10-235-cv(L)

10-251-cv(CON), 10-767-cv(CON), 10-1190-cv(CON)

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DISABILITY ADVOCATES, INC. AND UNITED STATES OF AMERICA,

Plaintiffs-Appellees,

v.

NEW YORK COALITION FOR QUALITY ASSISTED LIVING AND EMPIRE STATE ASSOCIATION OF ASSISTED LIVING,

Movants-Appellants,

-and-

(caption continued on inside front cover)

AMICUS CURIAE BRIEF FILED ON BEHALF OF FAMILIES OF CURRENT ADULT HOME RESIDENTS IN SUPPORT OF APPELLANTS ARGUING FOR REVERSAL OF JUDGMENT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NEW YORK 03-cv-3209

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DAVID A. PATTERSON, in his official capacity as Governor of the State of New York, RICHARD F. DAINES, in his official capacity as Commissioner of the New York State Department of Health, MICHAEL F. HOGAN, in his official capacity as Commissioner of the New York State Office of Mental Health, THE NEW YORK STATE DEPARTMENT OF HEALTH, and the NEW YORK STATE OFFICE OF MENTAL HEALTH,

Defendants-Appellants.

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I.

INTRODUCTION AND INTEREST OF *AMICUS CURIAE*[1]

Numerous family members of "Current Adult Home Residents"[2] (collectively, the "Families") have joined together to submit this *amicus curiae* brief in order to voice their concerns over the District Court's ruling[3].

The absence of any direct testimony from the Families or any reference to their concerns in the District Court's various rulings demonstrates that the Families' unique perspective and concerns have yet to be considered in these proceedings. Indeed, many Families joining this brief were unaware of the underlying litigation. Although the Families may not have the formal expertise or

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1 The parties to this action have consented to the filing of this *amicus curiae* brief. Pursuant to Local Rule 29.1, counsel discloses that: (i) counsel for *amicus curiae* alone authored this brief and no counsel for another party to this action authored any part of this brief; (ii) no party to this action or their counsel contributed money that was intended to fund preparing or submitting this brief; and (iii) no other person or entity other than counsel for *amicus curiae* contributed money that was intended to fund preparing or submitting this brief.

2 The District Court has defined "Current Adult Home Resident" as Disability Advocates, Inc.'s ("DAI") constituents who are residents of an Adult Home on the date of its order.

3 Attached as Schedule A is a list of individual family members who have indicated a desire to join in this *amicus curiae* brief. To protect the confidentiality of the family members and their mentally disabled relatives, the Families provide the initials of their first and last names, and their familial relationship to the mentally disabled relative. If the Court requires the full identification of such individuals, the Families are prepared to file an identical brief under seal disclosing these identities.

technical background of the expert witnesses who testified below, they have decades of experience caring for their loved ones and have witnessed firsthand the care and benefits that the adult home setting provides. They also have endured the difficult process of procuring adequate living arrangements for their mentally disabled family members and acclimating their family members to new circumstances and surroundings. Apart from the adult home residents themselves, the Families know – from personal experience – more than anyone else the kind of support and resources that their mentally disabled relatives require. In this way, the Families have a unique and immeasurable "expertise" that few, if any, others can offer.

The Families' *amicus curiae* brief does not illuminate any additional legal or academic authority—this Court has substantial amounts of each before it. Instead, the Families aim to provide the Court with some personal narratives about the mentally disabled persons who comprise DAI's purported constituents and to debunk some of the misconceptions propagated by DAI and other detractors of adult home life. Most of all, the Families seek to explain the real-world consequences of the District Court's ruling. The Families respectfully submit that this perspective should be factored into any decision that directly affects their mentally disabled relatives' living conditions, safety, and mental health, and the District Court's injunction therefore should be vacated.

II.

