

EXHIBIT A

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May 13, 2026

Via e-mail

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Re: *Matter of Miller v State of New York*, APL-2026-00033
Proposed Letter Brief of *Amicus Curiae* Legal Aid Society¹

Dear Ms. Davis:

The Legal Aid Society submits this proposed *amicus curiae* letter brief to share with the Court the experiences of our clients who are newly protected by the Equal Rights Amendment (“ERA”). Legal Aid takes no position on the ultimate merits of this case nor on the relief requested. However, Legal Aid urges the Court to find that the newly amended Article I, Section 11 creates a cause of action for New Yorkers to seek redress for governmental discrimination on the basis of an enumerated classification, and that a heightened standard of review is applicable to

¹ **Disclosure Statements Pursuant to Rules of Practice §§ 500.1 (f) and 500.23 (a)(1)(i):** The Legal Aid Society hereby discloses that it is a non-profit organization. No other person or entity contributed to this brief. No party or party’s counsel contributed money that was intended to fund preparation or submission of this brief. Additionally, no other person or entity contributed money that was intended to fund the preparation or submission of the proposed brief.

each protected category.²

New York’s ERA guarantees New Yorkers “the right to be free from discrimination.”³ On November 5, 2024, New Yorkers across the State voted for the ERA to ensure that even in uncertain times, New York remains a State that guarantees equal rights and protects its most vulnerable residents from discrimination. The ERA amended Article I, Section 11 of the New York State Constitution by adding suspect classifications to the list of characteristics requiring the highest level of protection against governmental discrimination. Moreover, the ERA recognized that many New Yorkers are members of more than one protected class, with intersecting identities and vulnerabilities. True equality requires a “comprehensive, enforceable, and intersectional equality under the law.”⁴

Legal Aid brings its expertise as a legal services provider to explain why a self-executing ERA is essential to protect our clients and their communities. This brief shares the experiences of our LGBTQ+ clients, our clients with disabilities, and our immigrant clients, who are newly protected by the ERA.

² See Proposed Letter Brief of Amicus Curiae New York Civil Liberties Union (“NYCLU”), *Matter of Miller v. State of New York*, APL-2026-00033.

³ Senate Introducer’s Memo in Support of 2023 N.Y. Senate Bill 108A (Concurrent Resolution of the Senate and Assembly), enacted as amended N.Y. Const. art. I, § 11, <https://www.nysenate.gov/legislation/bills/2023/S108/amendment/A> (hereinafter “Sponsor’s Mem.”).

⁴ *Id.*

I. INTERESTS OF *AMICUS CURIAE*

Amicus curiae the Legal Aid Society is the country's oldest and largest private non-profit legal services agency, dedicated since 1876 to providing quality legal representation to low-income families and individuals in New York City. It has served as the primary public defender in New York City since 1965. Each year, Legal Aid represents thousands of people who are arrested and unable to afford private counsel. It also provides comprehensive legal assistance to low-income New Yorkers in a range of civil matters. Finally, it represents the majority of children in Family Court in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare.

In addition to individual client advocacy, Legal Aid's Criminal Defense Practice, Civil Practice, and Juvenile Practice each have units devoted to bringing impact litigation and conducting policy advocacy to address systemic legal issues affecting the rights of their clients. And the LGBTQ+ Law and Policy Unit was specifically created to identify and address systemic issues facing our LGBTQ+ clients across all practices.⁵ The Unit is well-placed to explain the need of the

⁵ See, e.g., *S.W. v. City of New York*, No. 811313/2025E (Sup. Ct. Bronx County 2025) (challenging New York City's Department of Correction's practice of sending transgender women to men's jails for intake); *D.H. v. City of New York*, 16-cv-7698 (S.D.N.Y. dismissed pursuant to settlement Apr. 11, 2019) (challenging constitutionality of now repealed Penal Law § 240. 37 under which NYPD officers particularly targeted transgender women of color for enforcement); *Cruz v. Zucker*, 218 F. Supp. 3d 246 (S.D.N.Y. 2016) (ordering New York provide Medicaid funding for transition-related health care); *Smith v. Gonzalez-Russell*, 22-cv-07384

LGBTQ+ community for protections under the State’s equal protection clause. As advocates for our clients and their broader communities, we are committed to protecting “a constitution that recognizes that every person is entitled to equal rights and justice under the law regardless of who they are, whom they love, or what their families look like.”⁶

II. ARGUMENT

A. With the Passage of the ERA, New Yorkers Enshrined Sweeping Constitutional Protections Against Governmental Discrimination.

In the summer of 2024, New York’s Senate and Assembly came together in a special legislative session to “enshrine equal rights in the State Constitution.”⁷ The legislature proposed an amendment to Article I, Section 11 of the New York Constitution, “to ensure that New York’s Constitutional language reflects [a] commitment to full equality and justice before the law.”⁸ In passing the ERA, New York’s lawmakers intended to establish an independent cause of action, without the need for separate legislation to give effect to its provisions.⁹ The ERA provides New

(S.D.N.Y. dismissed pursuant to settlement Mar. 14, 2024) (challenging involuntary genital examinations for incarcerated transgender people).

⁶ Sponsor’s Mem.

⁷ Proclamation of Governor Kathy Hochul (July 1, 2022), <https://x.com/govkathyhochul/status/1542755891023413248>.

⁸ Sponsor’s Mem.

⁹ NY Const. Art. I § 11 (“[n]o person shall . . . be subjected to any discrimination in their civil rights . . . pursuant to law”); *see also* Sponsor’s Mem. (“[E]ven in the absence of specific executing legislation, the section operates to prohibit the application of laws and governmental action that discriminate on the basis of an enumerated protected category.”); Proposed Letter Brief of the NYCLU.

Yorkers with “legal protections that go above and beyond the protections of the Federal Constitution,” by adding protected classes, including “ethnicity, national origin, disability,” and “sexual orientation, gender identity, [and] gender expression,”¹⁰ and by recognizing the “interconnected nature of discrimination.”¹¹ Further, the ERA codifies those protections in the State Constitution, ensuring that our State’s commitment to “true equality and justice”¹² can withstand changes in both the federal and local political climates.

