18-1778, 18-1813, 18-1867, 18-1976

IN THE

United States Court of Appeals

FOR THE FIRST CIRCUIT

THE PARENT/PROFESSIONAL ADVOCACY LEAGUE; DISABILITY LAW CENTER, INC.; M.W., a minor, by his parents, L.N. and A.N., on behalf of himself and other similarly situated students,

Plaintiffs-Appellants/Cross-Appellees,

S.S., a minor, by his mother, S.Y., on behalf of himself and other similarly situated students,

Plaintiff,

—v.—

CITY OF SPRINGFIELD, MASSACHUSETTS; SPRINGFIELD PUBLIC SCHOOLS,

Defendants-Appellees/Cross-Appellants,

DOMENIC SARNO, in his official capacity as Mayor of City of Springfield; SUPERINTENDENT DANIEL J. WARWICK, in his official capacity as Superintendent of Springfield Public Schools,

Defendants.

ON APPEAL FROM A JUDGMENT AND ORDERS OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

BRIEF OF *AMICI CURIAE* ON BEHALF OF NATIONAL DISABILITY RIGHTS NETWORK, AMERICAN ASSOCIATION OF PEOPLE WITH DISABILITIES, AND NATIONAL COUNCIL ON INDEPENDENT LIVING IN SUPPORT OF PLAINTIFF-APPELLANT DISABILITY LAW CENTER, INC.

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INTEREST OF *AMICI*[1]

This brief is submitted on behalf of *amici curiae* the National Disability Rights Network, the American Association of People with Disabilities, and the National Council on Independent Living.

The National Disability Rights Network (NDRN) is the non-profit membership organization of the federally mandated Protection and Advocacy (P&A) and Client Assistance Program (CAP) agencies for individuals with disabilities. The P&A and CAP agencies were established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. There are P&As and CAPs in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands), and a P&A and CAP affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Piute Nations in the Four Corners region of the Southwest. Collectively, the P&A and CAP agencies are the largest provider of legally based advocacy services to people with disabilities in the United States.

The American Association of People with Disabilities (AAPD) works to increase the political and economic power of people with disabilities and to

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[1] This brief was prepared entirely by us and our counsel. No other person made any financial contribution to its preparation or submission.

advance their rights. A national cross-disability organization, AAPD advocates for full recognition of the rights of over 60 million Americans with disabilities.

The National Council on Independent Living (NCIL) is the oldest cross-disability, national grassroots organization run by and for people with disabilities. NCIL's membership is comprised of centers for independent living, state independent living councils, people with disabilities and other disability rights organizations. NCIL's mission is to advance the independent living philosophy and to advocate for the human rights of, and services for, people with disabilities to further their full integration and participation in society.

Amici are organizations who regularly work with P&As to aid them in their mission to provide services to individuals with mental illness under the Protection and Advocacy for Individuals with Mental Illness Act. 42 U.S.C. § 10801 et seq. *Amici* collaborate with P&As and their constituents to consider the best strategies for fulfilling their respective missions, which include seeking legal remedies for wrongs suffered by individuals with mental illness, and providing other forms of advocacy to defend the rights of those individuals. As such, *amici* have a critical interest in ensuring that the federal courts continue to acknowledge the ability of P&A organizations to bring lawsuits on behalf of their constituents.

SUMMARY OF ARGUMENT

P&A organizations, including the Disability Law Center (DLC)

provide an array of vital services to individuals with a mental illness under the Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act. 42 U.S.C. § 10801 et seq. As a P&A organization, the work of DLC necessarily includes litigation and other forms of advocacy to ensure that school-age children with mental illness have equal access to a quality public education, as required by the Americans with Disabilities Act (ADA).

Along with other essential advocacy services that P&As regularly provide, such as rights training, public exposure of abuse, and negotiation with policy makers and service providers, litigation is an important means to protect the rights of persons with mental illness wherever and whenever necessary. *Amici* submit this brief in support of DLC because it is critical that P&As have standing to bring suit in federal courts to ensure effective remedies for violations of the ADA and other rights of individuals with mental illness.

