09-1759

IN THE

United States Court of Appeals for the First Circuit

SAM and TONY M., by Next Friend Gregory C. Elliott; CAESAR S., by Next Friend Kathleen J. Collins; DAVID T., by Next Friend Mary Melvin; BRIANA, ALEXIS, CLARE, and DEANNA H., by Next Friend Gregory C. Elliott; and DANNY and MICHAEL B., by Next Friend Gregory C. Elliott; for themselves and those similarly situated,

Plaintiffs – Appellants,

v.

DONALD L. CARCIERI, in his official capacity as Governor of the State of Rhode Island; JANE HAYWARD, in her official capacity as Secretary of the Executive Office of Health & Human Services; and PATRICIA MARTINEZ, in her official capacity as Director of the Department of Children, Youth and Families,

Defendants – Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

BRIEF OF *AMICUS CURIAE* RHODE ISLAND AFFILIATE, AMERICAN CIVIL LIBERTIES UNION IN SUPPORT OF PLAINTIFFS – APPELLANTS AND IN FAVOR OF REVERSAL OF DISTRICT COURT'S JUDGMENT

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I. STATEMENT OF IDENTITY, INTEREST IN THE CASE AND SOURCE OF AUTHORITY

The Rhode Island Affiliate, American Civil Liberties Union ("RI-ACLU") is the state affiliate of the American Civil Liberties Union. Like its parent organization, the RI-ACLU is a non-profit, non-partisan organization dedicated to promoting the principles of liberty and equality embodied in the United States and Rhode Island Constitutions and federal and state civil rights laws.

In furtherance of these principles, the RI-ACLU has appeared before this Court and the court below, both as direct counsel and as amicus curiae, in cases, like this one, addressing the constitutional rights of vulnerable classes of individuals subjected to neglect and mistreatment by governmental institutions. See, e.g., Palmigiano v. Garrahy, 443 F. Supp. 956 (D.R.I. 1977), remanded by, 599 F.2d 17 (1st Cir. 1979) (class action lawsuit challenging the totality of conditions at the Rhode Island state prison). The RI-ACLU has similarly been actively involved in seeking to vindicate the rights of individuals, in a variety of contexts, to unimpeded access to the courts. See, e.g., Fontes v. Gonzales, 498 F.3d 1 (1st Cir. 2007) (amicus brief arguing that application of a federal law to bar appellate court jurisdiction of the appellant's habeas corpus claims violates the Constitution); In re: Providence Journal Company, Inc., 293 F.3d 1 (1st Cir. 2002) (amicus brief contesting district court practice of not placing court briefs in the public file).

The decision below has broad implications for both of these critical interests by severely circumscribing court access for those who need it most. Under the District Court's ruling in its Decision and Order dated April 29, 2009, foster children in Rhode Island -- an inherently vulnerable population completely dependent upon others to vindicate their legal rights -- have, for all intents and purposes, been denied access to the federal court to address civil rights violations. The inappropriate basis for this denial of access is heightened by the lower court's reliance on Rule 17(c) of the Federal Rules of Civil Procedure, when that rule was specifically designed to *provide access* for children and other vulnerable populations to the federal court.

The RI-ACLU seeks to file this brief of amicus curiae in light of its experience litigating similar issues that are directly implicated by the ruling below and its interest in protecting the vital Constitutional guarantee of access to the courts.

The RI-ACLU respectfully asks this Court for leave to file this Amicus Brief, based on the argument presented herein, and its Motion for Leave to File an Amicus Brief.

II. ARGUMENT

A. THE DISTRICT COURT ERRED WHEN IT EJECTED THE FOSTER CHILDREN, SUING THROUGH THEIR NEXT FRIENDS, FROM FEDERAL COURT.

1. A Section 1983 Action in Federal Court, through Next Friends, is the Proper Vehicle for Foster Children to Seek an End to Systemic Abuse and Neglect at the Hand of a Malfunctioning State System.