REPRESENTATIVE CURRENT ADULT HOME RESIDENTS – DAI'S PURPORTED CONSTITUENTS

DAI's brief attacks adult homes as "psychiatric flophouses" and attempt to portray adult homes as the same misconceived "institutions" or "asylums" of the past. The Families disagree with DAI's characterization. In their experience, adult homes are an ideal setting for their mentally disabled relatives because they provide the structure and supportive environment that allow their family member to cope with their disability and to flourish. At the same time, adult homes give many mentally disabled family members ample responsibility and freedom to leave the home when they choose, as well as a safe place to return. In this way, adult homes strike the correct balance between personal freedom and oversight. As the stories below demonstrate, adult homes have been a saving grace for the Families' mentally disabled relatives.

A. K.E. –Paranoid Schizophrenia

K.E. is a 53-year-old male who has lived in the same New York City area adult home for the past fourteen years. About three decades ago, K.E. was diagnosed as a paranoid schizophrenic while in the armed forces. K.E.'s mother describes him as a "nonconformist" because he does not take his schizophrenia medications unless somebody ensures that he does so. Before moving into his

adult home, K.E. lived in a number of different arrangements including with his mother, in apartment-type living and in various other adult homes. At one time, he was placed in an apartment with two roommates. The high-rise apartment was in a dangerous neighborhood that his mother describes as "frightening." Although K.E.'s mother concedes that he had more independence in the apartment, it lacked the structure that he requires, especially for ensuring that he takes his medication.

Before he came to live in his current adult home, K.E. would be hospitalized approximately three times per year for his schizophrenia. These hospitalizations sometimes lasted for a period of weeks or months.

The situation vastly improved for K.E. after he entered his current adult home. He takes his medication regularly and has not been hospitalized for his schizophrenia. Although he has been hospitalized for alcohol abuse, he also received four to five months of alcohol rehabilitation through a hospital identified by the adult home's staff and, with the support of his counselors and family, he has stayed clean and sober for two years.

K.E. generally is, in his mother's words, a "wanderer." He has ventured off in the past and, while on his own, would not stay current with his medications. In contrast, the adult home setting gives K.E. the support and structure needed to ensure that he does not wander and takes his medication.

Although K.E.'s mother sees him frequently, she takes further comfort in knowing that the staff of the adult home is keeping an eye out for him. K.E. has made himself part of the community in which the adult home is located, getting to know "everybody" including the postmen, building superintendents, and shop keepers.

Critically, the adult home setting strikes the proper balance of providing K.E. the highest possible standard of living without compromising the personal freedom and flexibility he needs. The home in which K.E. resides is described by his mother as "better than some of the best hotels," having been renovated completely a couple of years ago. The residents enjoy central air conditioning and have a large gathering room with a big screen television.

At the same time, K.E. enjoys getting out of the home and socializing, including with his friend and roommate of nearly 14 years with whom his mother says he gets along "beautifully." K.E. has complete freedom to leave and may do so without advising the staff or management of the adult home. His bed, however, is checked every morning. When he has failed to return to his room, the adult home staff has called his mother first to make sure he is not with her; if not, together they will seek to determine his whereabouts. On one such instance, K.E. had decided he was going to make it on his own and went to Manhattan, but quickly realized that he was not able to stay on his own.

K.E.'s mother would be devastated if the home is forced to close. At 78 years old and living in a one bedroom apartment, she would be unable to move him in with her (although his independent streak would prevent that anyway). She is also not convinced that an alternative form of residence will benefit K.E and she is terrified about what might happen to him if he is forced to live on his own, especially because of the likelihood that he would fail to keep taking his medications. Further, the prospect of such an abrupt forced change in his living arrangements and daily routine would, in her view, have a negative impact on K.E. as he has difficulty processing and adapting to significant change.

B. R.F. – Mixed Personality Disorder

R.F. is a 51 year-old male who, according to his sister, is diagnosed with mixed personality disorder and also has been treated for depression. From all outward appearances, R.F. would seem "high functioning" but that is not the reality of his situation. Growing up, he had no learning disabilities nor did he require special education, but demonstrated behavioral and emotional problems that made his adolescence challenging for all of those in his life. In high school, he became aggressive and began to take his frustrations out on his parents, and ultimately was diagnosed with his condition.