This brief demonstrates that Congress has authorized P&As to pursue litigation on behalf of their constituents in order to ensure the protection of their rights. Indeed, the plain language of the PAIMI Act makes it abundantly clear that Congress sought to vest P&As with the ability not only to investigate, document and report on the mistreatment of individuals with mental illness, but to actively seek remedies to address such mistreatment through the courts. This view is confirmed by subsequently enacted regulations. *See infra*, Part I.

Additionally, DLC satisfies the test set out by the Supreme Court in *Hunt v. Washington State Apple Advertising Commission* for associational standing for non-membership organizations. 432 U.S. 333 (1977). Indeed, federal courts nationwide (including courts within this Circuit) have routinely found that P&As have standing to sue on behalf of their constituents. *See infra*, Part II.

Finally, P&As such as DLC are uniquely positioned to advocate for their constituents' right to equal access to public facilities; such advocacy is particularly vital in the context of young people with mental illness who seek equal access to public educational facilities. *See infra*, Part IIII.

Accordingly, *amici* respectfully urge that this Court find that DLC has standing in this matter based on the fact that DLC's constituents have suffered an Article III injury in fact by being deprived of equal access to public education facilities by the City of Springfield, Massachusetts.

ARGUMENT

I. THE PAIMI STATUTE WAS ENACTED BY CONGRESS TO AUTHORIZE P&A ORGANIZATIONS TO INVESTIGATE ABUSE AND NEGLECT OF PERSONS WITH MENTAL ILLNESS AND TO PURSUE REPRESENTATIVE LITIGATION ON THEIR BEHALF.

Congress enacted the PAIMI Act in the mid-1980s in response to the abuse and neglect of individuals with mental illness when they sought care and treatment. *See* S. Rep. No. 109, 99th Cong., 1st Sess. 2-3 (1985). Congress determined that such conditions created "a need for an advocacy system

independent of any service provider[.]" *Id.* at 2. As Congress wisely determined, the "limited authority of advocates" and the fact that existing protective systems were "not… sufficient for protecting the mentally ill" required legislation to "affirm and enforce the rights of the mentally ill[.]" *Id.* at 2-3.

The PAIMI Act grew out of earlier legislation passed to protect individuals with developmental disabilities. Responding to reports in the mid-1970's of severe abuse at a school for students with developmental disabilities disabled, Congress passed the Developmental Disabilities Assistance and Bill of Rights Act (DD Act) in 1975. *See* 42 U.S.C. § 6012 (1976); S. Rep. No. 1297, 93d Cong., 2d Sess. 59 (1974). For a state to receive federal funding for other services under the DD Act, Congress required that the state create and maintain a P&A system to "protect and advocate the rights of individuals with developmental disabilities." 42 U.S.C. § 15043(a).

Recognizing that individuals with mental illness are potentially vulnerable and were experiencing legal deprivations, Congress enacted the PAIMI Act to expand the mission of the P&A system to encompass the protection of individuals with mental illness and authorized additional funds to the P&A systems for this purpose. 42 U.S.C. §§ 10802(2), 10803, 10827; *see also* Protection and Advocacy for Mentally Ill Individuals Act of 1986, Pub. L. No. 99-319, 100 Stat. 478 (May 23, 1986); last amended by Children's Health Act of 2000, Pub. L. No.

106-310, § 3206, 114 Stat. 1101, 1194, (Oct. 17, 2000) (changing the name of the program to the Protection and Advocacy for Individuals with Mental Illness Act). Two provisions of the PAIMI Act particularly empower P&As to advocate on behalf of their constituents.

First, P&As have the authority to monitor facilities and locations where services are provided to individuals with mental illness and developmental disabilities, which includes the right to reasonable unaccompanied access to such individuals. 42 U.S.C. § 15043(a)(2)(H); 42 C.F.R. § 51.42(b) - (d). Under the PAIMI and DD Acts, P&A organizations also "have the authority to investigate incidents of abuse and neglect[.]" 42 U.S.C. § 10805(a)(1)(A) (the PAIMI Act), 42 U.S.C. § 15043(a)(2)(B) (the DD Act); *see also* 42 U.S.C. § 10805(a)(4)(B)(iii) (the PAIMI Act provision authorizing access to records), 42 U.S.C. § 15043(a)(2)(I)(iii)(II) (the DD Act provision authorizing access to records).

