

02-7876

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

MAKE THE ROAD BY WALKING, INC.,
Plaintiff-Appellant,

IRANIA SANCHEZ and EMILIO VEGA, on behalf of themselves and all others
similarly situated,
Plaintiffs,

v.

JASON A. TURNER, as Administrator of the Human Resources Administration
of the City of New York,
Defendant-Appellee

On Appeal From The United States District Court
For The Southern District Of New York

**BRIEF OF *AMICUS CURIAE*
COMMUNITY SERVICE SOCIETY OF NEW YORK
IN SUPPORT OF PLAINTIFF-APPELLANT MAKE THE ROAD BY WALKING,
URGING REVERSAL**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, COMMUNITY SERVICE SOCIETY OF NEW YORK, *amicus curiae* herein, makes the following disclosures:

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STATEMENT OF INTEREST¹

The Community Service Society of New York (“CSS”) is a private, non-profit social services organization that for more than 150 years has confronted the causes and symptoms of poverty in New York City. CSS addresses issues in the areas of housing, income security, education, health care, and community development through research, direct services, volunteerism, training, program development, advocacy and litigation. CSS’s work is informed in large part by its policy department, which identifies emerging trends and problems faced by poor New Yorkers, its Public Benefits Resource Center, which educates advocates to assist families and individuals in navigating the complexities of the government benefits system, and its direct social services program, which helps individual New Yorkers in need. Through these programs and others, CSS has a keen understanding of the difficulties that poor New Yorkers face in negotiating New York City’s complicated public benefits system. Likewise, CSS knows the difficulties that the City has administering its welfare system accurately, as well as the human costs that result from eligible people being wrongly denied the subsistence benefits that they desperately need.

¹ This *amicus* brief is filed with the consent of all parties to this appeal.

ARGUMENT

Advocates are essential to the fair, efficient, and accurate administration of a complex, confusing, and constantly evolving welfare system. Advocates perform critical functions within the welfare offices. They help claimants navigate the application process, discuss with them their eligibility and their rights within the system, provide them with assistance in enforcing those rights, and act as liaisons between claimants and welfare workers, who are oftentimes too overwhelmed to communicate detailed program requirements or focus on the individualized needs of each claimant. These functions are not only compatible with, but are essential to, important purposes of welfare offices: providing benefits and services to help eligible individuals obtain and maintain employment, meeting the subsistence needs of unemployable people, and enabling children to live at home with their parents or other relatives. Indeed, without the assistance of advocates within the welfare offices, the City would be hard-pressed to achieve these purposes, given the enormous difficulties the City faces in accurately and fairly administering its complicated welfare program. The result of these difficulties is that the most vulnerable New Yorkers suffer, and the City wastes valuable resources correcting its errors. Thus, advocates' presence in the welfare offices clearly furthers the welfare

offices' primary purposes.

An understanding of how advocates further these purposes is critical to the analysis of Plaintiff-Appellant's First Amendment argument. This argument holds that because advocacy is protected by the First Amendment, *see Legal Serv. Corp. v. Velazquez*, 531 U.S. 533, 548 (2001); *In re Primus*, 436 U.S. 412, 431-32 (1978); *NAACP v. Button*, 371 U.S. 415, 434, 437 (1963), because the City allows advocates accompanied by claimants into welfare office waiting rooms, and because advocates help the City fulfill primary purposes of welfare offices, the City's exclusion of Make the Road by Walking is subject to heightened scrutiny.² To elucidate the third prong of this argument, *amicus* focuses herein on advocates' critical role in assisting the welfare offices to meet their goal.

I. PRIMARY PURPOSES OF NEW YORK CITY'S WELFARE OFFICES ARE TO PROVIDE BENEFITS AND OTHER SERVICES TO ENABLE ELIGIBLE INDIVIDUALS TO GET AND KEEP EMPLOYMENT, AND TO MEET THE SUBSISTENCE NEEDS OF UNEMPLOYABLE PEOPLE, INCLUDING CHILDREN.

Welfare offices, in particular the City's "Job Centers," are where the City fulfills its goal of "meet[ing] participants' emergency and temporary

² *Amicus* adopts Plaintiff-Appellant's First Amendment analysis as it relates to the City's welfare offices.

financial needs, while supporting their efforts to obtain a job and achieve financial independence.” Human Resources Administration, Overview (available at http://www.nyc.gov/html/hra/html/abouthra_overview.html).

The necessity of public assistance benefits to enable many poor people to move into self-supporting work is well-documented. For example, the U.S. General Accounting Office (“GAO”) reports that child care subsidies are an important factor in determining a poor woman’s ability to find and keep a job. GAO, *Welfare Reform: States Efforts to Expand Child Care Programs*, GAO/HEHS-98-27, 4 (1998) (available at <http://www.gao.gov/archive/1998/he98027.pdf>). See also Heather Boushey, Economic Policy Institute, *Staying Employed After Welfare: Work Supports and Job Quality Vital to Employment Tenure and Wage Growth* 6 (June 2002) (reporting that child care subsidies increase employment rates, retention and earnings). Similarly, the GAO notes that “one-time cash payments can help families catch up on rent, repair the car, or get through a medical emergency, thereby allowing them to more readily get or keep a job.” GAO, *Welfare Reform: States’ Implementation and Effects on the Workforce Development System*, GAO/T-HEHS-99-190, 8 (1999) (available at <http://www.GAO.gov>).