For his high school years, R.F. was sent to a co-ed residential treatment center, but before graduating R.F. felt he was ready for group living in New York City. He and six other young men moved to a supported apartment in Queens where a counselor supervised them. R.F. became disillusioned with the supported apartment system when someone had stolen R.F.'s money, which the counselor held for R.F., and the agency would not reimburse him. R.F. ultimately "hit the street" as a result.

R.F. has held various low-level jobs, including handing out pamphlets for a massage parlor and serving as a messenger. He moved back in with his family for a period, but because both parents were ill with cancer, there was a concern about what would happen to R.F. if one or both of his parents passed away or otherwise were unable to care for him. R.F.'s explosive personality complicated his stay at his parent's home, and he became abusive to his parents. R.F.'s family then began the process of finding other suitable long-term arrangements for him.

At one point, R.F. lived in a supported apartment located on the grounds of a mental institution. His apartment was fully furnished and equipped with a private telephone. Even though he saw a counselor weekly, his multiple personality disorder plagued him for 18 of the 24 months he lived there. R.F. would go a long time without answering his phone, which concerned his family as

they were worried that he might have "hit the streets" yet again. He also would not or could not cook for himself or clean his own apartment. He was unable to make healthy dietary decisions and his propensity for eating fast food for the sake of convenience caused serious weight gain—to the point where he now weighs 400 pounds. This excessive weight has complicated his diabetes, which requires regular monitoring and treatment. In addition to being erratic in taking his various medications, R.F. cannot properly manage his own money.

Three years ago, R.F. moved into his current adult home. His sister describes it as the best residence he has ever been in: it is exceptionally clean and the overall facilities are all that she could hope for. R.F. has a roommate and the staff ensures that he takes his various medications on a regular basis. R.F. is independent and does not utilize the doctors that regularly work with the adult home, but instead has chosen to use his own internist. If R.F. fails to return to the adult home, the staff will call his sister to advise her of his absence.

R.F.'s sister fears that if the adult home closed, R.F.'s placement in supported housing would threaten his health and well being. In her opinion, without the assistance an adult home provides, R.F. cannot administer his own medications, maintain basic personal hygiene, or do household chores like laundry and cleaning. R.F. is unable to follow through with even the most basic tasks

unless someone looks over his shoulder, as is the case in the adult home.[4] R.F.'s sister fears that this inability to follow through and attend to even minor details will have grave consequences to R.F. if he lives in supported housing.

C. J.G. – Chronic Schizophrenia

J.G. is a 58 year-old male who has been living in his current New York City area adult home for almost 10 years. In 1968, J.G. was diagnosed with chronic schizophrenia at the age of sixteen. Doctors warned his family that the condition would never improve and might worsen; that J.G. would never work, marry or have children; and that J.G. is at risk for early dementia. Additionally, J.G. has developed diabetes, which requires daily monitoring and medication.

Initially, J.G.'s father assumed primary responsibility for his care and dedicated the next thirty years to serving J.G.'s needs. The two were inseparable. J.G.'s father anticipated and attended to his son's every need, regulated his medication, and even served his food. As a result, J.G. had limited interaction with

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4 R.F.'s sister recounts an example of R.F.'s inability to follow through. Approximately one year ago, as broadcasts were switching over from analog to digital, R.F.'s sister obtained for him the necessary converter. She then gave him money to have somebody at the adult home assist him in connecting the converter box. Despite the fact the television is in R.F.'s room, and he had previously watched it every day, R.F. still has not arranged for the converter to be connected and the money remains unaccounted for. While this example may appear trivial to some, it speaks volumes to R.F.'s sister about his inability to manage money or otherwise follow through with promised tasks.

anyone outside his family and became completely dependent on his father. Spending his time in this fashion, J.G. became so isolated that he nearly was mute and did not participate in social interaction or any kind of community activity.

