300.

Outside the child welfare context, courts routinely reach the same conclusion. In *Armstrong v. Davis*, 275 F.3d 849 (9th Cir. 2001), the Ninth Circuit affirmed the certification of a class of all present and future state prisoners and parolees suffering from a multitude of disabilities that substantially limited one or

more major life activities. *Id.* at 856-57. The named plaintiffs claimed that California prison officials failed to provide them with adequate accommodations at parole hearings and during the parole revocation process in violation of the ADA, the Rehabilitation Act, and the Fourteenth Amendment. *Id.* at 854-55.

On appeal, the defendant argued, as ACS does here, that the “wide variation in the nature of the particular class members’ disabilities” required separate lawsuits. *Id.* at 868. The Ninth Circuit rejected this argument because “commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members.” *Id.* The court explained that where such systemic failures are alleged:

individual factual differences among the individual litigants or groups of litigants will not preclude a finding of commonality. Certainly, the differences that exist here do not justify requiring groups of persons with different disabilities, all of whom suffer similar harm from the Board’s failure to accommodate their disabilities, to prosecute separate actions.

Id. (internal citation omitted).

In *Andre H. v. Ambach*, 104 F.R.D. 606 (S.D.N.Y. 1985), an education rights case, a resident of a juvenile detention center with a learning disability sought to certify a class of center residents who were in need of special education and related services. *Id.* at 610. The court rejected an argument similar to ACS’s argument against commonality, noting that it

misses the substance of the plaintiff's claim, [because] [t]he claim does not concern a review of the actual determination of the status of the child [R]ather the claim involves the existence of procedures to make that determination. Thus, although the placement of the students requires an individual determination, this is not a bar to class certification.

Id. (internal citations omitted).

Similar decisions have also been made in mental illness cases. In *Alexander A. v. Novello*, 210 F.R.D. 27 (E.D.N.Y. 2002), the plaintiffs sued the Commissioners of the New York State Department of Health and the New York State Office of Mental Health and sought certification of a class of children with psychiatric disabilities who qualified for placement in a residential treatment facility, but who had not been so placed with reasonable promptness. *Id.* at 29.

The court found that commonality was easily met because “the core of plaintiffs’ complaint” was the defendants’ failure to provide required placements with reasonable promptness, in violation of federal law. *Id.* at 33. Moreover, certification was proper because “plaintiffs are seeking injunctive relief to reform a continuing government policy or practice. Their complaint is about defendants’ institutional failure to provide reasonably prompt placement in [residential treatment facilities]; it is not merely a cumulation of individual cases.” *Id.* at 34 (internal quotation and citation omitted).

In its Reply Brief here, ACS seeks to distinguish such cases on the ground that they were decided under Rule 23(b)(2) of the Federal Rules of Civil

Procedure, which does not contain a requirement that common questions “predominate” where class treatment is sought for actions seeking injunctive relief. (ACS Reply Br. at 26-27). But that difference should not undermine the persuasive force of *Baby Neal* and these other cases applying Rule 23(b)(2). First, while CPLR § 901, unlike Rule 23, does not distinguish between class actions for injunctive relief and class actions for damages, § 901 was intended to have the same application. The notes to § 901 in the CPLR include the 1975 Judicial Conference Report, which explained:

Section 901 contains a unitary scheme of prerequisites for all class actions, as opposed to the overlapping and more complex classification scheme of the Federal Rule. The reach of proposed section 901 is co-extensive with Federal Rule 23(a) and (b)(1), (2) and (3).

Therefore, federal decisions concerning the appropriateness of class certification under Rule 23(b)(2) are just as instructive as cases discussing classes under Rule 23(b)(3). As this case involves a class action for declaratory and injunctive relief, cases decided under Rule 23(b)(2) are fully persuasive here: the same standards applied under Rule 23(b)(2) apply to class actions for declaratory or injunctive relief under § 901.³

³ The fact that several of the named class representatives also have claimed money damages is of no moment, as the only relief sought on behalf of the class is declaratory and injunctive relief. *See Daniels v. City of New York*, 198 F.R.D. 409, 416 (S.D.N.Y. 2001) (where named plaintiffs sought money damages for themselves, but only declaratory and equitable relief on behalf of the class, the overall relief sought was primarily equitable).