The City, too, recognizes the importance of providing eligible

individuals with welfare benefits in order to help them get and keep work. In its recommendations to Congress regarding reauthorization of the federal welfare law, the City noted that “[some] families are doing all they can to achieve self-sufficiency, but some assistance is necessary to help them stay at work.” New York City Human Resources Administration, *Recommendations on Reauthorization of the Personal Responsibility and Work Reconciliation Act of 1996 and Related Legislation* 2 (May 2002) (available at http://www.nyc.gov/html/hra/html/tanf_proposal.html). Specifically,

[m]any people left welfare for low-wage jobs with little or no benefits. A medical or other emergency could send them back to public assistance. Others need transitional benefits - child care, transportation, housing - to remain in the workforce or boost themselves above the poverty line. We must continue the investment that TANF has made in these newly productive members of the workforce, supporting low-income workers and helping them improve their skills so that they can continue to work and move their families out of poverty.

Id. at 1. Similarly, the City recognizes that “[f]ood stamps can be an important tool for supporting those in low-wage jobs to remain in the workforce.” *Id.* at 2.

Another purpose of the welfare offices is to provide benefits and services to the increasing proportion of the people using HRA’s welfare offices who are not currently employable and may never be. *Id.* at 3. *See*

also Leslie Kaufman, *New York Says Those on Welfare are Increasingly Hard to Employ*, N.Y. Times, Nov. 29, 2002, at A-1; ; 12 N.Y. Comp. Codes R. & Reg. § 1300.2(b) (exempting various categories of people from work requirements). Children are one category of welfare recipients who are not expected to work. An important purpose of the welfare offices is to “provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives.” 42 U.S.C. § 601(a)(1).

It is thus clear that to achieve its goals of helping welfare recipients obtain and keep employment, of meeting the subsistence needs of unemployable people, and of helping children stay with their families, the City must provide benefits and services to qualified people. To this end, federal and state law mandate that the City administer welfare benefits fairly and efficiently.³ For example, the federal welfare law requires that the City’s welfare plan include “objective criteria for the delivery of benefits and the determination of eligibility and for fair and equitable treatment.” 42 U.S.C. § 602(a)(1)(B)(iii). The law requires the City to permit people in need of public assistance to apply for that assistance. Thus, the City must encourage households to file an application for food stamps on the same day

³ Local social service districts are responsible for administering New York State’s welfare program. Thus, federal and state obligations apply to New York City. *See, e.g.*, N.Y. Soc. Serv. Law §§ 61; 95(3); 344.

they contact the food stamps office, 7 C.F.R. §§ 273.2(c)(1)-(2), and must make food stamps application forms readily accessible to potentially eligible households, 7 C.F.R. § 273.2(c)(3). *See also* 7 U.S.C. § 2020(e)(2)(B)(iii). The City must also “provide that all individuals wishing to make application for medical assistance . . . have the opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals.” 42 U.S.C. § 1396a(a)(8). New York State regulations similarly provide that “[a]ny person has the right to make application for that form of public assistance or care that he believes will meet his needs.” 18 N.Y. Comp. Codes R. & Reg. § 350.3(a).

The City is also required to provide individuals seeking assistance with the necessary information. New York State regulations impose the basic obligation that the City’s welfare agency “shall . . . provide applicants and recipients . . . with clear and detailed information concerning programs of public assistance, eligibility requirements therefore, methods of investigation and benefits available under such programs.” 18 N.Y. Comp. Codes R. & Reg. § 351.1(b)(1). Federal and state law require the welfare agency to provide public assistance applicants and recipients with many types of specific information, as well, including information regarding: (1) the federal food stamp program’s eligibility requirements and administrative

procedures, 7 C.F.R. §§ 272.5; 273.2(c)(4); 273.2(e)(1); (2) applicants' right to reapply for food stamps at any time, 7 C.F.R. § 273.2(c)(6); (3) Medicaid eligibility, criteria, and services, whenever applicants request such information, 42 C.F.R. § 435.905(a)(1)-(3); (4) the right not to have benefits sanctioned when recipients fail to meet requirements due to an inability to find child care, 45 C.F.R. §§ 98.33(b); 261.56(c); and (5) eligibility requirements for whatever types of assistance the individual is applying for, and the other types of assistance that the applicant appears eligible for. 18 N.Y. Comp. Codes R. & Reg. § 350.7(a). Providing this information, and providing benefits to qualified people, are, thus, important purposes of HRA's welfare offices.

II. GIVEN THE ENORMOUS DIFFICULTIES OF ADMINISTERING A LARGE WELFARE SYSTEM, INCLUDING THE STRESS PLACED ON OVERBURDENED WELFARE WORKERS, THE CITY'S WELFARE OFFICES OFTEN FAIL TO ACHIEVE THEIR PURPOSES.