Despite his father's dedication, J.G. occasionally wandered off, became disoriented and then was unable to find his way home. On these occasions, J.G.'s father would retrieve J.G. from wherever he ended up, often miles from home. Once, J.G was found wandering along a road in upstate New York, many miles from his home.

Four months after J.G.'s father passed away, J.G.'s family arranged for him to be placed at an adult home and he has remained there for the last ten years. His improvement has been remarkable. The adult home provides the stability he needs to control his medical conditions, but also allows J.G. to socialize and experience much more independence than he had while he was living with his father. J.G. receives daily medication and meets with a case worker twice monthly. Importantly, J.G. no longer hears voices and, while he generally does not initiate conversations, his willingness to do so has increased.

J.G. is free to leave the building at any time, and receives a weekly spending allowance. Although J.G. occasionally becomes disoriented, and therefore has some difficulty with public transportation, he often spends time at the

library or walking on the boardwalk near the home. J.G.'s family members take him out to lunch or for day trips to visit family in Westchester County. He has consistent interaction with his roommate, the staff, his therapist and other residents in group meetings. He has developed social bonds with other residents who sometimes ask him to run errands for them.

J.G.'s family credits the last decade in an adult home with J.G.'s progress. The social interaction he receives is an important impetus for his development and J.G. is surrounded by numerous individuals who ensure he takes his medications and monitor his physical condition. While J.G.'s family is concerned with the potential closure of his home, J.G.'s own words say it best. As he told his brother, "You know that if this happens [the home closes] I won't be able to survive."

J.G. has good reason to be concerned. He is nearly sixty years old, but has never lived independently. In contrast, his adult home has allowed him to interact with a community and develop social ties, rather than withdrawing into his own world as he had done in the past. His family expects that if he were forced to live on his own, he would relapse and become reclusive once again. Additionally, J.G. has many needs that he cannot manage on his own, including his medical, dietary, personal hygiene, transportation, and monetary needs. J.G. and his family

believe that his condition leaves him vulnerable to predators and consequently fear any move to supported housing.

D. S.A. – Paranoid Schizophrenia

S.A. is a 58 year-old female who was diagnosed with paranoid schizophrenia while she was in college. According to her family, before her illness, S.A. was smart and outgoing and had many friendships. For the next five years, she responded to treatment, remained independent, finished her undergraduate degree, and started a PhD program.

However, S.A.'s condition deteriorated to the point that she could no longer care for herself. She dropped out of graduate school and moved in with her parents. S.A.'s family did everything they could to support her, but eventually her problems overwhelmed them. For instance, S.A. became verbally explosive and her paranoia prevented her from taking her medication which exacerbated matters. Soon, she could not distinguish between her hallucinations and reality. As a result, she was incarcerated several times and frequently hospitalized. Over time, S.A. became isolated and suicidal, and continues to suffer from physical injuries related to an attempted suicide.

Fifteen years ago, S.A. moved into a group home in Queens and her condition has stabilized. The home provides the structure S.A. needs and ensures

that she takes the medication she requires to be as functional as possible. She has developed a group of friends at the home and participates in group activities. She is familiar with the surrounding community and is free to leave the home although her psychiatric limitations have made it extremely difficult for her to negotiate public transportation. Although S.A. is unable to hold a job, the home provides her with opportunity to help out and to have an appropriate level of responsibility. S.A's family also reports that she is less prone to outbursts.

S.A.'s family is concerned that if she is forced to leave her current arrangements, her condition will relapse and her progress will quickly unravel. They also are concerned that she will lose longstanding social ties she has developed in the home, which they strongly believe have contributed to her improvement. S.A.'s family has little doubt that if she were moved to supported housing she would stop taking her medication and suffer unnecessarily. They are concerned that without the proper medication and supervision she presently receives in the adult home, she will again become suicidal.