Legal Aid sees firsthand how New Yorkers face discrimination by state actors across the criminal, family, and civil legal systems. As the City’s oldest and largest provider of direct legal services, Legal Aid has on-the-ground experience with these interconnected legal systems and the harm they inflict on New York’s most

¹⁰ N.Y. CONST. art. I, § 11(a).

¹¹ Sponsor’s Mem. Explicitly recognizing that many New Yorkers live at the intersection of multiple vulnerabilities protects individuals and communities from the realities of compound forms of discrimination. Caselaw analyzing intersectional discrimination claims under Title VII offer guidance on how courts can approach intersectional claims. *See e.g. Gorzynski v. JetBlue Airways Corp.*, 596 F.3d 93, 120 (2d Cir. 2010) (recognizing “where two bases of discrimination exist, the two grounds cannot be neatly reduced to distinct components”); *Lam v. Univ. of Haw.*, 40 F.3d 1551, 1562 (9th Cir. 1994) (recognizing that “[r]ather than aiding the decisional process, the attempt to bisect a person’s identity at the intersection of race and gender often distorts or ignores the particular nature of their experiences”); *Jefferies v. Harris Cnty. Cmty. Action Ass’n*, 615 F.2d 1025, 1032 (5th Cir. 1980) (holding that discrimination on combined basis of race and gender is cognizable: “discrimination against black females can exist even in the absence of discrimination against black men or white women.”). New York can also learn from the limitations of this caselaw. *See e.g. Rachel Kahn Best et al., Multiple Disadvantages: An Empirical Test of Intersectionality Theory in EEO Litigation*, 45 Law & Soc’y Rev. 991, 1009 (2011) (finding that plaintiffs claiming discrimination on the basis of more than one intersecting demographic trait are less than half as likely to win their federal employment discrimination suits than plaintiffs claiming discrimination based on only one trait).

¹² Sponsor’s Mem.

vulnerable populations. The ERA provides crucial protection to New Yorkers, “particularly those who have faced severe and pervasive injustice.”¹³ And the ERA’s explicit recognition of individuals with intersecting vulnerabilities protects marginalized New Yorkers as they are, rather than attempting to fit individuals and communities into one box. As the federal government sows fear amongst marginalized communities, the ERA provides security to those newly protected by New York’s Constitution, including LGBTQ+ people, people with disabilities, and immigrants.

B. A Self-Executing ERA Protects LGBTQ+ Individuals from Governmental Discrimination.

i. The ERA is Needed to Protect LGBTQ+ Individuals in the Face of Uncertain and Shrinking Federal Protections.

To date, it remains an unsettled question of federal law whether sexual orientation and gender identity are protected categories for the purpose of federal equal protection jurisprudence. Recent cases and trends, however, suggest that the equal protection clause may not provide relief to LGBTQ+ people who have experienced state-sanctioned discrimination, leaving LGBTQ+ people vulnerable. At the same time, many LGBTQ+ protections are being rolled back at the federal level. For this reason, it is essential that the ERA fulfill its intended goal of enshrining state-level protections for LGBTQ+ people.

¹³ Sponsor’s Mem.

Despite several Supreme Court cases raising the question of whether sexual orientation is a protected characteristic, it remains uncertain whether classifications based on sexual orientation receive heightened scrutiny under the federal Constitution. In *Romer v. Evans*, 517 U.S. 620 (1996), for instance, the Supreme Court appeared to apply a “rational basis review with bite” to strike down an amendment to the Colorado state constitution that prohibited the state and localities from adopting laws protecting people from sexual orientation discrimination.¹⁴ The Court relied heavily on the record of animus towards LGBTQ+ people to conclude that the amendment could not survive even rational basis review. Subsequent cases failed to provide greater clarity. In *Lawrence v. Texas*, 539 U.S. 558 (2003), the Court also stated it was applying rational basis review, but again relied on a history of animus, implying that laws criminalizing same sex conduct violated the equal protection clause for similar reasons as in *Romer*. In *Lawrence*, the Court ruled that statutes criminalizing sodomy are unconstitutional, relying mainly on an analysis under the due process clause and precedent based on liberty interests such as *Roe v. Wade*, 410 U.S. 113 (1973), *overruled by Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022), and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992),

¹⁴ See Katherine Erickson, *Harvey Milk and Judicial Review: The End of Rational Basis with Bite, and LGBTQ Schools Too?*, 41 N.Y.U. Rev. L. & Soc. Change 143, 154-155 (2017); Brendan Beery, *Rational Basis Loses Its Bite: Justice Kennedy’s Retirement Removes the Most Lethal Quill from LGBT Advocates’ Equal Protection Quiver*, 69 Syracuse L. Rev. 69 (2019).

overruled by Dobbs, 597 U.S. 215. *See also United States v. Windsor*, 570 U.S. 744 (2013) (striking down the Defense of Marriage Act as unconstitutional on due process and equal protection grounds, but without clearly articulating a standard of review). Most recently, in *Obergefell v. Hodges*, 576 U.S. 644 (2015), the Court established the right to marry for same-sex couples, recognizing that marriage was a fundamental right under the due process clause. While the Court employed language closely tying equality with due process liberty rights, it did not clearly identify the level of scrutiny that applies to classifications based on sexual orientation.