Second, Congress gave P&As the power to pursue legal and other remedies to protect and advocate on behalf of individuals with mental illness. The plain language of the PAIMI Act confers on P&As the authority to act in a representative capacity and bring legal actions on behalf of their constituents. P&A organizations "shall have the authority to pursue administrative, legal, and other appropriate remedies or approaches to ensure the protection of individuals with mental illness[.]" 42 U.S.C. § 10805(a)(1)(B), 42 U.S.C. § 15043(a)(2)(A)(i);

see also Virginia Office for Prot. & Advocacy v. Stewart, 563 U.S. 247, 250-1 (2011) ("Under the DD and PAIMI Acts… in addition to pressing its own rights, a P&A system may pursue administrative, legal, and other remedies on behalf of those it protects[,]" and noting that, pursuant to such authorization, "[Virginia's P&A organization] enjoys authority to litigate free of executive-branch oversight.") (internal citations and quotation marks omitted).

The P&A program's legislative history further demonstrates Congressional intent to authorize P&As to sue on behalf of individuals with mental illness. The PAIMI and DD Acts contain identical language authorizing P&As to pursue legal remedies on behalf of their constituents. Indeed, the PAIMI Act was directly modeled on the DD Act. *Compare* 42 U.S.C. § 15043(a)(2)(A)(i) (DD Act) *with* 42 U.S.C. § 10805(a)(1)(B) (PAIMI Act). Amending the DD Act in 1993, the Senate stated that it had reviewed the statute's authorization for P&As to sue and determined that P&As clearly have standing to sue in their own right:

> The Committee heard testimony about the waste of scarce resources that are expended on *litigating the issue of whether P&A systems have standing to bring suit*. The Committee wishes to make it clear that we have reviewed this issue and have decided that no statutory fix is necessary because *the current statute is clear that P&A systems have standing to pursue legal remedies* to ensure the protection of and advocacy for the rights of individuals with development disabilities within the State.

S. Rep. No. 120, 103d Cong., 1st Sess. 39-40 (1993), *reprinted in* 1994

U.S.C.C.A.N. 164, 202-03 (emphasis added).[2]

The Senate report also expressly approved two district court decisions holding that P&As have standing to sue for injuries imposed upon their constituents. *Id.* (citing *Goldstein v. Coughlin*, 83 F.R.D. 613, 614 (N.D.N.Y. 1979) (noting Congressional intent in the DD Act to provide P&As with standing to sue on behalf of their constituents); *Rubenstein v. Benedictine Hosp.*, 790 F. Supp. 396, 409 (N.D.N.Y. 1992) ("Given the broad remedial purposes of the [DD] Act, and the statutory language apparently conferring a right upon entities… to pursue legal remedies such as those sought through the present lawsuit, the defendants' motion to dismiss… for lack of standing is denied."); *see also* 132 Cong. Rec. H2642-02, May 13, 1986 (statement of Rep. Waxman) (stating that in the PAIMI Act "[i]t is also clear that the conferees do not intend for questions of standing or jurisdiction to limit the effectiveness, range, or forums in which [P&As] can work").

It is well-settled that Congress may grant standing to a party to represent the rights of persons who have suffered an Article III injury in fact.

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[2] *See Branch v. Smith*, 538 U.S. 254, 281 (2003) ("If a thing is contained in a subsequent statute, be within the reason of the reason of a former statute, it shall be taken to be within the meaning of that statute… and if it can be gathered from a subsequent statute *in pari materia*, what meaning the legislature attached to the words of a former statute, they will amount to a legislative declaration of its meaning, and will govern the construction of the first statute.") (internal citations and quotation marks omitted).