III.

THE DISTRICT COURT'S RULING LIKELY WOULD FORCE ADULT HOMES TO CLOSE AND THUS JEOPARDIZE THE HEALTH AND SAFETY OF THE FAMILIES' RELATIVES

Because the District Court's decision promotes a wholesale adoption of supported housing over adult homes, it may very well force the closure of most, if not all, adult homes in the New York Metro area. This so for two reasons.

First, closures likely will occur as a result of State budget shortfalls that would result from attempting to comply with the District Court's ruling. In fact, the District Court makes clear that closing adult homes not only is acceptable collateral damage from its ruling, but it seems to welcome such closures. With an implicit nod to the zero-sum nature of funding services for the mentally disabled, the District Court stated that "if there is a will to close Adult Homes… that money could be shifted and used for the services people in supported apartments would need." (Special Appendix ("SPA") 188.) The District Court thus augured that the State will likely "shift" this money by exercising its authority "to downsize or close Adult Homes." (*Id.* at 188, 197.)

Second, because of the emphasis on moving residents out of adult homes, occupancy likely will fall to levels that are too low to keep adult homes

economically viable. The lack of occupancy and related revenue would limit resources for proper maintenance, upkeep and health services. As a result, adult homes may become less desirable alternatives for the mentally disabled or altogether lose their licenses to serve that populace. When coupled with the shift in public funding away from adult homes that the District Court contemplates, the lack of occupancy could devastate the adult home system—a system that the Families' relatives currently benefit from and prefer.

Before the District Court's ruling is left to stand, the Families respectfully ask this Court to consider the disastrous consequences that the lack of an adult home system would have for them and their loved ones.

A. Current Residents May End Up In A Shelter Or On The Streets.

As Justice Kennedy acknowledged, "For a substantial minority . . . deinstitutionalization has been a psychiatric *Titanic*," whereby "self-determination often means merely that the person has a choice of soup kitchens" and the "least restrictive setting frequently turns out to be a cardboard box, a jail cell, or a terror-filled existence plagued by both real and imaginary enemies." *Olmstead v. L.C.*, 527 U.S. 581, 609 (1999) (Kennedy, J., conc.) (internal quotations/citation omitted). That observation resonates with the Families here.

Nearly all of the Families are concerned that their relatives will end up in a homeless shelter or on the streets if either the letter or spirit of the District Court's order is implemented. Certain residents, if placed in the less structured environment of supported housing, may be incapable of remaining there and revert to previous behavior. For instance, R.F., K.E. and J.G. have a history of "wandering" and may reject or abandon their supported housing, particularly if their medication is not administered carefully and regularly. R.F. in particular has had two experiences with supported housing, both of which ended in failure. The first time he was placed in supported housing, he decided to move out and "hit the street." Because R.F. often refuses to answer his telephone for long periods, if on his own, his family would be left to wonder whether he returned to the streets again. In the adult home, they have the reassurance of knowing that staff will let them know if he were to disappear.

There is no guarantee that supported housing provides the kind of direct oversight found in the adult home. From the Families' perspective, this greatly increases the risk that their relatives will become homeless or resort to a homeless shelter for housing. That prospect simply is unacceptable.

B. There Will Be A Shortfall In Adult Homes For Residents Who Wish To Remain In Them.

The record shows that a large percentage of the adult home populace has expressed no interest in leaving their respective adult homes. (*See* SPA at 155-56.) In fact, as many as 44% of the adult home population may prefer continued residence in adult homes. (*See* SPA at 153.) That means, of the 4,500 total Current Adult Home Residents, up to 1,890 want to stay exactly where they are. By the same token, the District Court aims to essentially shutter the adult home system by siphoning off public funds or forcing a substantial loss of occupancy. Given the number of residents who likely will choose an adult home, the District Court's order thus could create a dangerous shortfall in adult home arrangements for the many residents that want them. The Families respectfully fail to understand that incongruity.