New York City's welfare system is inherently complicated, not well understood by claimants or welfare workers, and guaranteed to generate a certain level of error. These difficulties are due in large part to the complexities of the law governing the system and the discretion and enormous responsibility vested in overburdened and undertrained front-line

workers, resulting in an extremely high rate of error with a devastating impact on those in need of assistance.

- A. The law governing the City's welfare system is fraught with complexity.

New York City's welfare system is constructed of a complex quilt of federal and state statutes, regulations and policies. The City's Human Resources Administration ("HRA"), the City agency charged with overseeing the City's welfare program, is responsible for administering several statutory schemes to provide food stamps, Medicaid and two different cash assistance programs -- Family Assistance and Safety Net Assistance --, as well as other benefits, including child care assistance, all in accordance with relevant state and federal requirements. *See, e.g.*, N.Y. Soc. Serv. Law § 95(3) (devolving responsibility to the City for administration of the food stamp program); N.Y. Soc. Serv. Law § 344 (devolving responsibility to City for administration of the Family Assistance program).

HRA itself recognizes the complexity and difficulties inherent in administering this welfare system. This year, in its federal welfare reauthorization recommendations, HRA urged simplification of the laws governing public assistance. Specifically, HRA noted that:

The wide range of definitions and requirements for income, resources, household composition, etc. among related programs

creates tremendous operational challenges in determining and reporting benefit eligibility in an efficient and effective manner. The current patchwork approach is confusing for program staff and participants alike, leads to increased errors and reduced customer satisfaction, and increases administrative costs.

Recommendations on Reauthorization of the Personal Responsibility and Work Reconciliation Act of 1996 and Related Legislation, at 11.

Outside observers agree. For example, in a 1999 report exploring the internal functioning of the state agency which oversees the City's welfare system, the New York State Bar Association described the system as "very much under stress," as it was ten years earlier, due, in part, to the "complexity of governing law." The New York State Bar Association, *Report of the Special Committee on Administrative Adjudication* 44 (Oct. 21, 1999) (quoting The New York State Bar Association, *Report of the Task Force on Administrative Adjudication* 170 (July 14, 1988)).

Courts, too, recognize the difficulties of administering a complicated public benefits system. For example, this Court recently called the Medicaid statute one of the "most intricate ever crafted by Congress." *Lewis v. Thompson*, 252 F.3d 567, 569 (2d Cir. 2001) (quoting *Lewis v. Grinker*, 965 F.2d 1206, 1216 (2d Cir. 1992)). Thus, it is well-recognized that the complex legal environment governing the City's government benefits system is ripe for mistakes and inefficiency.

- B. The administration of the welfare system, too, is complicated, and vests vast discretion in already overburdened welfare workers.
 - 1. The rules and requirements governing welfare eligibility and the application process are confusing.

The operation of the City's welfare system is confusing to workers within the welfare offices and to individuals seeking assistance alike. In order to obtain benefits in New York City, claimants must fulfill complicated requirements which include traveling to meetings with welfare workers throughout the City and complying with onerous and confusing documentation requirements.

First, to complete the application process, welfare applicants must meet with many welfare workers. Applicants must meet with a "Financial Planning Unit Receptionist," a "Financial Planner," and an "Employment Planner," and must engage in extensive job search activities before an "I" interview. *Reynolds v. Giuliani*, 35 F. Supp. 2d 331, 335-36 (S.D.N.Y. 1999). Once an application is filed, applicants must then travel throughout the city to meet with other workers. They must keep daily appointments to comply with work requirements and complete verification interviews, including reporting to the City's office of Eligibility Verification Review in Brooklyn. Ass'n of the Bar of the City of New York, Committee on Social Welfare, *Welfare Reform in New York City: The Measure of Success*, 56 The

Record 322, 330 (Summer 2001). Families with children applying from all five boroughs for public assistance benefits must go to the Child Support Enforcement Unit in Brooklyn, where they are required to provide information about paternity and child support. *Id.* Individuals with conditions that might limit their ability to work must attend multiple appointments for medical or psychiatric evaluations at Health Services Systems, a private agency which contracts with HRA to do such evaluations. *Id.* A missed appointment or failure to comply with a directive from any of these offices means that the applicant must start the process from scratch. *Id.*

Applicants must also fulfill numerous documentation requirements. They must provide documents such as birth certificates, marriage certificates or divorce decrees, proof of residence, tax records, statements from child care providers, unpaid medical bills, and INS documentation. See Community Service Society of New York, *Public Benefits Resource Center Manual Online* (July 2001) (available at <http://pbrcmanual.cssny.org>).

Clearly, requiring claimants to engage in such a variety of tasks and to supply the agency with such a vast amount of information leads to misunderstandings and error. For example, applicants often miss required appointments because they are not notified by welfare workers, or are given

conflicting appointments. *Reynolds*, 35 F. Supp. 2d at 347. Other applicants are terminated from benefits although they were, in fact, actively involved in the job search process. *Id.* As a result of the City's onerous application requirements, 69% of individuals seeking benefits at one welfare office were found to have left the office without filing an application. *Id.* at 343.

