

No. APL-2025-00081

State of New York
Court of Appeals

In the Matter of the Application of

LAWYERS FOR CHILDREN, THE LEGAL AID SOCIETY, and LEGAL AID BUREAU OF
BUFFALO,

Petitioners-Appellants,

v.

THE NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES and
SHEILA J. POOLE, in her capacity as the Commissioner of The New York State
Office of Children and Family Services,

Respondents-Respondents.

BRIEF FOR RESPONDENTS
IN RESPONSE TO *AMICI CURIAE* BRIEFS

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Dated: February 26, 2026

Supreme Court, Rensselaer County, Index No. EF2022-271346
Appellate Division, Third Department No. CV-23-2341

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ARGUMENT

Respondents submit this brief in response to briefs for *amici curiae* (1) Professor Merrill Sobie (Sobie Br.) and (2) a consortium of law clinics, defense services, and advocacy groups, including the Columbia Law School Family Defense Clinic and the Neighborhood Defender Service (Clinic Br.). In supporting this challenge to the Host Family Home regulations, *amici* rely on the hypothetical possibility that bad actors, including local social service officials, might coerce parents into placing their children in host family care, where children could languish without access to judicial intervention.

Such speculative concerns about the potential consequences of the regulations in individual cases have no bearing on the merits questions presented on appeal—namely whether the regulations conflict with provisions of the Social Services Law and Family Court Act and whether in adopting the regulations the Office of Children and Family Services (OCFS) exceeded its rulemaking authority in violation of the separation-of-powers doctrine.

Nor do *amici*'s concerns have any basis in fact. Host family care has a proven track record in other States, as OCFS confirmed before

promulgating the regulations at issue and *amicus curiae* Safe Families for Children Alliance explains further in its brief to the Court. New Yorkers deserve to have the same short-term care option, outside the traditional foster care system, available to them.

POINT I

AMICI'S CONCERNS ABOUT HOW THE REGULATIONS MAY WORK IN PRACTICE DO NOT ADDRESS THE LEGAL ISSUES AT ISSUE HERE

Amici's concerns about the Host Family Home regulations have no bearing on the issues presented in this appeal. The only merits questions presented here are whether the regulations conflict with provisions of the Social Services Law and Family Court Act, and whether OCFS exceeded its rulemaking authority in violation of the separation-of-powers doctrine when it promulgated the regulations. Yet *amici* have little to say about either of those questions. Indeed, *amici* ignore that parents already have the right to place their children with others for the purpose of providing temporary care, *see* Social Services Law §§ 371(12), 374(2); General Obligations Law § 5-1551, and that OCFS has explicit statutory authority to approve and regulate agencies that place out children from their parents' homes, *see* Social Services Law §§ 371(10), 374(2), 460-a(1)–(2). For all

the reasons explained in respondents' brief (at 36-72), OCFS properly exercised that authority in promulgating the Host Family Home regulations. These regulations allow host family agencies to match families in need with volunteer, vetted host families who can temporarily care for children in times of crisis, without the loss of parental custody.

Rather than challenge the validity of the regulations, *amici* complain about how the regulations might harm individual children and their parents. The brief filed by, among others, the Columbia Law School Family Defense Clinic contends that the regulations will allow local social services officials "to coerce countless parents into giving up physical custody of their children." (Clinic Br. at 2.) And Professor Sobie predicts that children in host family care "could be left alone in abusive environments, potentially out of state, with no oversight, no intervention, no access to medical care, and no way out." (Sobie Br. at 16.)

As explained *infra*, these concerns are baseless. They also do not address the issues on appeal. As this Court has made clear, the judiciary's role "is not to question the efficacy or wisdom of the means chosen by the agency to accomplish the ends identified by the legislature." *Matter of LeadingAge N.Y., Inc. v. Shah*, 32 N.Y.3d 249, 261 (2018). Thus, the lower

courts properly declined to address the efficacy or wisdom of OCFS's Host Family Home regulations, and this Court should do the same.