Granted, the District Court contemplates a procedure through which the residents will have a choice of remaining in an adult home or moving to supported housing. But as explained above, this "choice" is illusory because adult home closures are essentially a foregone conclusion from the District Court's order. Thus, without the important "middle ground" that adult homes provide, the true choice here could be between smaller supported housing on the one hand and

larger institutional settings on the other. Neither alternative appeals to the Families or their mentally disabled relatives.

C. For Many Residents, Adult Homes Provide Ideal Living Arrangements, While Supported Housing Does Not.

The Families recognize that some mentally disabled persons will benefit from the move to supported housing. Disabilities are of varying degrees and undoubtedly there are those who can live independently and take care of themselves with minimal interaction with counselors, case workers and others. But that is not the case with the Families' relatives.[5]

Many of the Families were thankful that after a painful hit-and-miss process of finding suitable living arrangements, the adult homes finally provided the exact environment in which their relative could thrive. In each of the representative sample cases above, after moving into an adult home, the mentally disabled relative has experienced drastic improvement in their respective abilities to cope and live with their mental conditions. This is directly due to the structure,

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5 Consistent with the District Court's finding that "virtually all" of DAI's Constituents meet the requirements for supported housing (*see, e.g.*, SPA at 146), the Remedial Order establishes a very low bar to qualify. *Id.* at 238-39. Indeed, despite the fact that the Families overwhelmingly believe that supported housing could cause harm to their relatives, many of the mentally disabled whose relatives joined this brief likely would qualify. That could prove dangerous, since any determination of qualification for supported housing will be made by the providers who have been awarded contracts to develop supported housing. *Id.* at 239.

oversight, and sense of community that living in an adult home brings. Also, because residents are often free to come and go from the adult home as they choose, they develop a sense of personal responsibility to themselves and to their fellow community members. In this way, adult homes strike the perfect balance between personal freedom and necessary oversight.

By contrast, many Families have witnessed terrible consequences when their mentally disabled relatives try to live in a more independent setting. Some have ended up on the streets or at homeless shelters, associated with undesirable or dangerous individuals, or engaged in substance abuse. For example, although S.A. is doing well in her current surroundings, she has a history of becoming suicidal. Her family worries that if she were living on her own, without the social interaction and support she enjoys in the home, those tendencies may reappear. Additionally, K.E. has been hospitalized several times for problems associated with substance abuse. His family is concerned that without the care given in the adult home his substance abuse could arise once more.

Further, mentally disabled individuals who have lived on their own, like R.F. and J.G., often are victimized financially because they have demonstrated an inability to manage their money. Supported housing, which by definition provides less assistance than adult homes, likely would require the resident to

perform daily tasks—like cooking, cleaning, and basic hygiene—that they otherwise are incapable of performing and that adult home staff currently handles. To make matters worse, mentally disabled persons who have lived on their own often fail to keep up their medicine regime, which only exacerbates their mental condition and makes them more vulnerable to harm.

D. Adult Homes Provide The Families With The Security Of Knowing Their Loved One Will Be Cared For If The Families No Longer Can Do So.

A common concern, particularly for parents of mentally disabled adults, is how their relative will receive proper care if the parents pass away or otherwise are unable to provide the required care. J.G.'s case is a textbook example[6]. J.G.'s father devoted thirty years to J.G.'s care, but after his death, the surviving family members found it impossible to provide that level of care. They turned to an adult home where, over the last decade, J.G. has learned to become more independent and has thrived. The larger community setting of an adult home has provided residents such as J.G. and S.A. with opportunities for beneficial social interaction that their families never thought possible.

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6 But J.G.'s case is by no means unique. Many of the Families supporting this brief indicated that they and their extended family have the same concerns for the future care of their mentally disabled relative.