Add to this confusing system the fact that many claimants do not speak English, are unable to read in any language, have very little education, and are preoccupied with the pressing needs of poverty, such as where they are going to sleep that night and where their next meal will come from. *See Recommendations on Reauthorization of the Personal Responsibility and Work Reconciliation Act of 1996 and Related Legislation*, at 2 (noting that 58% of New York City's welfare caseload lacks a high school diploma, and many recipients require English classes). This makes it even more difficult for the agency and its workers to communicate to them the vast amounts of information they need to navigate the benefits system. Accordingly, New York City's welfare system is in need of help.

2. HRA vests discretion in overburdened, undertrained agency employees.

In addition to the requirements it places on individuals seeking assistance, the welfare system places tremendous burdens on welfare workers, who are often underpaid, inadequately trained, have very high

caseloads, and must adhere to the complicated legal requirements described above. The union representing many New York City welfare workers has noted that front-line staff reductions have outpaced the reduction in caseloads: “While there are less people receiving welfare, there are just as many applying or re-applying for it. For [welfare workers] this has meant increased workloads and stress . . . there is no reduction in the amount of actual work.” HRA Watch, *1180 Members Talk about the Real Deal on Welfare Reform* (July 2002) (available at <http://www.cwa1180.org/news/WelfareAsWeKnowIt.html>). In fact, recent reports show that, after a long period of decline, the number of individuals receiving public assistance in New York City is now starting to grow. See Human Resources Administration, HRA Facts (Aug.-Oct. 2002) (available at <http://www.nyc.gov/html/hra/html/hrafacts.html>). See also Raymond Hernandez and Nina Bernstein, *Welfare Rolls Grew in City Late Last Year*, N.Y. Times, Jan. 17, 2002, at B1.

And the situation is growing worse: Mayor Bloomberg, in an effort to stem a growing budget deficit, recently announced a hiring freeze after offering a lucrative early retirement deal to city workers. See Michael Cooper, *City Announces Hiring Freeze and Imposes More Cutbacks*, N.Y. Times, Oct. 29, 2002, at B-1. At HRA, 1,030 workers have taken advantage

of the early retirement offer, including those who screen clients for access to benefits and services and place clients in jobs. Jamie Katz and Jill Grossman, *Freezed Out: After Mass Retires, No New Hires*, City Limits, Nov. 4, 2002. Welfare and social work supervisors with responsibilities including fair hearings, protective services and homecare for people with AIDS, have also taken advantage of the early retirement offer. *Id.*

Those who remain face a stressful working environment. A recent profile of New York City's welfare system revealed that welfare office workers face chronic shortages of supplies, malfunctioning equipment and worker discontent. Jason DeParle, *What Welfare-to-Work Really Means*, N.Y. Times Magazine, Dec. 20, 1998, at 53-54. Offices are disorganized, and caseworkers have overwhelming caseloads. *Id.* at 54. A 1993 report by the Association of the Bar for the City of New York similarly described the significant stress placed on front-line case workers. Ass'n of the Bar of the City of New York, The Committee on Administrative Law, *Dispute Resolution in the Welfare System: Toward an End to the Fair Hearing Overload*, 48 The Record 411, 421 (1993). One center worker told the Committee, "[w]orkers and supervisors are so overwhelmed with high caseloads, double coverage and a high rate of absenteeism due to the stress

of the job, they do not always . . . explain what the client has to do in order to become eligible.” *Id.* at 423.

These overburdened workers are also undertrained, so even in the best of circumstances they are not equipped to deal with the complexities of the welfare system. For example, a state audit of the City’s welfare program found that officials and caseworkers at one of the City’s welfare offices that it visited were not aware of federal and state mandates exempting from sanctions recipients who are unable to comply with work requirements due to their inability to find appropriate child care. A-236 (Office of the State Comptroller, State of New York, Report 99-N-4, *A Status Report of Selected Aspects of the Implementation of Welfare Reform in New York City* 10 (Aug. 21, 2000)). Similarly, the Office of Civil Rights of the U.S. Department of Health and Human Services (“OCR”) recently found that New York City welfare workers were unaware of policies and procedures for assisting Limited English Proficient and hearing impaired claimants. A-91 to 106 (U.S. Dep’t of Health and Human Services, Office for Civil Rights, Letter to Commissioners Novello, *et al.*, Re: Docket No. 02-99-3130, 8 (Oct 21, 1999)).

The demands placed on welfare workers are exacerbated by the tremendous amount of discretion that the City vests in them. As stated

above, throughout the application process, individuals seeking assistance are required to meet with a series of workers with the discretion to determine eligibility. Welfare workers decide whether an applicant can work, what type of work he or she is capable of, whether the individual has access to suitable child care, and whether the applicant has a good excuse for missing an assignment or appointment. See Matthew Diller, *The Revolution in Welfare Administration: Rules, Discretion and Entrepreneurial Government*, 75 N.Y.U. L. Rev. 1121, 1148 (2000). There is little oversight of these decisions. See *id.* at 1201-07 (discussing ways in which discretionary decisions which lead to erroneous denials of benefits and unfair treatment are difficult to challenge legally because they are often not embodied in written rules or decisions).