Moreover, from the courts' analyses in these cases, it is clear that common questions *do* predominate in cases that seek injunctive relief from systemic deficiencies. As the Third Circuit emphasized in *Baby Neal*:

Because the complaint does not seek damages, the factual differences [among individual class members] are largely irrelevant. The complaint prays for declaratory and injunctive relief. Factual differences among the situations of the plaintiffs will thus not preclude the district court from determining whether the class claims are meritorious, or from ordering the appropriate relief in the event they are.

Baby Neal, 43 F.3d at 61.

In sum, the federal cases discussed above provide compelling precedent for the class certified here. Further, Article 9 “vests great discretion in the court” to certify class actions and “enable[s] individuals injured by the same pattern of conduct by another to pool their resources and collectively seek relief.” Governor’s Memorandum, June 17, 1975, filed with A. 1252-B, 198th Sess., Reg. Sess. (1975), in N.Y. Sessions Laws 1975, at 1748. In light of all the circumstances and considerations discussed above, class certification here was certainly well within the discretion of the Supreme Court.

III.

CLAIMS SEEKING TO ENFORCE MANDATORY LEGAL RIGHTS ARE JUSTICIABLE

The claims of the class of children with developmental disabilities are justiciable because they seek to enforce mandatory statutory obligations owed to

them by ACS and OMRDD. For the same reasons discussed above with respect to class certification, judicial intervention is essential to remedy an agency's persistent violations of its statutory obligations. The children who comprise the plaintiff class are alleging that absent class-wide injunctive and declaratory relief, the defendant agencies will continue to violate and threaten to violate their statutory rights, in direct contravention of the agencies' statutory obligations. It is a core duty of the courts to ensure that the executive branch complies with applicable law. *See Klostermann v. Cuomo*, 61 N.Y.2d 525, 536, 475 N.Y.S.2d 247, 253 (1984). ACS is asking this Court to abdicate that responsibility.

Suits asserting breaches by agencies of obligations mandated by the legislature have consistently been found justiciable. *See, e.g., Id.*, 61 N.Y.2d at 535-36, 475 N.Y.S.2d at 252-53 (1984) (noting key distinction "between a court's imposition of its own policy determination upon its governmental partners and its mere declaration and enforcement of the individual's rights that have already been conferred by the other branches of government"); *Figueroa v. Market Training Inst., Inc.*, 167 A.D.2d 503, 506, 562 N.Y.S.2d 175, 177 (2d Dep't 1990) (refusing to dismiss a complaint against a government agency because the complaint sought to compel mandatory, as opposed to directory, action under state law). Moreover, the mere presence of some element of discretion involved in an agency's execution of its mandatory duties does not render a challenge to agency actions non-

justiciable so long as the duties, as here, are mandatory. *See, e.g., Natural Res. Defense Council, Inc. v. New York City Dep't of Sanitation*, 83 N.Y.2d 215, 221, 608 N.Y.S.2d 957, 959 (1994). Thus, under well-established New York law, claims arising out of a failure to perform mandatory statutory duties are justiciable.

Here, ACS's duties to provide adequate programs and care for children with developmental disabilities in an appropriate and non-discriminatory manner are mandated by Congress under the ADA and the Rehabilitation Act, and by the New York Legislature under the Social Services Law, and therefore are susceptible to judicial enforcement. ACS does not meaningfully dispute this, and indeed even acknowledges that class members may obtain relief in individual proceedings. (ACS Br. at 63-65).

Thus, ACS is only challenging the justiciability of *class* relief. ACS offers no support, however, for this constriction of the use of the class device afforded by Article 9. In fact, courts have held in class actions that "the judicial branch is competent to determine whether ACS has complied with the duties imposed upon it by the state legislature." *Marisol A. v. Giuliani*, 929 F. Supp. 662, 686 (S.D.N.Y. 1996), *aff'd*, 126 F.3d 372 (2d Cir. 1997). New York courts have found similar claims of systemic violations of state law to be justiciable. *See, e.g., Jiggetts v. Grinker*, 75 N.Y.2d 411, 554 N.Y.S.2d 92 (1990); *McCain v. Koch*, 70

N.Y.2d 109, 517 N.Y.S.2d 918 (1987); *Martin A. v. Gross*, 153 A.D.2d 812, 546 N.Y.S.2d 75 (1st Dep't 1989).

IV.