Gladstone Realtors v. Vill. of Bellwood, 441 U.S. 91, 100 (1979) ("Congress may, by legislation, expand standing to the full extent permitted by Art. III, thus permitting litigation by one 'who otherwise would be barred by prudential standing rules.'") (internal citation omitted). It is abundantly clear that Congress chose to bestow such standing upon P&As when passing the PAIMI and DD Acts.

Reflecting Congress' clear intention to confer standing upon P&As to sue on behalf of persons with mental illness, implementing regulations promulgated by the Department of Health and Human Services ("HHS") pursuant to the PAIMI Act permit funds allotted under the Act to be used by P&As to litigate in order to "redress incidents of abuse or neglect, discrimination, and other rights violations." 42 C.F.R. § 51.6(f) ("Allotments may be used to pay the… costs incurred by a P&A system [1] in bringing lawsuits in its own right to redress incidents of abuse or neglect… and other rights violations impacting on individuals with mental illness and [2] when it appears on behalf of named plaintiffs or a class of plaintiffs for such purposes."). This specific authorization of P&As to assert the rights of their constituents in court is "sufficient to rebut the usual presumption (in the statutory context, about Congress' intent) that litigants may not assert the rights of absent third parties." *United Food & Commercial Workers Union Local 751 v. Brown Grp., Inc.*, 517 U.S. 544, 557 (1996).

HHS has further clarified that violations of statutory or constitutional

rights may constitute "abuse" as defined by the PAIMI Act. Requirements Applicable to Protection and Advocacy of Individuals with Mental Illness, 62 Fed. Reg. at 53551 ("when an individual's rights… are repeatedly and/or egregiously violated, this constitutes abuse."). According to HHS, the determination of whether a violation of one's rights has risen to the level of "abuse" contemplated by the PAIMI Act is left to the discretion of P&As:

> The Department declines the opportunity of defining the threshold at which a violation of an individual's rights constitutes abuse, leaving that decision to the system which will have intimate knowledge of the situation based on its monitoring of facilities and its discussion with individuals with mental illness.

Id.

Because it is the federal agency tasked with administering the PAIMI Act, HHS's interpretation of the Act is due substantial deference. *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843-44 (1984). HHS has expressed the view that "without showing injury to itself, a P&A system does have standing to bring suit on behalf of" its constituents. *See* Requirements Applicable to Protection and Advocacy of Individuals with Mental Illness (Final Rule), 62 Fed. Reg. 53,548, 53,553-54 (Oct. 15, 1997).

In this capacity, P&As provide significant aid to the federal government in the enforcement of laws designed to protect the rights of persons with mental illness. *See, e.g.*, *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205,

211 (1972) (where the government's ability to enforce civil rights laws is limited, the "main generating force must be private suits in which… complainants act not only on their own behalf but also 'as private attorneys general in vindicating a policy that Congress considered to be of the highest priority[.]'") (internal citation omitted).

The legislative history of the PAIMI and DD Acts, along with subsequent implementing regulations promulgated by HHS, demonstrate the clear Congressional intent to confer statutory standing upon P&As to litigate on behalf of their constituents. Accordingly, insofar as the Court finds that the constitutional requirements for Article III standing have otherwise been met in this matter (and they have), this Court should affirm the District Court's holding regarding the validity of P&A standing for DLC.

II. P&A ORGANIZATIONS SATISFY THE REQUIREMENTS LAID OUT FOR ASSOCIATIONAL STANDING BY THE SUPREME COURT OF THE UNITED STATES. DLC HAS ASSOCIATIONAL STANDING IN THE INSTANT MATTER.

P&As also have associational standing under the Supreme Court's decision in *Hunt v. Washington State Apple Advert. Comm'n*. 432 U.S. 333, 343 (1977). In *Hunt*, the Court laid out requirements for an organization to have standing to sue on behalf of its constituents: (1) its members must "have standing to sue in their own right," (2) "the interests it seeks to protect [must be germane] to

[its] purpose," and (3) "neither the claim asserted nor the relief request [can require] the participation of individual members" of the organization. *Id.* The Court's third requirement is a prudential one and may be abrogated by statute. *See United Food & Commercial Workers Union v. Brown Grp, Inc.*, 517 U.S. 544, 552-53 (1996). The PAIMI Act is an explicit congressional abrogation of this requirement by statute. *See id.* at 553.