The time for *amici* to raise their concerns was during OCFS's rule-making process. Indeed, many *amici* took advantage of that opportunity by commenting on the proposed regulations. (*See, e.g.*, R. 943-945, 1000-1001, 1059-1060.) And OCFS considered and addressed those concerns during the rulemaking process. (*See* R. 1435-1444.) *Amici's* concerns, however, are untethered to any legal argument about the regulations' validity, and thus do not support annulment of the regulations in this proceeding.

POINT II

AMICI'S CONCERNS ARE ALSO BASELESS

Amici's concerns also have no basis in fact. *Amici* merely speculate about how bad actors might misuse host family care to the detriment of children and their parents. At the same time, *amici* downplay the care OCFS took in fashioning the Host Family Home regulations to mitigate any such adverse consequences. And *amici* point to no evidence supporting their concerns. While the Host Family Home regulations have not yet been implemented in New York, similar programs have been

implemented in other States. *Amici* ignore that those programs have a proven track record of success, belying their prediction that children might languish in host family care.

A. Host Family Care Is Not Coercive.

There is no merit to the contention (Clinic Br. at 2, 25-28) that the regulations will allow local social services officials to coerce parents into sacrificing physical custody of their children.

This contention is purely speculative because the regulations do not authorize local social services officials to remove children from their parents and place them with host families. Nor do *amici* cite any examples from other States where social services officials have in fact coerced parents into placing their children with the kind of volunteer, vetted host families that the Host Family Home regulations contemplate. To the contrary, *amici* cite examples of cases that involved coercing parents into placing their children with extended family or in foster care. (See Clinic Br. at 8-10, 18-19.) Of course, even without the Host Family Home regulations, parents can place their children with extended family or in foster care. The risk of coercion for such placements is thus already present, and *amici* only speculate that the regulations will exacerbate

that risk. Such speculation does not warrant annulment of the regulations in their entirety.

Moreover, OCFS took care in fashioning the regulations to mitigate the very risk of coercion that *amici* identify. Under the Host Family Home regulations, parents' use of host family care must be completely voluntary. Only a parent has the authority to sign a "designation of person in parental relation," which allows the parent's child to be cared for by a host family. *See* 18 N.Y.C.R.R. § 444.5. And, as *amici* recognize (Clinic Br. at 26), a parent may not utilize host family care if the parent is "the subject of an open investigation of a report of suspected child abuse or maltreatment or of an open indicated case of child abuse or maltreatment." *Id.* § 444.5(c). These provisions are designed to prevent local social services officials from coercing parents into placing their children in host family care.

Amici nonetheless contend (Clinic Br. at 27) that the regulations leave a loophole because a local social services department can agree to close an investigation in exchange for a parent's agreement to place the parent's child in host family care. If such an arrangement were to occur, it might well be coercive. But again, *amici* can only speculate about this

risk of coercion. And this risk is further diminished by the fact that the regulations require host family agencies—the organizations that match parents in need with volunteer, vetted host families—to protect against coercion. Host family agencies “must have policies and procedures in place to adequately provide that parents who seek to place their children in a host family home on a temporary basis are making an informed decision, including that parents are informed that they have legal rights, *are not acting as a result of coercion*, and are not incapacitated.” *Id.* § 444.11(a) (emphasis added). And host family agencies must further verify that each individual parent “is not seeking to execute a designation of ‘person in parental relation’ *as a result of coercion*.” *Id.* § 444.11(a)(4) (emphasis added). If a host family agency were to violate these provisions by accepting coerced placements of children, that would be a ground for revocation of the agency’s authorization. *Id.* § 444.10(c) (providing that OCFS “will take enforcement action for non-compliance with the provisions of this Part, including, but not limited to, revoking the approval for an Agency for violation of any of the provisions of this Part or the policies of OCFS for such programs.”).

Of course, there is always *some* risk that bad actors will evade discovery of their coercive tactics. But that is not a reason to annul the regulations in their entirety. The due process concerns that *amici* identify (Clinic Br. at 17-19) do not warrant annulling the regulations, either. On their face, the regulations do not authorize the removal of children from their parents' homes without parental consent. If a local social services official nonetheless *misused* the regulations to coerce a parent into placing a child in host family care, that coercion might violate due process. But the risk of a hypothetical due process violation is not a reason to annul the regulations in their entirety.