With this increased authority comes greater responsibility for crafting individualized plans for each welfare applicant and recipient. Yet, given the already overwhelming nature of their work, welfare workers do not have the time to fully explain the options available to claimants or to assist them in making the best choices for their individual circumstances. See Evelyn Brodtkin, *Inside the Welfare Contract: Discretion and Accountability in State Welfare Administration*, 71 Soc. Serv. Rev. 1, 12-17 (1997) (discussing how discretion vested in “street-level workers” to allocate services such as job

skills and training may result in inadequate and inappropriate assessments and placements, due to the fact that case workers ration the information they provide and do not have the resources and ability to elicit and respond to all of a client's needs). *See also* Diller, 75 N.Y.U. L. Rev. at 1164-65 (discussing resistance of case workers to increased demands, including the requirement that they make more evaluative, discretionary decisions).

Thus, welfare workers are in a situation where it is virtually impossible to adequately, accurately and fairly administer the welfare system on their own.

- C. The result is lots of error, causing great harm and necessitating courts and oversight agencies to step in.

Historically, New York City has had difficulty administering its welfare program in a way that ensures that all eligible individuals are able to access the benefits they need. Indeed, the seminal case establishing the due process requirement of administrative fair hearings, *Goldberg v. Kelly*, 397 U.S. 254 (1970), was brought to address the high number of erroneous benefits terminations by the New York City welfare administration. This problem is ongoing and well-documented.

1. Through its errors, the City violates claimants' procedural and substantive rights and fails to provide information essential to claimants' ability to obtain benefits.

The City's difficulties in accurately and efficiently administering its welfare program have been detailed in a host of recent court decisions and agency actions. Likewise, outside observers have documented the City's failures in this area.

The City's inability to administer its welfare system in a fair and timely manner is highlighted by the numerous instances in which courts have needed to step in and correct the City's errors. For example, the City has been enjoined from preventing otherwise eligible individuals from obtaining food stamps, Medicaid and cash assistance by imposing unreasonable application requirements, by failing to provide notice of the denial of applications, and by failing to meet the federal requirements for providing emergency benefits, such as expedited food stamps. *Reynolds*, 35 F. Supp. 2d at 331. Moreover, courts have found that the City has failed to provide adequate notice regarding how to decline improper work assignments, *Mitchell v. Barrios-Paoli*, 687 N.Y.S. 2d 319, 323 (N.Y. App. Div. 1999), and has failed to provide claimants living with AIDS with appropriate, critical benefits and services, *Henrietta D. v. Giuliani*, 119 F. Supp. 2d 181, 209 (E.D.N.Y. 2000). *See also Morel v. Giuliani*, 927 F.

Supp. 622, 639 (S.D.N.Y. 1995) (preliminarily enjoining city to provide continuing aid while applicants and recipients await action on their requests for administrative fair hearings, and preliminarily enjoining City from further reducing staff responsible for providing continuing aid); *Brown v. Giuliani*, 158 F.R.D. 251, 267 (E.D.N.Y. 1994) (preliminarily enjoining the City to timely respond to requests for welfare benefits and special needs grants); *Hernandez v. Barrios-Paoli*, 720 N.E. 2d 866, 870 (N.Y. 1999) (enjoining HRA from requiring Division of AIDS Services and Income Support clients to undergo onerous and duplicative Eligibility Verification Review process).

Numerous reports and studies by government agencies and advocacy organizations likewise illustrate the difficulties the City faces in implementing and administering its welfare program. The Office of Civil Rights of the U.S. Department of Health and Human Services (“OCR”) recently found that HRA routinely violates the rights of low-English proficiency and hearing-impaired clients in the administration of its welfare offices. A-91 to 106 (U.S. Dep’t of Health and Human Services, Office for Civil Rights, Letter to Commissioners Novello, *et al.*, Re: Docket No. 02-99-3130 (Oct 21, 1999)). Specifically, the OCR found that welfare offices failed to provide translated documents or interpreters for individuals with

limited English-speaking ability and with hearing impairments and illegally discouraged many people from completing an application for public assistance regardless of need, in violation of federal civil rights laws. A-97 to 100.

The City has also faced noted difficulties with regard to the administration of its food stamp program. In November and December of 1998, officials from the U.S. Department of Agriculture (USDA), the federal agency responsible for overseeing state and local compliance with federal food stamp law, investigated New York City's welfare offices and found numerous violations of federal food stamp law, particularly with regard to the application process within the welfare system. See A-193 to 220 (U.S. Department of Agriculture, *New York Program Access Review, November-December 1998* (February 5, 1999)).