THE CLAIMS OF THE CLASS ARE NOT MOOT

In rejecting ACS's mootness challenge, the Appellate Division held that the claims brought on behalf of the class of children satisfy the requirements of the long-established exception to mootness, and are, therefore, not moot. *City of New York v. Maul*, 59 A.D.3d 187, 191, 873 N.Y.S.2d 540, 544 (1st Dep't 2009). This holding should be affirmed, as the claims advanced by the class members are substantial, likely to recur, and capable of evading review. *Cf. In re M.B.*, 6 N.Y.3d 437, 447 (2006).

This Court should reject the argument that, to satisfy the mootness exception, a claim must present a "purely legal question[]." (ACS Br. at 73) This Court has never held that a pure question of law must be present to avoid mootness. To the contrary, in *Mental Hygiene Legal Servs. ex rel. Aliza K. v. Ford*, 92 N.Y.2d 500 (1998), this Court applied the mootness exception and engaged in just the sort of fact-intensive and qualitative inquiry objected to by ACS in order to determine whether due process required a judicial hearing prior to an involuntarily committed civil patient's non-emergency transfer from a civil to a secure mental health facility.

ACS ignores the established exception to mootness, and advocates for a position that would allow ACS and OMRDD to avoid accountability by simply mooting the claims of the particular individual children who are participating in the case as the named class representatives. But if this were the case, the court would be unable to evaluate the claim that systemic agency failures are the common cause of the violations and threatened violations of the class members' rights. This issue would continue to evade review, as happens when individuals secure individual relief in the Family Court that leaves unaddressed the systemic failures that repeatedly cause similarly situated individuals to suffer similar injuries.

Indeed, one of the important advantages of the class action device is that it protects the class members from mootness defenses of the kind asserted here. *See Lamboy v. Gross*, 129 Misc.2d 564, 573, 493 N.Y.S.2d 709, 715 (Sup. Ct. N.Y. Cty. 1985), *aff'd*, 126 A.D.2d 265, 513 N.Y.S.2d 393 (1st Dep't 1987) (holding that a "class action avoids the possibility that important claims ... will become moot").

CONCLUSION

For the foregoing reasons, this Court should affirm the decision of the Appellate Division that affirmed the decision of the Supreme Court granting class certification.

Dated: New York, New York
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ADDENDUM A

STATEMENTS OF INTEREST OF AMICI CURIAE

Advocates for Children of New York (“AFC”)

Advocates for Children of New York (“AFC”) is dedicated to ensuring access to the best education New York City can provide for all students. For over 37 years, AFC has been working with low-income families in New York City to secure quality and equal public education services for their children. AFC provides a range of direct services, including free individual case advocacy, technical assistance, and trainings, and also works on institutional reform of educational policies and practices through advocacy and litigation. AFC has served as class counsel in numerous litigations, including *D.S. v. New York City Department of Education (“DOE”)*, No. 05 Civ. 4787 (E.D.N.Y.), *J.G. v. Mills*, No. 04-5415 (E.D.N.Y.), *E.B. v. DOE*, No. 02 Civ. 5118 (E.D.N.Y.), *Jose P. v. Mills*, No. 79 Civ. 270 (ERK)(SMG) (E.D.N.Y.), and *L.V. v. DOE*, No. 03 Civ. 9917 (S.D.N.Y.).

Bazelon Center for Mental Health Law

The Bazelon Center for Mental Health Law is a national public interest organization founded in 1972 to advocate for the rights of individuals with mental disabilities. The Bazelon Center has engaged in litigation, administrative

advocacy, and public education to promote equal opportunities for individuals with mental disabilities in all areas of life, including access to health care services, employment, voting, public benefits, parental rights, educational opportunities, housing, and community living. Much of the Center's work involves efforts to remedy disability-based discrimination through systemic class action litigation under civil rights laws such as the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

Brennan Center for Justice at NYU School of Law

Brennan Center for Justice at New York University School of Law
Named for the late Associate Justice William J. Brennan, Jr., the Brennan Center for Justice at New York University School of Law is a not-for-profit, non-partisan public policy and law institute that focuses on issues of democracy and justice. Founded by Justice Brennan's former law clerks, family, and friends, the Brennan Center is a living monument to the legacy of the Justice. Among its goals, the Brennan Center works to ensure that those in our society who are most vulnerable can obtain access to our nation's courts to secure their rights and protect their interests. The Brennan Center has litigated in this court and before the United States Supreme Court, the challenge to funding restrictions that prevent low income communities from obtaining comprehensive legal representation by

lawyers funded by the federal government. See *Legal Services Corporation v. Velazquez*, 531 U.S. 533 (2001). Because class action litigation offers an essential means for obtaining relief when individuals are harmed by the failure of the government and other parties to comply with the law, and because the ability to rely on the courts for such relief is a critical component of a democratic and just society, the Brennan Center joins this amicus brief.