The Supreme Court’s failure to clarify the extent of lesbian, gay, and bisexual people’s right to equal protection, and its strong reliance on due process to declare anti-gay laws unconstitutional, makes LGBTQ+ people vulnerable at the federal level, particularly after the Supreme Court’s decision in *Dobbs*. In *Dobbs*, the Supreme Court severely restricted the heightened substantive due process inquiry to specific and narrowly defined rights “deeply rooted in this Nation’s history and tradition.” *Dobbs*, 597 U.S. at 231. In addition to limiting previously recognized liberty and autonomy rights, *Dobbs*’ overturning of *Roe*, 410 U.S., and its progeny, signals a Supreme Court that is willing to overturn longstanding constitutional precedent. This trend in Supreme Court jurisprudence comes at the same time as extensive federal rollbacks on protections against sexual orientation discrimination

in education, employment, and healthcare. This animus extends to the highest levels of government: One of the earliest executive orders under the current federal administration (“the administration”) rescinded prior orders protecting LGBTQ+ people from discrimination in employment and education and seeking to advance equality for LGBTQ+ people in healthcare, child welfare and juvenile justice, and housing access and stability.¹⁵

While some limited albeit ambiguous, precedent supports a heightened degree of protection for lesbian and gay people, the Supreme Court has yet to rule on whether transgender people enjoy heightened protection. It will likely do so before the end of its current term in the cases *Little v. Hecox*, Supreme Court Docket No. 24-38, and *West Virginia v. B.P.J.*, Supreme Court Docket No. 24-43. These cases raise the question of whether laws that bar trans girls and women from sports teams are sex-based classifications and, if so, what level of scrutiny applies. Legal Aid declines to speculate on the outcome of these cases, but notes that most commentators have opined that the Court will likely uphold the bans and rule that trans people are not protected under the federal equal protection clause.¹⁶ Thus, transgender people will likely continue to lack protections at the federal level

¹⁵ Exec. Order No. 14,148, 90 FR 8237, Initial Rescissions of Harmful Executive Orders and Actions (Jan. 20, 2025).

¹⁶ E.g., Kate Redburn, *Skrimetti Beyond Scrutiny*, 139 Har. L. Rev. 167, 171-72 (2025); Scott Bomboy, *Unpacking the Transgender Athlete Cases at the Supreme Court*, National Constitution Center (Jan. 21, 2026), <https://constitutioncenter.org/blog/unpacking-the-transgender-athletes-case-at-the-supreme-court>.

indefinitely. The foreclosure of protections under the federal equal protection clause is especially concerning when viewed alongside the barrage of rollbacks of trans rights directed by the federal government and the overwhelming number of states seeking to create barriers to healthcare, safe spaces, and equal access for transgender people.¹⁷ This includes the anticipated revocation of protections for transgender and intersex people in prisons, jails, juvenile detention facilities, and police lock-ups under regulations pursuant to the Prison Rape Elimination Act.¹⁸ It is precisely these circumstances that created the need for the ERA and resulted in its overwhelming passage.

ii. The ERA Provides LGBTQ+ Individuals Necessary Protection Given Insufficient State Statutory Law.

Existing state law protections do not fully serve the goal of protecting the LGBTQ+ community from discrimination by government actors. While New York has strong statutory protections for LGBTQ+ people, the ERA extends further than those statutes by encompassing all government action and providing a greater means of relief than existing protections.

The New York State Human Rights Law provides the core set of non-discrimination protections for LGBTQ+ people. But while sexual orientation and

¹⁷ See Exec. Order No. 14,168, 90 F.R. 8615, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government (Jan. 20, 2025). There are 767 bills targeting transgender people currently being tracked across the country. 2026 Anti-Trans Bills Tracker, <https://translegislation.com>.

¹⁸ Exec. Order No. 14,168.

gender identity or expression are expressly covered characteristics, the law applies to only certain covered settings, specifically public accommodations, employment, housing, and lending.¹⁹ Legal Aid’s clients experience discrimination from a broader set of agencies and government actors, including law enforcement, jails and prisons, juvenile detention centers, the child welfare system, and in the provision of public benefits. The State Division of Human Rights, the state agency responsible for implementing the Human Rights Law, has claimed that it does not have jurisdiction over police departments and jails. *See LeTray v. N.Y.S. Div. of Hum. Rts.*, 121 N.Y.S.3d 481 (4th Dept. 2020). The Fourth Department agreed that police and jails are not “public accommodations,” but did not address whether jails are housing accommodations. *Id.* at 483. Further, the Office of Temporary and Disability Assistance, which administers public benefits, has challenged whether the public benefits system is a public accommodation under the Human Rights Law. *See* Mem. of L. in Supp. of State Defs’ Mot. to Dismiss Complaint at 18-19, *Princess Janae Place v. Off. of Temp. & Disability Assistance*, 153065 (Sup. Ct. N.Y. County May 21, 2021), NYSCEF Doc. No. 15 (arguing the electronic public benefits system is not a public accommodation). New York’s Civil Rights Law 40-c, on the other hand, is broader in scope than the Human Rights Law and applies to any state or

¹⁹ *See generally* N.Y. Exec. L. § 296 et seq.

subdivision of the state; but it imposes such a small penalty that it dissuades potential litigants from bringing any costly litigation.²⁰

In contrast to these limited statutory protections, the ERA applies to “any action with the force of law, including action by the executive or legislative branch, local governments, or any subdivision thereof.”²¹ Viewed in this light, the ERA is an important and necessary tool to address inequality and unfair treatment based on sexual orientation and gender identity. Legal Aid’s work with LGBTQ+ communities consistently demonstrates the need for increased protections and avenues for relief, specifically with respect to those agencies that are not covered by the Human Rights Law or for which coverage remains an open question, such as prisons and jails. For instance, LGBTQ+ people are disproportionately policed and harassed by the NYPD, in particular transgender people and LGBTQ+ youth.²²

²⁰ See N.Y. Civ. Rights L. § 40-d (violators are liable for a penalty of just \$100 to \$500 per violation).

²¹ See Sponsor’s Mem.