A recent report by the New York City Public Advocate examining the City's declining food stamp usage in view of rising usage elsewhere in the state and country found that difficulties within welfare offices, such as those identified by the USDA, contributed to this problem. Public Advocate Betsy Gotbaum, *Stamping Out Hunger: Why New York City is Falling Behind in Food Stamp Registration* 2 (2002) (available at http://www.pubadvocate.nyc.gov/pdf/stamping_out_hunger.pdf). The

Report attributed the declining usage to a complicated application procedure, procedures in welfare offices that discourage food stamp registration, and misinformation communicated by welfare offices. *Id.* at 4-6.⁴

Addressing welfare benefits as a whole, a coalition of social service agencies found that at one welfare center serving the Washington Heights and Inwood sections of Manhattan, 93% of families who reported having problems with their welfare benefits either were wrongly denied benefits when they applied or were erroneously terminated from the program. WHI Solutions 2000, *From Case to Cause: Understanding the Link between Child Welfare and Welfare Reform: Final Report to the Strategic Alliance Fund* 8-11 (June 2000).

In its study of State and City practices regarding Medicaid, the advocacy organization Care for the Homeless found that city welfare workers often provide incorrect information to applicants about who can apply for Medicaid and where to apply. Care for the Homeless, *Barriers to Medicaid: Challenges and Opportunities for New York* 21 (March 2001) (available at http://www.gulpony.org/Health/Medicaid/Barriers_to_Medicaid.PDF). The report concluded that staffing levels at

⁴ Although 1.6 million people in New York City live below the poverty line, as of June, 2002, approximately 800,000 potentially eligible New Yorkers – almost half of the potentially eligible population – were not receiving food stamps. *Stamping Out Hunger*, at 4.

Medicaid-only offices and welfare offices are inadequate to accommodate the number of applicants and application requirements. *Id.* at 23. *See also* A-237 (*A Status Report of Selected Aspects of the Implementation of Welfare Reform in New York City*, at 11) (finding that welfare workers failed to provide notices informing Medicaid recipients of their responsibilities and the programs that might be available to assist them).

Similarly, welfare workers often fail to provide claimants with information regarding their right to child care, as required under state and federal law. A study by a consortium of advocates found that 95% of parents surveyed were not told by their caseworkers that they would be exempted from sanctions if they could not work because they did not have child care. NOW Legal Defense and Education Fund, *Still Nowhere to Turn: New York City's Continuing Failure to Inform Parents About Their Child Care Rights* 4 (2001) (available at <http://www.nowldef.org/html/pub/pubs/stillnowhere.pdf>). On the contrary, almost half of the parents surveyed had been threatened by their caseworkers with sanctions if they did not find child care. *Id.* *See also* A-236 (*A Status Report of Selected Aspects of the Implementation of Welfare Reform in New York City*, at 10).

The City is also failing in its statutory obligation to provide individuals with child care assistance to help them make the transition from

welfare to work. The Community Service Society of New York studied “welfare leavers” in the South Bronx and found that New York City fails to provide, in a consistent and reliable manner, child care subsidies for these former welfare recipients. *Help or Hurdles? Experiences of Welfare Leavers in the South Bronx Accessing Subsidized Child Care* 5-7 (CSS Issue Br. No. 20, Oct. 2002) (available at <http://www.cssny.org/reports/issuebrf/no20.pdf>).

Likewise, the City fails to provide victims of domestic violence needing public benefits with assistance in accessing the necessary services to enable them to comply with welfare requirements while seeking safety from an abusive partner. A 2000 survey found that HRA fails in its statutory obligation to screen clients, inform domestic violence victims of available services, or refer self-identified clients for services. NOW Legal Defense and Education Fund, *Dangerous Indifference: New York City’s Failure to Implement the Family Violence Option* 1-2 (2000) (available at http://www.ssw.umich.edu/trapped/pubs_FVO_NYC_report.pdf). Simply put, the City experiences tremendous difficulties in administering its complex welfare system in compliance with the law.

2. The result of the City's errors is that people are denied benefits for which they are qualified, and both the human cost and the cost to the City are high.

When errors happen, and when people lack necessary information regarding welfare benefits, the consequences are terrible: individual New Yorkers suffer brutal need. Courts have long recognized that a loss of welfare benefits “may deprive an eligible recipient of the very means by which to live Since he lacks independent resources, his situation becomes immediately desperate.” *Goldberg*, 397 U.S. at 264. Indeed, “to indigent persons, the loss of even a portion of subsistence benefits constitutes irreparable injury.” *Morel*, 927 F. Supp. at 635. *See also Reynolds*, 35 F. Supp. 2d at 339 (recognizing the hardships endured by individuals who unsuccessfully seek public assistance benefits at welfare offices).