The Bronx Defenders

The Bronx Defenders is a public defender office located in the South Bronx which has been at the forefront of holistic defense for the past twelve years. Created and staffed by advocates with a broad vision of public defense work, The Bronx Defenders views clients not as "cases," but as whole people: caring parents, hard workers, recent immigrants, native New Yorkers, and students with hope for the future. Our staff of attorneys, social workers, parent advocates, investigators, administrative support, and community organizers is committed to working with our clients, their families, and their communities to address the critical issues that bring them into contact with the child welfare and criminal justice systems. The Family Defense Practice represents parents accused of neglect or abuse in Bronx Family Court at all stages of their case whether an initial child protective services investigation, neglect case or termination of parental rights case.

Children's Rights Inc.

Children's Rights is a national advocacy group working to reform failing child welfare systems on behalf of the hundreds of thousands of abused and neglected children who depend on those systems for protection and care. Founded by Marcia Robinson Lowry, a leading voice on civil rights and child welfare issues nationally for more than 35 years, Children's Rights began as a project of the New York Civil Liberties Union and, later, the American Civil Liberties Union. It became an independent nonprofit organization in 1995. Children's Rights has won landmark legal victories in more than a dozen states across the nation, thereby bringing about sweeping improvements in the lives of thousands of abused and neglected children. These lawsuits, in tandem with the organization's policy expertise and advocacy efforts, are changing the way child welfare is practiced in the United States. Because class-action litigation is such an important tool for effecting institutional change and obtaining relief for individuals who are harmed by government's failure to comply with the law, Children's Rights joins this amicus brief.

Citizens' Committee for Children of New York (CCC)

Citizens' Committee for Children of New York (CCC) is a sixty-five year old independent, multi-issue, child advocacy organization dedicated to ensuring that every New York City child is healthy, housed, educated and safe.

CCC is an independent voice for children and its goal is to secure the rights, protections, and services children deserve. Many of CCC's activities directly affect the lives of individual children, but most of its efforts are spent identifying the causes and effects of disadvantage and poverty, promoting the development of services in the community, and working to make public and private institutions more responsive to children. CCC is unique among child advocacy organizations in that citizen members and staff work side-by-side assuming the roles of spokesperson, researcher, coordinator and watchdog for the City's children. Its staff and members include specialists in health, mental health, education, child care, housing, homelessness, income security, child welfare, juvenile justice and child and youth development. CCC believes that the well-being of developmentally disabled foster children necessitates that ACS and OMRDD identify and secure the services and placements that these children need in a timely manner, while they are in foster care and when they are aging out of the foster care system.

Court Appointed Special Advocates, Inc. (CASA)

New York City CASA was established in 1979 through the combined efforts of the Council on Adoptable Children, the Junior League of Brooklyn, and the Council of New York Law Associates. From the beginning, our goal was to protect the basic needs and well being of children in foster care through advocacy

that facilitates appropriate treatment intervention and timely case resolutions. Since that time, CASA has played a crucial role in assisting New York City's overburdened family court system by meeting the needs of children in foster care. Appointed by Family Court Judges, CASA's dedicated and objective volunteer advocates fill a unique and critical role, often acting as invaluable liaisons among all players involved in each aspect of the court proceedings: Advocates provide individualized attention to each child—monitoring their adjustment, ensuring that services to address educational, emotional, psychological and physical difficulties are in place, and reporting problems and progress to the attention of the court. By retaining an unbiased stance, CASA advocates may significantly impact the many vital components necessary to moving children through the foster care system—including expediting reunification with loved ones, discharge from the foster care system and movement into safe permanent homes.