B. The Host Family Home Regulations Promote Family Reunification and Protect Children.

Equally baseless is Professor Sobie's concern that children will languish in host family care without the procedural safeguards in place for children in foster care or under the supervision of Family Court.

Preliminarily, Professor Sobie incorrectly asserts (at 12-15) that the regulations conflict with governing law because they lack those procedural safeguards. As noted, parents have the right to place their children with others for the purpose of providing temporary care. *See Social*

Services Law §§ 371(12), 374(2); General Obligations Law § 5-1551. Those informal arrangements do not result in loss of custody, do not involve the foster care system, and do not require judicial approval. *See Matter of Sanjivini K.*, 47 N.Y.2d 374, 382 (1979). The procedural safeguards cited by Professor Sobie, including the right to counsel and the right to seek return of custody, *see* Social Services Law §§ 358-a, 384-a; Family Court Act §§ 1016, 1033-b, 1061–1062, 1086–1090-a, thus do not apply to those informal arrangements—which include the kind of temporary caregiving arrangement contemplated by the Host Family Home regulations.

Nor is there any evidence to support Professor Sobie’s claim that children will languish in host family care without these procedural safeguards. To the contrary, host family care *promotes* family reunification. For example, over 99% of children placed by Safe Families for Children in other States return home to their families. (Safe Families Br. at 13.) The average stay for such children with a host family is just 10 days. (*Id.*) And at least one study, considered by OCFS during the rulemaking process, demonstrated that Safe Families for Children *reduces* the likelihood that children eventually enter foster care. (*Id.*; *see also* R. 322-378.) Indeed, the federal government has made Safe Families for

Children eligible to receive Title IV-E funds to keep families together and prevent unnecessary foster care placements. *See* Administration for Children & Families, Title IV-E Prevention Services Clearinghouse, [Safe Families for Children](#).¹

There is likewise no evidence to support Professor Sobie’s claim that children in host family care will be placed out-of-state, beyond the reach of New York’s family courts. Host family care in other States is typically provided locally. Safe Families for Children, for example, offers support to families in need *within* their communities. (*See* Safe Families Br. at 2-7.) And OCFS’s regulations require host family agencies to offer care options “located in the community in which the parent and child currently reside,” to the extent possible. 18 N.Y.C.R.R. § 444.4(a). Mere speculation that children may nonetheless be placed with host families out-of-state does not warrant annulment of the regulations in their entirety.

Professor Sobie further speculates that children in host family care “could be left alone in abusive environments, potentially out of state, with no oversight, no intervention, [and] no access to medical care.” (Sobie Br.

¹ The full URL for this source appears in the Table of Authorities.

at 16.) As noted, parents already have the right to place their children with others, and outside of host family care, such informal arrangements are not subject to any regulatory oversight. The purpose of the Host Family Home regulations is to help parents who need assistance caring for their children in times of crisis, but who lack the social support network needed to find that care. And the regulations provide protections for children placed in host family care. For example, host families must be vetted by host family agencies before caring for children. 18 N.Y.C.R.R. § 444.15–444.16. Host families must provide a safe, healthy environment for children placed with them. *Id.* §§ 444.7, 444.13. Host families must allow a child to communicate with their custodial parents. *Id.* § 444.7(f)–(g). And host family agencies must supervise host families and contact both the child and the host family every 30 days. *Id.* § 444.17.

Again, these regulations are designed to mitigate the very concerns raised by *amici*. Thus, annulling the regulations would result in *fewer* protections for children. And it would deprive parents of a short-term care option that has a proven track record in other States. The policy concerns raised by *amici* thus do not warrant annulling the regulations.

CONCLUSION

The Court should affirm the Appellate Division's order dismissing the petition.

Dated: Albany, New York
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Respectfully submitted,

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AFFIRMATION OF COMPLIANCE

Pursuant to the Rules of Practice of the New York Court of Appeals (22 N.Y.C.R.R.) § 500.13(c)(1), Beezly J. Kiernan, an attorney in the Office of the Attorney General of the State of New York, hereby affirms that according to the word count feature of the word processing program used to prepare this brief, the brief contains 2,205 words, which complies with the limitations stated in § 500.13(c)(1).



BEEZLY J. KIERNAN