Supported housing may not provide that same level of comfort. With fewer residents living there, a supported housing arrangement will have a smaller revenue stream to provide needed services and keep them economically viable. Given the economies of scale attendant with adult homes, a high level of services and resources are available to the residents. However, the costs of living in supported housing are borne by fewer residents, which could threaten the availability of vital services—such as access to medical care or even transportation to medical appointments. The resulting "less-structured" environment may impose a level of responsibility for which many residents may not be ready, or even capable, of accepting. And while the Families may be able to compensate for these shortfalls with their own money and care, there will come a time when they can no longer do so. For these Families, the security of adult homes provides a measure of comfort that supported housing arrangements simply cannot.

But there is more. Supported housing contemplates the contracting provider obtaining a rental apartment in the open real estate market -- in this case, the New York City area. The term of the lease is finite and likely will not last for the duration of the resident's life. Supported housing thus could result in one or more moves for mentally disabled relatives, who find such moves highly unsettling and difficult to bear. Moreover, mentally disabled relatives in supported housing would likely receive a patchwork of service providers who may be here today, but

gone tomorrow. In contrast, adult homes offer an invaluable measure of consistency because the Families and their mentally disabled relatives know where the relative is living, what level of care to expect, and who will provide it. That consistency, in turn, means that the families and their mentally disabled relatives can focus on what is important: living with their mental disability.

IV.

CONCLUSION

Historically, the pendulum has swung from forced institutionalization to unassisted living for mentally disabled persons. To thousands of mentally disabled persons and their families, adult homes have represented an ideal middle ground where they have been able to be part of a relatively tight-knit community, while having the freedom to interact more with the general populace. At the end of the day, they are assured a place to return that has a strong support infrastructure which provides them the physical, emotional and psychological support that they require. Upholding the District Court's ruling will have the effect of closing many if not all adult homes, thus depriving the residents and their Families of the benefits they enjoy through adult homes. Accordingly, the Families respectfully urge the Court to vacate the District Court's injunction.

Dated: New York, NY
July 30, 2010

Respectfully submitted,

/s/

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SCHEDULE A

Family Members of Current Adult Home Residents
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M.B., Sister of R.B.
M.B., Brother of E.B.
A.C., Mother of J.C.
J.D., Sister of P.D.
W.D., Mother of W.D.
A.G., Brother of J.G.
H.G., Mother of I.D.
E.J., Cousin of V.B.
G.K., Brother of S.K.
G.L., Sister of S.A.
D.M., Brother of L.A.
R.N., Father of C.C.
P.P., Sister of K.T.
N.R., Sister of P.W.
K.S., Sister of K.B.
R.S., Sister of A.S.
J.V., Sister of D.K.
D.W., Sister of D.B.
T.B., Brother of J.B.
J.B., Brother of R.B.
L.B., Brother of W.B.
C.C., Mother of K.B.
M.D., Brother of J.D.
A.D., Daughter of T.D.
D.E., Mother of K.E.
D.G., Sister of J.G.
J.H., Brother of E.H.
M.J., Sister of E.S.
S.K., Sister of K.U.
M.L., Brother of A.L.
J.M., Sister-in-Law of L.M.
E.O., Sister of R.F.
J.R., Sister of R.D.
B.S., Brother of B.S.
G.S., Mother of K.S.
S.T., Brother-in-Law of F.C.
R.W., Brother of B.W.
A.Z., Sister of S.M.

CERTIFICATE OF COMPLIANCE

The foregoing brief is in 14-point Times New Roman proportional font and contains 5,089 words, and thus complies with the type-volume limitation set forth in Rules 32 and 29(d) of the Federal Rules of Appellate Procedure.

/s/
Jordan W. Siev

July 30, 2010

CERTIFICATE OF SERVICE

I, Jordan W. Siev, do hereby certify that on the 30th day of July, 2010, I served or caused to be served a copy of the attached Brief via the CM/ECF System as required under L.R. 25.1(h)(2) upon the following counsel of record:

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