Disability Advocates, Inc

Since 1989, it has been Disability Advocates' mission to protect and advance the rights of adults and children who have disabilities. We assist persons with disabilities in freely making the decisions that affect their lives, enforcing their rights, and fully participating in community life. Our advocacy and litigation has defeated efforts to exclude housing for persons with disabilities from certain municipalities, assured the accessibility of movie theaters and state operated

community residences, established the right to counsel at public expense for indigent persons subject to guardianship proceedings, stopped dangerous experiments on patients in state psychiatric hospitals, and obtained compensation for victims of unnecessary and unconsented prostate surgery. More information about our past and present advocacy for persons with disabilities is available at www.disability-advocates.org.

A major focus of our work involves assisting individuals with disabilities who have been denied services by the Office of Mental Retardation and Developmental Disabilities (OMRDD). Through our advocacy we frequently uncover systemic problems in the delivery of services and supports to persons with disabilities. It is critical that our clients, often our most vulnerable citizens, have access to class actions as a mechanism to afford broad relief in addressing these system-wide failures. If this forum becomes unavailable to our clients, there will often be no other forum and no other remedy available to redress the systemic discrimination they have suffered.

Empire Justice Center

The Empire Justice Center is a statewide, public interest non-profit firm that practices in many areas, including the areas of disabilities rights and special education. Empire Justice works to strengthen and protect programs and services for those who are poor, disabled or disenfranchised.

We do this through systems-change litigation and advocacy, training and support to other advocates and organizations, and high quality direct civil legal representation.

Empire Justice has brought numerous class actions in state and federal courts to remedy systemic violations of the rights of our clients. In our experience, class actions are often the only way to make defendants fix systemic violations and redress the harm caused by those violations.

Legal Services of Central New York

Founded in 1966, LSCNY is a not-for-profit law firm serving the civil legal needs of low-income families and individuals, as well as underserved populations and populations with special needs, in Central New York. LSCNY currently receives funding from multiple sources, including the New York State Commission on Quality of Care and Advocacy for Persons (CQCAPD) with Disabilities, the New York Interest on Lawyer Accounts (IOLA) Fund, the New York Department of State, the New York State Department of Health, the New York State Office of Court Administration, and other private and governmental sources.

LSCNY has a long history of serving individuals with disabilities. LSCNY currently serves as the Protection and Advocacy office for the central

region and has represented individuals with developmental, physical and psychiatric disabilities since 1980.

Mental Disability Law Clinic at Touro Law Center

The Mental Disability Law Clinic of Touro Law Center (“Clinic”) is authorized, pursuant to 42 U.S.C. § 10801 et seq., to provide legal services to individuals who suffer, or have been diagnosed as suffering, from mental illness. In fulfilling this mission, the Clinic seeks to enforce rights on behalf of as many individuals as possible. In order to enhance its ability to accomplish this goal, the Clinic uses the class action device to provide relief on a system-wide basis. Hence, it is within the interest of the Clinic that this Court fully understand the importance of class remedy in the CPLR in ensuring justice flows to all individuals aggrieved by any system-wide problems that violate the law.

MFY Legal Services, Inc.

MFY Legal Services, Inc. (“MFY”) has provided free civil legal services to low-income New Yorkers since its founding in 1963. MFY provides advice and representation for over 6,500 individuals each year and initiates affirmative litigation on behalf of its clients that impacts thousands of disadvantaged New Yorkers, many of whom are people with disabilities.

Throughout its history, MFY has successfully employed class action litigation to represent vulnerable New Yorkers. *See, e.g., New York v. Sullivan*, 906 F.2d 910 (2d Cir. 1990); *Schisler v. Bowen*, 851 F.2d 43 (2d Cir. 1988); *Stieberger v. Sullivan*, 801 F.Supp. 1079 (S.D.N.Y. 1992); *Velazquez v. New York*, 226 A.D. 141, 640 N.Y.S.2d 510 (1st Dep't 1996). When new regulations barred federally-funded agencies from initiating class action litigation on behalf of poor people, MFY stayed true to its mission by withdrawing from the Legal Services Corporation system. MFY has therefore been able to continue to bring class actions on behalf of large groups of individuals with disabilities. MFY recently successfully sued on behalf of a class of over 150 adult home residents with psychiatric disabilities who were deprived of the personal needs allowance to which they were entitled. *See Cortigiano v. Oceanview Manor Home for Adults*, 227 F.R.D. 194 (E.D.N.Y. 2005). MFY also successfully sued the Metropolitan Transit Authority on behalf of a class of New Yorkers with psychiatric disabilities who were being denied reduced fares through unnecessarily burdensome application and eligibility verification procedures. *See Fountain House, Inc. v. Metropolitan Transportation Authority*, CV-03-2579 (CBA)(CLP) (E.D.N.Y. Oct. 15, 2003).