²² A recent report found that 13% of LGBTQ+ respondents reported being targeted by the NYPD because of their sexual orientation; 43% of those respondents reported being targeted because they are transgender or nonbinary. Nine percent of LGBTQ+ respondents experienced harassment by the NYPD based on their sexual orientation; 26% of those respondents reported being transgender or non-binary. Nearly a quarter of transgender and non-binary people reported sexual attention by NYPD officers, double the rate for cisgender respondents. Priscilla Bustamante et al., *Police Sexual Violence in NYC: A Community Safety Project Report* at 14-15, Communities United for Police Reform & The Public Science Project (2025), <https://s3.amazonaws.com/files.commonsc.gc.cuny.edu/wp-content/blogs.dir/34509/files/2025/11/Police-Sexual-Violence-in-NYC.pdf>. See also Alexi Jones, *Visualizing the Unequal Treatment of LGBTQ+ People in the Criminal Justice System*, Prison Policy Initiative (2021), <https://www.prisonpolicy.org/blog/2021/03/02/lgbtq/>; Center for American Progress & Movement Advancement Project, *Unjust: How the Broken Juvenile and Criminal Justice Systems Fail LGBTQ+ Youth* (2016), <https://www.lgbtmap.org/lgbt-criminal->

Transgender people in New York State custody face extraordinary rates of violence while detained and incarcerated.²³ See *People v. Terrance S.*, 85 Misc.3d 1246(A), *2025 N.Y. Slip Op. 50429(U), at *22 (Sup. Ct. Kings Cty. 2025) (finding that LGBTQ individuals face “harassment, and physical assault from both inmates and correctional staff, often targeted due to perceptions of weakness or difference”); *People v. S.S.*, 79 Misc.3d 1235(A), 2023 N.Y. Slip Op. 50805(U), at *8 (Sup. Ct. N.Y. Cnty. 2023) (reducing a transgender woman’s sentence under the Domestic Violence Survivors Justice Act, finding that her incarceration “was more onerous in significant ways because of the danger, harassment, and assault she faced in prison as a transgender woman and her need to protect herself through protective custody”). And while transgender people have a right to be treated consistently with their gender identity in all covered entities under the New York Human Rights Law, prisons and jails continue to house people based on their sex assigned at birth with serious ramifications for people’s safety and mental well-being.²⁴

justice.

²³ A recent report on the treatment of TGNCI people in the New York State prison system found that 91% of respondents reported at least one form of physical assault while incarcerated and 75% of respondents reported at least one incident of sexual violence by corrections officers. The Sylvia Rivera Law Project & Take Root Justice, *It’s Still War in Here: A Statewide Report on the Trans, Gender Non-Conforming, Intersex (TGNCI) Experience in New York Prisons and the Fight for Trans Liberation, Self-Determination, and Freedom*, at 25, 27 (2021), <https://srlp.org/wp-content/uploads/2025/01/Its-Still-War-In-Here-1-2.pdf>.

²⁴ See Ethan M. Rogers et al., *The Disproportionate Mental Health Burden Among Incarcerated Transgender and Gender Diverse People*, 29 J. Correct. Health Care 39 (2023) (reviewing national data); Leah Drakeford, *Correctional Policy and Attempted Suicide Among Transgender Individuals*, 24 J. Correct. Health Care 171 (2018) (reviewing national data).

LGBTQ+ youth also experience unfair treatment in the child welfare and juvenile justice system. More than one out of three young people (34%), ages 13-20, in New York City foster care self-identify as LGBTQ+, as compared to about one out of four young people (24%) in the general population of New York City.²⁵ Of the total LGBTQ+ population in foster care, approximately 13% are transgender, gender non-binary, gender fluid, gender non-conforming, and intersex youth.²⁶ These children experience worse outcomes than other youth, including higher rates of placements in more restrictive settings, higher rates of homelessness, less satisfaction in their foster care placements, and higher rates of negative encounters with police.²⁷ At the same time, consistent with other federal rollbacks, the federal government is seeking to rescind prior rules that required sufficient numbers of affirming and inclusive placements for LGBTQ+ youth and has publicly stated it will not fund any state programs that seek to increase inclusion or support trans youth.²⁸ A self-executing ERA is a powerful tool to challenge discriminatory

²⁵ Theo G.M. Sandfort, *Experiences and Well-Being of Sexual and Gender Diverse Youth in Foster Care in New York City*, at 7 (2020), <https://www.nyc.gov/assets/acs/pdf/about/2020/WellBeingStudyLGBTQ.pdf> (noting that “differences in survey design impeded absolute comparisons”).

²⁶ *Id.*

²⁷ *Id.* at 7-8; 35-37.

²⁸ Administration for Children & Families, *ACF Vision, Mission, Values, Priorities, & Guiding Principles*, https://acf.gov/about/acf-vision-mission-values?utm_source=RHYTTAC&utm_campaign=9135471224-EMAIL_CAMPAIGN_2025_ACF_STRATEGIC_FOCUS&utm_medium=email&utm_term=0_-5f6bc42b51-155364922&emci=5f8a0507-2593-f011-b484-6045bdeb7413&emdi=500b44ec-3193-f011-b484-6045bdeb7413&ceid=6266185 (subsection titled “Eliminating DEI and Gender Ideology in Funded Programs”); Designated Placement Requirements Under Titles VI-E and IV-

treatment in all of these various contexts state-wide and make the promise of equality a reality.

With the Supreme Court’s decision in *Dobbs*, the ongoing rollback of federal protections, and the insufficiently protective state human rights law, the ERA remains a beacon of hope for vulnerable LGBTQ+ New Yorkers.

C. A Self-Executing ERA Protects New Yorkers with Disabilities from Governmental Discrimination in the Face of Federal Attacks on Longstanding Protections.

The ERA provides New Yorkers with disabilities an effective mechanism to vindicate their right to equal treatment, including, in the event of future rollbacks of federal protections. The possibility of such rollbacks is far from remote. The current administration has reversed decades of federal policy supporting the community-based housing, care, and treatment of people with disabilities. In July 2025, the White House issued an executive order encouraging the Attorney General to work towards reversing federal and state judicial precedents and terminating consent decrees between the U.S. Department of Justice and state agencies that “impede . . . the civil commitment of individuals with mental illness.”²⁹ The administration’s call

B for LGBTQI+ Children; Rescission, 91 Fed. Reg. 11017 (Mar. 6, 2026) (to be codified at 45 C.F.R. pt. 1355).