DLC works to protect and advocate on behalf of the rights of "individuals with mental illness who are receiving care or treatment" in Massachusetts. 42 U.S.C. § 10805(a)(1)(B). The Supreme Court made clear in *Hunt* that, regarding organizations that do not feature voluntary membership, the question of whether such organizations qualify for associational standing turns on whether the organization asserting standing "[i]n a very real sense… represents [its constituents] and provides the means by which they express their collective views and protect their collective interest[.]" *Hunt*, 432 U.S. at 345. The PAIMI Act put into place an organizational structure for P&As that satisfies *Hunt*'s requirement.

P&A actions are guided by PAIMI Advisory Councils. The PAIMI Act requires that sixty percent (60%) of the PAIMI Council's members are persons "who have received or are receiving mental health services," or the family members of such individuals. 42 U.S.C.§ 10805(a)(6)(B). Moreover, the PAIMI Act stipulates that "[i]n States in which the governing authority [of a P&A

organization] is organized as a private non-profit entity with a multi-member governing board," as is the case with DLC, "such governing board shall be selected according to the policies and procedures of the system. The governing board shall be composed of members… who broadly represent or are knowledgeable about the needs of the clients served by the system[.]" 42 U.S.C.§ 10805(c)(1)(B)(i). Finally, the PAIMI Act mandates that P&As put certain procedures in place to ensure that their constituents have insight into how they are run and the ability to provide input, feedback, and to raise any grievances or concerns. 42 U.S.C.§ 10805(a)(8) ("[P&As shall] on an annual basis, provide the public with an opportunity to comment on the priorities established by, and the activities of, the system[.]"); 42 U.S.C.§ 10805(a)(9) ("[P&As shall] establish a grievance procedure for clients or prospective clients of the system to assure that individuals with mental illness have full access to the services of the system and for individual who have received or are receiving mental health services, family members of such individuals with mental illness, or representatives of such individuals or family members[.]"). Thus, it is clear that P&A organizations, "in a very real sense," represent individuals with mental illness and provide "the means by which they express their collective views and protect their collective interest[.]" *Hunt*, 432 U.S. at 345.

It is incontrovertible that the first and second requirements of *Hunt*

have been satisfied – DLC's members have standing to sue for equal access to public school facilities in the City of Springfield, Massachusetts, and the interests DLC seeks to protect (the rights of children with a mental illness) are manifestly germane to its purpose.[3] And while it bears repeating that the third *Hunt* requirement is a prudential one that Congress abrogated by passing the PAIMI Act, this matter does not require the participation of DLC's individual constituents. DLC may satisfy the third *Hunt* requirement if "[t]he claims asserted by plaintiffs may be resolved by [the court] answering common questions of law without individualized proof[.]" *Joseph S. v. Hogan*, 561 F. Supp. 2d 280, 308 (E.D.N.Y. 2008). In this matter, the courts have the authority to cure the City of Springfield, Massachusetts's violations of the ADA without requiring the individual participation of students with a mental illness. No individualized determination is required in order to grant the relief requested by DLC.

Numerous federal courts have held that P&As have standing to sue on behalf of their constituents. *See, e.g.*, *Doe v. Stincer*, 175 F.3d 879, 886 (11th Cir. 1999); *Oregon Advocacy Center v. Mink*, 322 F.3d 1101 (9th Cir. 2003); *Disability Advocates, Inc. v. Paterson*, 598 F. Supp. 2d 289, 307 (E.D.N.Y. 2009) ("It is well-established in this district that P&A organizations have standing to sue on behalf of their constituents[.]"); *Laflamme v. New Horizons, Inc.*, 605 F. Supp. 2d 378, 395-7

[3] *See infra*, Part III.

(D. Conn. 2009) ("This conclusion that [party P&A] has satisfied the prerequisites for organizational standing is consistent with the many other decisions finding that P&A agencies meet the three *Hunt* elements.") (citing *Disability Rights Wisconsin, Inc. v. Walworth Cty. Bd. of Supervisors*, 522 F.3d 796 (7th Cir. 2008)).