The human toll is real. For example, the enormous difficulties in receiving benefits experienced by Irania Sanchez, one of the original named plaintiffs in this lawsuit, resulted in the rapid deterioration of her daughter's health. Originally forced to apply for benefits because of her daughter's serious medical condition, Ms. Sanchez was nevertheless unable to obtain her daughter's Medicaid benefits in a consistent and reliable manner without the help of an advocate from Make the Road by Walking. As she describes

it, “my daughter’s benefits, including Medicaid, would stop suddenly, without warning and it was always difficult to get them restored. . . . It was alarming because she was extremely ill. In fact, on three occasions during the winter of 1998-99, [my daughter] was so sick that she went into shock and I had to call 911 to get emergency assistance.” Affid. of Irania Sanchez, ¶ 9, dated July 30, 2001 (attached to Pls.’ Notice of Mot. For Summ. J., dated July 30, 2001). Ms. Sanchez eventually lost her job because she was forced to take numerous days off from work to care for her daughter, as she was getting sick more often once her Medicaid coverage stopped. *Id.* at ¶ 21.

Erroneous decisions not only create additional suffering for those in need, they also create high costs for the City by generating unnecessary appeals. From 1994 to 1999, there was a 71% increase in the number of requests for administrative fair hearings, despite a drop in the welfare rolls. New York City Welfare Reform and Human Rights Documentation Project, *Hunger is No Accident* 34 (2000) (available at <http://www.urbanjustice.org/publications>) (citing Liz Krueger, Community Food Resource Center, Inc., *NYC Public Assistance Fair Hearing Trends and Outcomes* (Nov. 1999)). More than 80% of these fair hearing decisions have been in the client’s favor. *Id.* See also *Report of the Special*

Committee on Administrative Adjudication, at 45 (reporting HRA's fair hearing loss rate at 85%).⁵ For each incorrect decision it makes, the agency must spend personnel time correcting it. Indeed, the State Bar Association has recognized that preventing the errors that lead to fair hearings would save the City's staff and hearing officers, as well as claimants, valuable time. *Report of the Special Committee on Administrative Adjudication*, at 45.

Thus, while the difficulties that the City faces in efficiently, accurately and fairly administering its welfare system may be inherent in a such a complicated, bureaucratic and overstressed system, the consequences are real and dangerous: New Yorkers in need are unable to access subsistence benefits and services which will help them get and keep employment, and which unemployable people (including children) need in order to subsist, and the City is expending its precious resources remedying problems that should not have occurred in the first place.

III. ADVOCATES PLAY A CRITICAL ROLE IN SOLVING THESE PROBLEMS, PREVENTING MISERY AND PROMOTING AGENCY ACCURACY AND EFFICIENCY, THUS HELPING WELFARE CENTERS FULFILL THEIR PURPOSE.

⁵ This, of course, does not account for the numerous applicants, discussed *infra*, who are wrongly denied access to public assistance but who do not know of their right to apply for a fair hearing.

Welfare advocates can provide essential help to the City, allowing it to meet its goals of assisting individuals to get and keep employment, and providing subsistence benefits to unemployable people, including children, by alleviating the strain on overburdened caseworkers and providing information that eligible individuals oftentimes lack as they attempt to navigate a labyrinthine system and comply with program requirements. In short, advocates help both claimants and welfare workers.

- A. The statutes, regulations and case law all provide for advocates to play an essential role preventing and correcting error.

The statutory and regulatory scheme governing the welfare system and its adjudication process, and the case law regarding access of advocates to welfare offices, consistently recognize the important role that advocates play in assisting claimants and welfare workers. State and federal law require that the City allow advocates to accompany claimants in the welfare offices. For example, New York regulations provide that “[a]n applicant or recipient shall be permitted to appear with an attorney or other representative at any interview or conference with a representative of a social services district, whenever such interview or conference relates to questions of eligibility for public assistance and care, or the amount to which the person interviewed is or was entitled.” 18 N.Y. Comp. Codes R. & Reg. § 351.1(d).

See also 45 C.F.R. § 206.10(a)(1)(iii). Similarly, the regulations governing welfare fair hearings support the role of advocates in this regard. 18 N.Y. Comp. Codes R. & Reg. § 358-5.1(b)(4).

The case law, too, affirms the need for, and right of, advocates to be present in the welfare offices to assist welfare workers and claimants with the benefits system. *See New York City Unemployed & Welfare Council v. Brezenoff*, 742 F.2d 718, 720 (2d Cir. 1984) (holding that welfare offices are public forums for purposes of speech related to welfare issues); *New York City Unemployed & Welfare Council v. Brezenoff*, 677 F.2d 232, 238 (2d Cir. 1982) (same); *Albany Welfare Rights Organization v. Wyman*, 493 F.2d 1319, 1322-24 (2d Cir. 1974) (ruling unconstitutional a policy imposing a blanket ban on welfare advocates handing out informational leaflets within welfare offices). This recognition is consistent with the important role that advocates can play in ensuring the accurate and efficient functioning of the welfare system.

- B. Advocates perform numerous critical roles which help both their clients and the welfare agencies.

Advocates are crucial to the accurate and fair functioning of the welfare offices because they are able act as liaisons between claimants and

welfare workers. Advocates communicate important information and help prevent unnecessary mistakes.