²⁹ The White House, *Executive Order: Ending Crime and Disorder on America’s Streets* (July 24, 2025), <https://www.whitehouse.gov/presidential-actions/2025/07/ending-crime-and-disorder-on-americas-streets/>. See also Center for American Progress, *The Trump Administration’s War on Disability* (July 28, 2025), <https://www.americanprogress.org/article/the-trump-administrations-war-on-disability/> (describing the executive order as “encourage[ing] the attorney general to violate current civil rights laws and judicial precedents, such as the Supreme Court’s *Olmstead v.*

to expand civil commitment programs uplifts coercive and involuntary treatment for people with mental health disabilities³⁰ under the pretext of restoring law and order in U.S. cities—a narrative that revives pernicious stereotypes about people with disabilities.

At the same time, the administration has significantly scaled back federal enforcement of the right to not be subjected to disability discrimination, and cut funding to local providers responsible for defending the rights of people with disabilities.³¹ The administration has also abandoned enforcement of any protections

L.C. decision.”) This executive order also orders the elimination of evidence-based Housing First programs, an approach first endorsed in 2003 by President George W. Bush’s administration, which place homeless people in permanent housing without barriers to entry; shifting away from decades of evidence-based practice, the executive order seeks to rely on a compulsory conditional housing program. *Id.*; see also Nancy Stedman, *Trump Order to Criminalize Homelessness Sparks Alarm*, Penn LDI (2026), <https://ldi.upenn.edu/our-work/research-updates/trump-order-to-criminalize-homelessness-sparks-alarm/>. While the ERA cannot override federal policy, it offers additional protection, should federal statutory and constitutional safeguards be rolled back.

³⁰ In addition to the stigma caused by such programs, “coercive practices are often associated with negative outcomes for patients with significantly adverse impacts on satisfaction and quality of life.” S P Sashidharan et al., *Reducing Coercion in Mental Healthcare*, *Epidemiology and Psychiatric Sciences* 605–612 (2019), <https://pmc.ncbi.nlm.nih.gov/articles/PMC7032511/>.

³¹ In April 2025, Secretary Kennedy laid off nearly half the staff at the Administration for Community Living, which helps fund protection and advocacy agencies, independent living services, and disability research that put the *Olmstead* decision into practice. Michelle Diamant, *HHS Layoffs Likely To Have Ripple Effect On Disability Programs Nationwide*, *Disability Scoop* (April 3, 2025), <https://www.disabilityscoop.com/2025/04/03/hhs-layoffs-likely-to-have-ripple-effect-on-disability-programs-nationwide/31391>. The Office of Civil Rights reached 78.7% fewer disability discrimination resolution agreements, “[a] legally binding, written contract between OCR and the school specifying corrective actions, timelines, and reporting requirements to remedy student harm,” in 2025 compared to 2024; this includes OCR reaching only 1 out of 595 disability harassment cases, 93% fewer than in 2024. Bernie Sanders, Ranking Member, Minority Staff Report, Health, Education, Labor, and Pensions Committee, *Justice Denied: How Trump’s Office for Civil Rights Reached a 12-Year Low in Protecting Students Discrimination*, 11 (2026) (“Students with disabilities—whose complaints make up the largest share of OCR cases—have been abandoned.”). In April 2025, the administration quietly terminated the nationwide provision of the National Qualified Representative Program (NQR), which provided legal representation

against racial discrimination, leaving people with disabilities who are also discriminated against based on race without protection.³² These cuts to local and federal agencies are devastating, dismantling systems that performed the crucial work of protecting the rights of people with disabilities to equal treatment, including those who lack the resources to file lawsuits against state or local agencies on their own.³³

to people found “mentally incompetent” while in immigration detention. Center for American Progress, *The Trump Administration’s War on Disability*.

³² The Office of Civil Rights’ abandonment of students with disabilities occurred despite staff receiving instructions to continue with disability focused cases and may in part reflect orders to ignore race and gender discrimination, including cases in which a Black student with disabilities faces discrimination, but a white student with disabilities does not. See Jennifer Smith Richards and Jodi S. Cohen, *Education Department “Lifting the Pause” on Some Civil Rights Probes, but Not for Race or Gender Cases*, ProPublica (Feb. 20, 2025), <https://www.propublica.org/article/departments-education-civil-rights-investigations-disability-gender-race-discrimination>. Additionally, in response to President Trump’s executive order against DEI, all staff was eliminated at the Centers for Medicare & Medicaid Services’ Office of Minority Health and significant staff cuts were made at the Department of Health and Human Services’ Office of Minority Health. See Annika Kim Constantino, *RFK Jr. is Gutting Minority Health Offices Across HHS That Are Key to Reducing Health Disparities*, CNBC (Apr. 30, 2025), <https://www.cnbc.com/2025/04/30/rfk-jr-hhs-job-cuts-minority-health-offices.html>; U.S. Dep’t of Health and Hum. Servs., Off. of Minority Health, *About the Off. of Minority Health*, <https://minorityhealth.hhs.gov/about-office-minority-health> (last visited May 13, 2026). These offices provided expertise on eliminating health disparities and led programs to improve health outcomes for people in underserved communities. See National Women’s Law Center, *Gutting Federal Offices that Advance Health Equity Endangers the Health of Women & LGBTQ+ People* (March 2026), <https://nwlc.org/resource/gutting-federal-offices-that-advance-health-equity-endangers-the-health-of-women-lgbtq-people/>.

³³ Disabled people are twice as likely to live in poverty as nondisabled people. See Nanette Goodman et al., *Financial Inequality: Disability, Race, and Poverty in America* (2019), <https://www.nationaldisabilityinstitute.org/wp-content/uploads/2019/02/disability-race-poverty-in-america.pdf>; see also Dylan Peers McCoy, *Families Say School Civil Rights Investigations Have Stalled After Federal Cuts*, NPR (April 16, 2025), <https://www.npr.org/2025/04/16/nx-s1-5338830/trump-federal-cuts-civil-rights-education-investigations> (“[S]pecial education advocates say nothing quite compares to an OCR investigation: OCR can examine whether there is a larger pattern of discrimination at a particular

In this landscape of federal attacks on longstanding disability rights, the ERA guarantees that New Yorkers with disabilities have a remedy for disability discrimination under the state Constitution. And, for the first time, discriminatory practices based on disability would be subjected to heightened scrutiny.³⁴ Moreover, the ERA offers a remedy that is free of burdensome pleading standards and administrative exhaustion requirements that exist in federal law.