MFY firmly believes that the rules governing class actions should be broadly construed, particularly in cases involving people with disabilities. Because

of the far-reaching implications of this appeal for its clients, MFY has a substantial interest in the Court's decision.

National Disability Rights Network (NDRN)

The National Disability Rights Network ("NDRN") is the non-profit membership association of protection and advocacy ("P&A") agencies that are located in all 50 states, the District of Columbia, Puerto Rico, and the United States Territories. P&A agencies are authorized under various federal statutes to provide legal representation and related advocacy services, and to investigate abuse and neglect of individuals with disabilities in a variety of settings. The P&A System comprises the nation's largest provider of legally-based advocacy services for persons with disabilities. NDRN supports its members through the provision of training and technical assistance, legal support, and legislative advocacy, and works to create a society in which people with disabilities are afforded equality of opportunity and are able to fully participate by exercising choice and self-determination.

New York Civil Liberties Union

The New York Civil Liberties Union (NYCLU) is a not-for-profit, nonpartisan membership organization whose mission is to defend and promote the fundamental principles and values embodied in the Bill of Rights, the U.S. Constitution, and the New York Constitution, including freedom of speech,

petition and assembly; freedom of religion; and the rights to privacy, due process, and equal protection of the law. One of the ways NYCLU accomplishes this mission is by acting as a public-interest law firm, bringing litigation – including class action litigation in state and federal court – designed to vindicate the rights of students; the poor; people of color; people with disabilities; lesbian, gay, bisexual and transgender people; women; and other New Yorkers who are systematically deprived of their constitutional and legal rights.

Presently, for example, the NYCLU serves as counsel in *Hurrell-Harring v. State of New York*, a class action filed in New York state courts on behalf of indigent criminal defendants who are relying on the State to provide them with meaningful and effective assistance of counsel. That class action alleges that the State’s failure to adequately fund, oversee and set standards for the public defense system violates criminal defendants’ right to counsel under the New York Constitution and the Sixth Amendment to the United States Constitution. The Court’s ruling on class certification in this case directly implicates the ability of that class of indigent criminal defendants to challenge the State of New York’s systemic failure to meet basic constitutional standards governing the provision of public defense services.

New York Legal Assistance Group

Founded in 1990, the New York Legal Assistance Group (“NYLAG”) is a not-for-profit organization that provides free civil legal services to low-income New Yorkers. NYLAG serves immigrants, seniors, individuals and families in

need of government assistance, homeowners facing foreclosure, renters facing eviction, low-income consumers, children in need of special education, victims of domestic violence, persons with disabilities, and others in need of free legal services. In addition to providing legal advice and representation to individuals and families, NYLAG brings class-action lawsuits challenging policies and practices that violate the rights of our clients. The class action device enables NYLAG to secure relief for the maximum number of individuals possible—as a result of NYLAG’s class-action litigation, hundreds of thousands of low-income New Yorkers have obtained a wide range of essential benefits and services. A narrow construction of the CPLR’s rules concerning class actions would undermine NYLAG’s ability to obtain meaningful relief for low-income New Yorkers who are suffering from widespread and systemic violations of their rights. The proper resolution of this case is therefore a matter of substantial interest to NYLAG and its clients.

Urban Justice Center (“UJC”)

The Urban Justice Center (“UJC”) is a non-profit corporation that provides civil legal services to eligible low-income clients in New York City. For 25 years, the Urban Justice Center has served New York City’s most vulnerable residents through a combination of direct legal service, systemic advocacy,

community education and political organizing. We assist our clients on numerous levels, from one-on-one legal advice in soup kitchens, to helping individuals to access housing and government assistance, to filing class action lawsuits to bring about systemic change. We often defend the rights of people who are overlooked or turned away by other organizations. Each year, our cumulative work results in thousands of victories on behalf of individual clients, as well as groundbreaking reforms that affect public policy nationwide. The UJC has served as class counsel in dozens of class action lawsuits. The class action device is critical to bringing about systemic change to improve the lives of the most deprived and abused people in our society and in obtaining relief for those who experience discrimination and oppression.