Indeed, courts within the First Circuit have held that P&As have standing to sue on behalf of their constituents. *See, e.g.*, *Risinger v. Concannon*, 117 F. Supp. 2d 61, 69-70 (D. Me. 2000) ("Federal courts interpreting the [DD Act and the PAIMI Act] have uniformly concluded that the relevant provisions confer standing to sue on behalf of individuals with mental illness and developmental disabilities.") (internal citations omitted); *accord Disability Law Ctr. v. Mass. Dep't of Corr.*, 960 F. Supp. 2d 271, 276 (D. Mass. 2012) (noting that, "[a]s the Massachusetts agency designated pursuant to [the PAIMI Act], DLC is authorized to pursue legal and other remedies to ensure that individuals with mental illness are protected from abuse and neglect.").[4]

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[4] As explained by the Plaintiffs-Appellants in their brief on the standing issue, little deference is due to the decisions in *Association for Retarded Citizens of Dallas v. Dallas County Mental Health & Mental Retardation Center Board Of Trustees*, 19 F.3d 241 (5th Cir. 1994) (holding, with little analysis, that P&A lacked standing and failed to satisfy the first prong of *Hunt* because its constituents did not guide the P&A's efforts) and *Missouri Protection and Advocacy Services, Inc. v. Carnahan*, 499 F.3d 803 (8th Cir. 2007) (finding that P&A lacked associational standing under *Hunt* because it did not feature membership and required individual participation). Critically, the Fifth Circuit declined to extend associational standing to a P&A only where it found that the organization's clients were "unable to participate in and guide the organizations efforts." *Retarded*

This Court should confirm the long held view in the First Circuit that P&As may obtain associational standing pursuant to *Hunt* and otherwise have the ability to obtain Article III standing to sue on behalf of their constituents.

III. P&A ORGANIZATIONS ARE UNIQUELY SITUATED TO ADVOCATE ON BEHALF OF VULNERABLE CHILDREN WITH MENTAL ILLNESS, AND HAVE REGULARLY DONE SO TO ENSURE THAT THEIR RIGHTS ARE RESPECTED BY SCHOOLS.

Children with mental illness are particularly vulnerable and may have a limited or impaired capacity to assert their rights. In acknowledgment of this reality, and of the need to expand P&A services, Congress amended the PAIMI Act through the Children's Health Act of 2000 in order to expand the PAIMI Act's coverage to individuals with mental illness who "live in a community setting, including their own home." Pub. L. No. 106-310, Div. B, Title XXXII, § 3206(b)(1)(B), 114 Stat. 1101 (codified at 42 U.S.C. § 10802(4)(B)(ii)). This change was intended to, among other things, promote and strengthen community-based mental health services for children. S. Rep. No. 106-196, at 6 (1999).

Citizens, 19 F.3d at 244. On the other hand, the Eighth Circuit's rejection of P&A standing in one instance was predicated on the lack of constituent involvement in the governance of the organization at issue. *Mo. Prot. & Advocacy Serv.*, 499 F.3d at 810. Unlike those cases, DLC has amply alleged the involvement of its constituents in its governance. *See, e.g.*, *Advocacy Ctr. For Elderly and Disabled v. Louisiana Dep't of Health and Hosp.*, 731 F. Supp. 2d 583, 595 (E.D. La. 2010) (holding that P&A has associational standing under *Hunt*, distinguishing the Fifth Circuit's decision in *Retarded Citizens* because "the PAIMI organizations are required by federal statute to give its constituents a central role in its management and activities.").