Legal Aid represents clients with psychiatric, or intellectual and developmental disabilities who have been subjected to disability discrimination at every stage of the criminal legal system.³⁵ During interactions with law enforcement, people with disabilities—especially those experiencing mental health crises—are often denied reasonable accommodations, are arrested and involuntarily transported

school or district . . . [a]nd unlike lawsuits, families can file OCR complaints without legal assistance.”).

³⁴ See *Saltarelli v. State of New York*, 251 NYS3d 534, 544 (Sup. Ct. Madison Cnty. 2026) (finding “that a strict scrutiny standard of review is warranted” in part, because “one of the direct purposes of the ERA was to expand the list of suspect classes”); see also Proposed Letter Brief of Amicus Curiae NYCLU, § III(B).

³⁵ As discussed in Section II(B)(ii), *supra*, at 10, the State Human Rights Law only protects against governmental discrimination in certain settings, excluding jail and police. Similarly, while New York’s Civil Rights Law 40-c applies more broadly, it imposes only a small penalty on violators, which dissuades costly litigation.

to a hospital,³⁶ and/or are exposed to excessive force.³⁷ Since 2015, at least twenty people, primarily people of color, have been killed by police in New York City while experiencing a mental health crisis.³⁸ A self-executing ERA ensures that Legal Aid’s

³⁶ In New York City, police respond to 95% of mental health calls, a “pathway [which] almost exclusively routes someone experiencing a mental health crisis to the hospital.” Mayor’s Office of Community Mental Health, 2023 Annual Report, at 12 (2023), <https://mentalhealth.cityofnewyork.us/wp-content/uploads/2023/02/2023-OCMH-Annual-Report.pdf>. In a recent six year period, the NYC CCRB reported receiving 2,687 allegations that police had taken people to the hospital against their will—an average of one every 20 hours. Corey Kilgannon, *Plan Tests Tense Relationship Between N.Y.P.D. and Mentally Ill People*, N.Y. Times (Dec. 5, 2022), <https://www.nytimes.com/2022/12/05/nyregion/mentalhealth-plan-nypd.html>. Psychiatric professionals have found that such involuntary transport and resulting detention is often a traumatizing experience. Ingrid Sibitz et al., *Impact of Coercive Measures on Life Stories: Qualitative Study*, 199 BR J PSYCHIATRY 3 39–244 (2011), <https://www.cambridge.org/core/journals/the-british-journal-of-psychiatry/article/impact-of-coercive-measures-on-life-stories-qualitativestudy/522495A328930D5E3384608ABFFEC8EB>.

³⁷ Anna V. Smith, *There’s Already An Alternative to Calling the Police*, High Country News (June 11, 2020), <https://www.hcn.org/issues/52-7/public-healththeres-already-an-alternative-to-calling-the-police/> (“When police show up, situations can escalate, and the use of force can be disproportionate, especially towards Black people . . .”); NYLPI, *Saving Lives, Reducing Trauma: Removing Police from New York City’s Mental Health Crisis Response*, 16 (2021), https://www.nylpi.org/wp-content/uploads/2021/10/FINAL_Mental-Health-Crisis-Response-Report.pdf (survey of New Yorkers with mental illness “align with reports that communities of color experience a high level of aggression from the police that can escalate into violence, and align with the statistics that people who are shot and killed by the police when experiencing mental health crises are disproportionately Black and other people of color.”); N.Y.P.D., *Use of Force Report 2022*, at 47 (2022), <https://www.nyc.gov/assets/nypd/downloads/pdf/use-of-force/use-of-force-2022.pdf> (Police interactions involving people with mental illness are the second most common type of encounter in which officers use force, not accounting for incidents with unreported mental health issues.).

³⁸ Human Rights Watch, *“Self Determination is the Pathway to Liberation:” Alternative Mental Health Crisis Response in the United States* (Mar. 30, 2026), <https://www.hrw.org/report/2026/03/30/self-determination-is-the-pathway-to-liberation/alternative-mental-health-crisis> (“In New York City, for example, police have killed more than 20 individuals experiencing mental health crises since 2015, most of whom were people of color.”).

clients can challenge such discriminatory treatment in state court, thereby avoiding stringent pleading standards that too often frustrate claims filed in federal court.³⁹

New Yorkers with disabilities also face violence, neglect, and unfair treatment in New York’s jails and prisons. The state prison agency, for example, routinely fails to provide reasonable accommodations that are necessary for people with disabilities to access government programs and services.⁴⁰ For years, that agency prolonged the confinement of New Yorkers with disabilities solely because they needed community-based mental health housing and services that were unavailable at the time of release.⁴¹ In New York City jails, people with disabilities regularly lack access to appropriate mental health treatment, are brutalized and subjected to arbitrary practices such as “deadlocking” (a practice in which officers lock a person in their cell for days or weeks, effectively enforcing solitary-like conditions), and are denied timely competency restoration services if they are found unfit to proceed to trial. With a self-executing ERA, an incarcerated Legal Aid client could seek relief

³⁹ See Suzette M. Malveaux, *Front Loading and Heavy Lifting: How PreDismissal Discovery Can Address the Detrimental Effect of Iqbal on Civil Rights Cases*, 14, LEWIS & CLARK L. REV. 65, 87–88 (2010) (discussing how *Twombly* and *Iqbal* make it more difficult for potentially meritorious civil rights claims alleging intentional discrimination to survive dismissal); Karen M. Blum, *Section 1983 Litigation: The Maze, the Mud, and the Madness*, 23 Wm. & Mary Bill Rts. J. 913, 916 (2015) (“Municipal liability claims have become procedurally more difficult for plaintiffs to assert since the Court’s imposition of a more stringent pleading standard.”).

⁴⁰ See *Clarkson v. Coughlin*, 898 F. Supp. 1019 (S.D.N.Y. 1995).