Advocates educate claimants about their obligations as well as their rights within the welfare system. For example, advocates inform individuals of the services available to enable them to get and keep employment. This is particularly important, given that individuals often are unaware of the programs and services that are available, such as job training and transitional benefits, to assist in the move from welfare to work. *See, e.g., Help or Hurdles? Experiences of Welfare Leavers in the South Bronx Accessing Subsidized Child Care*, at 5 (noting that two-thirds of those interviewed never applied for transitional child care benefits for which they were eligible because they were not aware of the program and their eligibility). Likewise, advocates are able to inform claimants of their right to have a welfare office accept an application for benefits, as well as their right to request administrative fair hearings regarding HRA actions that deny, reduce or terminate public assistance benefits. *See A-72 to 73, 80 (Affidavit of Anusuya Chatterjee, at ¶¶ 11, 31).*

Advocates help claimants communicate with their welfare workers, navigate their options, and comply with application requirements. This helps claimants access the benefits for which they are eligible and saves

personnel time they would otherwise have to spend explaining requirements, rescheduling meetings people do not attend because they do not understand the requirements, repeatedly processing incomplete applications, and responding to requests for fair hearings. For example, Make the Road by Walking advocates help claimants, who are often illiterate, have below-average literacy skills or are non-English speaking, gather documents necessary to establish eligibility and understand the forms that they must complete in order to obtain and keep their benefits. See A-4 to 6 (Affidavit of Anusuya Chatterjee, ¶ 14, 15, 18, 19). Likewise, advocates can accurately interpret agency policy for claimants, giving credibility to the agency's statements and forestalling a meritless appeal by the client.

In addition, advocates prevent wrongful sanctioning. As discussed earlier, front-line workers often fail to exempt recipients from certain welfare requirements when special circumstances exist, such as the unavailability of appropriate child care to enable a mother to comply with a work requirement, see *Still Nowhere to Turn*, at 4, or the existence of domestic violence, see *Dangerous Indifference*, at 1-2. To avoid improper sanctioning of recipients in such instances, advocates can inform agency personnel when claimants are eligible for certain exemptions. This is particularly helpful when claimants are non-English speakers and unable to

communicate with their English-speaking caseworkers. *See* A-77 (Affidavit of Anusuya Chatterjee, ¶ 24) (describing role of advocates in helping Spanish-speaking claimants give their workers the information necessary to process their applications and keep their cases open).

Likewise, they can prevent or correct erroneous calculations of benefit eligibility and grant amounts. For example, in one case, an advocate from Plaintiff Make the Road by Walking was able to inform a Center Director of a worker's failure to change a claimant's address and make appropriate budgeting corrections, which had led to an incorrect closure of the claimant's public assistance case. A-161. As a result of a complaint filed by the advocate, the welfare office was able to correct the address, re-open the case, and issue over \$3000 in retroactive cash assistance, shelter allowance and food stamps. *Id.* *See also* A-117, 122, 138-141.

Advocates' role in this regard is essential, as oftentimes claimants do not even get notice of the denial of or reduction in benefits, and, thus, without the help of advocates, may be unaware of errors made in their case. *See Reynolds*, 35 F. Supp. 2d at 346 (finding that "many applicants are unable to avail themselves of a [fair hearing] because many applications are denied without written notice to the applicant explaining the basis for the denial"). *See also Hunger is No Accident*, at 35.

Finally, advocates help different parts of the agency communicate with each other. For example, there are several instances in which Plaintiff Make the Road by Walking has provided information, through a complaint form, enabling welfare offices to rectify their failure to comply with fair hearing decisions. *See* A-129, 131, 132. In some cases, welfare offices never received the fair hearing decisions, and thus without Plaintiff's assistance, would have been unable to comply. *See* A-131, 132.

Thus, advocates are critical to the effective and efficient functioning of New York City's welfare system. They are uniquely able to assist both welfare workers and claimants in navigating the large bureaucratic and legally complicated welfare system, avoiding harmful and costly mistakes, and fulfilling the City's goal of administering welfare benefits and services in a fair, efficient manner to assist individuals in getting and keeping employment, and to provide subsistence benefits to unemployable people, including children.

CONCLUSION

For the foregoing reasons, *amicus curiae* Community Service Society of New York respectfully urges the Court to reverse the decision below.

Respectfully Submitted,

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RULE 32(a)(7)(B)(i) CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief complies with the type-volume limitations of R.32(a)(7) and R. 29(d) of the Federal Rules of Appellate Procedure. Relying on the word count of the word processing system used to prepare this brief, I hereby represent that the *amicus* brief of Community Service Society of New York in support of Plaintiff-Appellant Make the Road by Walking contains 6,903 words, not including the corporate disclosure statement, table of contents, table of authorities, and certificates of counsel, and is therefore within the word limit for *amicus* briefs under Fed. R. App. P. 29(d) and Fed. R. App. P. 32(a)(7)(B).

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CERTIFICATE OF SERVICE

I, Risa E. Kaufman, hereby certify that on this day I served the within brief of *amicus curiae* Community Service Society of New York in support of Plaintiff-Appellant Make the Road by Walking on the following persons via FedEx Priority Overnight Delivery Service:

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