In the interest of protecting the rights of children with a mental illness within their communities, P&As have regularly gone to the federal courts to affirm their right of access to vulnerable children. *See, e.g.*, *Connecticut Office for Prot. & Advocacy For Persons With Disabilities v. Hartford Bd. of Educ.*, 464 F.3d 229, 240 (2d Cir. 2006) (Sotomayor, J.) (school was a facility which P&A must be given reasonable access to under the PAIMI Act); *Disability Law Ctr. Of Alaska, Inc. v. Anchorage Sch. Dist.*, 581 F.3d 936, 939-40 (9th Cir. 2009) (P&A granted access to special education class at a school pursuant to its authority under the PAIMI and DD Acts); *Disability Rights Wis., Inc. v. Wis. Dep't of Pub. Instruction*, 463 F.3d 719, 726 (7th Cir. 2006) (schools that provide special education programs "easily meet[] the definition of a facility" providing care under the DD Act sufficient to support authority of P&A). In addition, P&As have played a significant role in advancing compliance with ADA obligations, at issue in this litigation. *See* U.S. Dep't of Justice, *Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and* Olmstead v. L.C. (June 22, 2011), http://www.ada.gov/olmstead/q&a_olmstead.htm ("Congress gave P&As certain powers, including… the authority to pursue legal, administrative, or other remedies on behalf of individuals with disabilities. P&As have played a central role in ensuring that the rights of individuals with disabilities are protected, including

individuals' rights under title II's integration mandate. The Department of Justice has supported the standing of P&As to litigate *Olmstead* cases.").

That P&As have focused and continue to focus on redressing wrongs done to children with mental illness should come as no surprise. A recent HHS report on the enforcement of the PAIMI Act highlighted the importance of P&As' work on behalf of potentially vulnerable children with mental illness, noting that eighty-five percent of P&As include monitoring and investigation of the treatment of children in schools among their priority objectives. Substance Abuse and Mental Health Servs. Admin., HHS Pub. No. PEP12-EVALPAIMI, *Evaluation of the Protection and Advocacy for Individuals With Mental Illness (PAIMI) Program, Phase III: Evaluation Report* (2011), at 69. This priority focus is highly appropriate given the incidence of mental health risks faced by children. Approximately 13.3 percent of school-age children nationwide receive some treatment for a mental, behavioral, or emotional disorder. Mark Olfson, Benjamin G. Druss & Steven C. Marcus, *Trends in Mental Health Care among Children and Adolescents*, 372 New. Eng. J. Med. 2029 (2015); *see also*, President's New Freedom Comm'n on Mental Health, HHS Pub. No. SMA-03-3832, *Achieving the Promise: Transforming Mental Health Care in America 2* (2003). Many of these children spend a significant portion of their day in the care of school authorities and professionals such as teachers, counselors, nurses, and administrators. It is

undeniable that much screening and support services for children with mental illness are provided by schools. *Id.* at 58, 62-64.

It is essential that P&As have the ability to pursue legal remedies in defense of the rights of children with mental illness. As numerous authorities have recognized, there is perhaps no group of individuals simultaneously as vulnerable and potentially less able to assert their rights on their own behalf. It is imperative that this Court reaffirm the ability of P&As to sue on behalf of their constituents, and to confirm that DLC has such standing in the instant matter.

CONCLUSION

For the foregoing reasons, *amici* respectfully urge that the District Court's holding that, as a Protection & Advocacy organization, DLC has standing to sue on behalf of persons with mental illness should be affirmed.

Dated: March 4, 2019

SCHULTE ROTH & ZABEL LLP

By: _____/s/ *Howard Schiffman*_____

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), the undersigned certifies that this brief complies with the applicable type-volume limitations of Federal Rule of Appellate Procedure 32(a). This brief was prepared using a proportionally spaced type (Times New Roman, 14 point). This brief contains 4,533 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This certificate was prepared in reliance on the word-count function of the word-processing system (Microsoft Word 2016) used to prepare this brief.

By: __/s/ *Howard Schiffman*_____

Howard Schiffman

Dated: March 4, 2019

CERTIFICATE OF SERVICE

I hereby certify that, on March 4, 2019, I served the foregoing **Brief of *Amici Curiae* on Behalf of National Disability Rights Network, American Association of People with Disabilities, and National Council on Independent Living In Support of Plaintiff-Appellant Disability Law Center, Inc.** upon all relevant counsel registered as participants of the CM/ECF System, including:

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Dated: March 4, 2019