⁴¹ See *M.G. v. N.Y. Office of Mental Health*, 572 F. Supp. 3d 1, 7 n.3 (S.D.N.Y. 2021).

from such discrimination, without needing to clear the burdensome “administrative exhaustion” requirement of the Prison Litigation Reform Act before filing suit.⁴²

The administration is championing a policy of reduced protections for people with disabilities and actively promoting discriminatory practices. Under these conditions, the ERA provides a much-needed remedy to Legal Aid clients who experience harm in the criminal legal system.

D. A Self-Executing ERA Protects New York’s Immigrant Communities in the Face of Unprecedented Attacks.

The administration is waging an unprecedented assault on immigrant communities. Since the first days of the administration, the Department of Homeland Security has widely promoted its goal of deporting 100 million people, nearly ten times the number of undocumented people in the United States.⁴³ To achieve this

⁴² The Prison Litigation Reform Act applies to all prison condition claims brought under *federal* law. Among other provisions, the PLRA requires plaintiffs to exhaust correctional agencies’ internal grievance processes before filing federal claims. Prison or jail grievance processes are often complicated and difficult to navigate for the average individual, and even more so for an individual with a psychiatric diagnosis or developmental disability. Additionally, the PLRA limits the form of injunctive relief available should a claim succeed. American Civil Liberties Union, *Know Your Rights: The Prison Litigation Reform Act (PLRA)*, https://www.aclu.org/sites/default/files/images/asset_upload_file79_25805.pdf. The PLRA would not apply to a claim brought under the ERA.

⁴³ See DHS (@DHSgov), X (Dec. 31, 2025, 4:06 pm), <https://perma.cc/L6HC-PUQE>; Katie J.M. Baker & Hamed Aleaziz, *Gregory Bovino’s Final Days: Harsh Words and Few Regrets*, N.Y. Times (Mar. 24, 2026), <https://perma.cc/KA97-EPGW>. To fulfill this goal, ICE field offices are given arrest quotas that one ICE insider complained, forced agents to “look[] for anyone they can get their hands on at the local Home Depot or bus stop.” Jennie Taer, *Trump Admin’s 3000 ICE Arrests Per Day Quota is Taking Focus Off Criminals and ‘Killing Morale’: Insiders*, N.Y. Post (June 17, 2025), <https://perma.cc/ZK6F-PRWR>.

goal, the administration has pursued immigration enforcement in an often lawless,⁴⁴ violent, and gratuitously cruel manner.⁴⁵ Tom Homan, President Trump’s “Border Czar,” courted private contractors, stating he wanted to see a mass deportation system “like [Amazon] Prime, but with human beings.”⁴⁶ Moreover, the administration has openly displayed the discriminatory intent behind its immigration policy, routinely issuing statements that dehumanize nonwhite immigrants,⁴⁷ regularly using white supremacist messaging to recruit new officers,⁴⁸ and casting

⁴⁴ See N.Y.C. Bar Ass’n, *Report on the Trump Administration’s 2025-2026 Changes to Immigration Law*, 3-15 (last updated Oct. 10, 2025), <https://www.nycbar.org/wp-content/uploads/2025/03/20221419-TrumpAdminChangesImmigrationLaw.pdf> (describing the administration and its officials targeting immigration attorneys and other legal professionals, terminating immigration judges, and assaulting and arresting elected officials and the press, for acts ranging from visiting a detention center to asking a question at a press conference).

⁴⁵ See e.g. Gwynne Hogan, *Video: Federal Agents Bust Into Queens Apartment, Pointing Guns at Mother and Her Four Kids*, The City (Nov. 19, 2025), <https://www.thecity.nyc/2025/11/19/queens-ice-raid-guns-children-mother/> (ICE agents and U.S. Marshals busted into a Queens family’s apartment in a pre-dawn raid, did not show a warrant, dragged the mother by her hair, and pointed an assault rifle at a child.)

⁴⁶ Jerod Macdonald-Evoy, *ICE Director Envisions Amazon-Like Mass Deportation System: “Prime, But with Human Beings,”* Arizona Mirror (April 8, 2025), <https://perma.cc/J7M3-V93K>.

⁴⁷ For example, President Trump has frequently described nonwhite immigrants as “animals,” Miriam Valverde, *In Context: Donald Trump’s Comments about Immigrants, ‘Animals,’* POLITIFACT (May 17, 2018), <https://perma.cc/KMW9-6QVY>; see also “Rapists, Murderers and Terrorists, Donald J. Trump (@realDonaldTrump), Truth Social (June 12, 2025 2:03 PM), <https://perma.cc/FLC6-S959>.” Similarly, White House Deputy Chief of Staff Stephen Miller has demonized immigrants as “illegal alien invaders, cartel killers, foreign terrorists, transnational gangs and insurrectionist mobs.” Stephen Miller (@stephenM), X (June 9, 2025 9:59 PM), <https://perma.cc/N4M3-W6VD>.

⁴⁸ For example, DHS made a social media post stating “We’ll have our home again,” which is “also the name of a song, written by members of a self-described ‘pro-White fraternal order,’ that has been embraced by white-nationalist groups.” When “the post was opened on Instagram’s mobile app, audio from the chorus of the song played in the background.” The Instagram post was deleted 40 minutes after the New York Times inquired about it, but it remained on X and Facebook. Evan Gorelick, *Administration Social Media Posts Echo White Supremacist Messaging*, N.Y. Times (Jan. 27, 2026), <https://perma.cc/ZU2W-9QZX>.

whole immigrant populations as criminal gang members.⁴⁹ In this environment, ICE agents have been engaged in a pattern of racially discriminatory stops of Black and brown New Yorkers across the state.⁵⁰

The ERA provides a bulwark against any efforts by local or state lawmakers who, inspired by the national anti-immigrant discourse and policy, may attempt to codify anti-immigrant legislation. The need for such protection is exemplified by the recent sharp increase in the number of local law enforcement agencies partnering with ICE to support the administration's assault on immigrants. Since January 2025, ICE has signed 287(g) agreements with eight additional New York counties, encompassing *twelve* law enforcement agencies; prior to 2025, New York had just one such agreement.⁵¹ Because New York City has refused to assist the administration's discriminatory attack on immigrants, the federal government has sued New York City in a challenge to the City's sanctuary laws, which protect

⁴⁹ The administration has repeatedly used the wartime Alien Enemies Act to claim, without evidence, that noncitizen Venezuelans older than fourteen years old are Tren de Aragua members and thus "alien enemies." See Proclamation No. 10903, Invocation of the Alien Enemies Act Regarding the Invasion of The United States by Tren De Aragua, 90 Fed. Reg. 13033 (Mar. 14, 2025), <https://www.federalregister.gov/documents/2025/03/20/2025-04865/invocation-of-the-alien-enemies-act-regarding-the-invasion-of-the-united-states-by-tren-de-aragua>.

⁵⁰ Legal Aid is suing federal immigration agencies, challenging the policy and practice of targeting Latino New Yorkers with discriminatory traffic stops. See Complaint, *Benitez v. Mullin*, 2:26-cv-02082, at ¶¶ 67- 69; ¶¶ 71-82 (Apr. 8, 2026).

⁵¹ NYCLU, *What are 287(g) Agreements and How Do They Fuel Trump's Mass Deportations?* (Feb. 4, 2026), <https://www.nyclu.org/commentary/what-are-287g-agreements-and-how-do-they-fuel-trumps-mass-deportations>.

immigrant New Yorkers' ability to fully participate in civil society.⁵² As law enforcement agencies across the State clamor to assist the administration in its attack on immigrants, a self-executing ERA that prohibits discrimination based on national origin and ethnicity, bars state and local legislators from codifying anti-immigrant laws and stops state and local agencies from adopting discriminatory practices. For the many New Yorkers fearful of immigration sweeps by local law enforcement, the ERA is available to protect their ability to participate in civil society, regardless of where they are born or their ethnicity.

Legal Aid has witnessed discrimination against its clients, based on national origin and ethnicity, through the immigration defense work of Legal Aid's Immigration Law Unit, which has represented clients ensnared in the administration's mass deportation regime. Legal Aid's criminal defense attorneys represent Latino New Yorkers who are disproportionately policed by the NYPD. Latino New Yorkers disproportionately face traffic-stops by the NYPD, are nearly six times more likely to have their cars searched by the NYPD than white drivers in New York City,⁵³ and are incarcerated at almost three times the rate of white New

⁵² See Complaint, *United States v. New York City*, Case No. 1:25-cvc-4084 (E.D.N.Y. Apr. 8, 2026).

⁵³ NYCLU, *NYPD Vehicle Stops Data* (Apr. 18, 2025), <https://www.nyclu.org/data/nypd-vehicle-stops-data>.

Yorkers.⁵⁴ And Legal Aid attorneys working in the child welfare system represent Latino children, who are disproportionately removed from their families and pulled into the City’s often traumatic foster care system.⁵⁵ In each of these systems, Legal Aid’s immigrant clients face discrimination along multiple axes, including perceived race, perceived ethnicity or national origin, and spoken language. The ERA’s recognition of the “interconnected nature of discrimination,” and its explicit protections of ethnicity and national origin, provide New Yorkers with the necessary tools to challenge discriminatory practices and anti-immigrant legislation, should it arise in the future.

III. CONCLUSION

The ERA promises New Yorkers “comprehensive, enforceable, and intersectional equality under the law.”⁵⁶ It provides New Yorkers with an effective tool to vindicate their rights to equal treatment in the face of uncertain and shrinking federal protections for LGBTQ+ individuals, attacks on federal disability rights and federal enforcement of those rights, and unprecedented assaults on immigrant

⁵⁴ New York State Dept. of Corrections and Community Supervision, Incarcerated Profile Report, Table 2 (Mar. 1, 2025), https://doccs.ny.gov/system/files/documents/2025/03/2025_03_03-uc-profile.pdf.

⁵⁵ Latino families in NYC are significantly more likely to be reported, investigated, and forcibly separated. The NYC Administration for Children’s Services is 6.7 times more likely to investigate Latino children than white children and 8.4 times more likely to take Latino children into foster care than white children. *See* State Off. of Child. & Fam. Servs., Hispanic Disparity Rate: Unique Children in CPS Reports CY 2024, at 6 (2024), <https://ocfs.ny.gov/reports/sppd/dmr/Disparity-Rate-Packet-2024-County-Comparison.pdf>.

⁵⁶ Sponsor’s Mem.

communities. The passage and ratification of the ERA demonstrates that New Yorkers believe in equality for all New Yorkers, “particularly those who have faced severe and pervasive injustice,” a promise that will only come to fruition if this Court determines the ERA has the full force of the law and can independently put an end to state discriminatory policies and practices. Legal Aid urges the Court to find the ERA creates a standalone cause of action and is self-executing against government discrimination, and that a heightened standard of review is applicable to each protected category.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to the State of New York, Court of Appeals Rules of Practice, 22 NYCRR Part 500.1 §§ (j)(1) and Part 500.11 §§ (j) and (m), I certify that the foregoing letter brief was prepared on a word processor, using 14-point Times New Roman proportionally spaced typeface, double-spaced, and with 12-point single-spaced footnotes. The total number of words in the brief, inclusive of point headings and footnotes is **6,929**.

Dated: May 13, 2026
New York, N.Y.

Respectfully submitted,

/s/ Ranit Patel

Ranit Patel

Counsel for Amicus Curiae

AFFIRMATION OF SERVICE

Ranit Patel affirms:

I am over eighteen years of age and a Staff Attorney in the Legal Aid Society's Special Litigation Unit. On May 13, 2026, I served, with consent of all parties or their counsel, the accompanying letter brief by sending one portable document format copy by electronic mail as complete and effective personal service upon the following named persons:

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I affirm, under the penalties of perjury under the laws of New York, that the foregoing is true, except for matters alleged on information and belief and as to those matters I believe it to be true.

/s/ Ranit Patel

Ranit Patel

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