In rather summary fashion, the District Court seems to have concluded that the Rhode Island Family Court, not the federal court system, is the sole venue to review and hopefully resolve the systemic neglect suffered by the Plaintiffs and foster children throughout Rhode Island. (Add. at 2, 29-30; Decision and Order at 2, 29-30).[1] This erroneous jurisdictional premise appears to be the driving force behind the District Court's flawed analysis of Federal Rule of Civil Procedure 17(c) and outright dismissal of this case raising constitutional concerns.[2]

Plaintiffs, through their properly designated Next Friends, are seeking to assert and protect their federal constitutional rights. Such claims belong in the

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[1] Citations to Appellants' Addendum are prefixed by the abbreviation "Add." and to the Joint Appendix by the abbreviation "App."

[2] In fact, as noted by the Appellants, even assuming *arguendo* that the District Court was correct in concluding that the Next Friends were not proper persons to sue on Plaintiffs' behalf, it should have at the very least allowed the Plaintiffs to secure new representatives or itself appoint suitable replacements under Rule 17(c).

federal court system. This action must proceed on its merits, and its adjudication would not "invade the jurisdiction of the Rhode Island Family Court," as summarily and erroneously concluded by the District Court. (Add. at 30; Decision and Order at 30).

The United States Constitution and laws passed by Congress create the right to sue in federal court to protect rights created by the Constitution and federal law. See, e.g., U.S. Const. Art. III, § 2; 42 U.S.C. § 1983 and 28 U.S.C. §§ 1331 and 1332. Congress enacted §1983 in 1871. One can hardly even imagine what the constitutional and legal landscape would look like in this country without § 1983.[3] The United States Supreme Court articulated the broad purpose of § 1983 in McNeese v. Bd. of Educ. For Cmty. Unit School Dist. 187, Cahokia, Illinois, 373 U.S. 668, 672 (1963) (citations omitted):

> [T]o override certain kinds of state laws, to provide a remedy where state law was inadequate, to provide a federal remedy where the state remedy, though adequate in theory, was not available in practice, and to provide a remedy in the federal courts supplementary to any remedy any State might have.

Plaintiffs here seek federal court adjudication, pursuant to § 1983 and 28 U.S.C. §§ 1331 and 1343(a)(3), of claims arising from pervasive neglect

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[3] Congressional "debates show that one strong motive behind [enactment of § 1983] was grave congressional concern that the state courts had been deficient in protecting federal rights." Allen v. McCurry, 449 U.S. 90, 98-99 (1980).

suffered by foster children in state custody in Rhode Island as the result of constitutional violations by the state's child welfare agency. The Plaintiffs allege that the Rhode Island Department of Children, Youth and Families ("DCYF"), "the agency responsible for protecting abused and neglected Rhode Island children," is at fault for causing Rhode Island foster children to suffer needlessly. (App. at 18; Am. Comp. ¶ 1). Plaintiffs also allege that DCYF "is plagued by fundamental, systemic failings of great depth and scope." (Id. at 19-20; Am. Comp. ¶ 5). The Plaintiffs do not seek damages, but hope to avoid continued tragedy and grievous injury through injunctive and declaratory relief. While acknowledging the "heart wrenching and compelling" stories at the heart of the case (Add. at 6; Decision and Order at 6), the District Court slammed the courthouse doors on the Plaintiffs based upon unduly restrictive jurisdictional reasoning.

Where do the Plaintiffs go if the federal court won't let them in? Suit in the Rhode Island courts is practically impossible and inadequate. Rhode Island Family Court, the realm of the children's guardians *ad litem* and the Court-Appointed Special Advocate ("CASA") program, lacks jurisdiction over such systematic class action claims and has no power to issue the sort of broad injunctive and equitable remedies needed in this case. See R.I. Gen. Laws § 8-

10-3; In re Stephanie B., 826 A.2d 985, 993 (R.I. 2003) (Family Court lacks general equitable power).

The Plaintiffs have properly chosen the independence and resources of the federal court for a case of this dimension, consequence, and sensitivity. Tragically, the Plaintiffs have been simply tossed out of the forum best suited to hear their case when the law says they are properly there. They now have, in reality, nowhere else to turn.

Prior cases, including suits against DCYF, have demonstrated the importance of access to the federal district court. Repeatedly, Rhode Islanders have turned to the federal court for justice when they allege that DCYF or other arms of the state government have systematically violated rights protected by the United States Constitution or federal law. Inmates of the Rhode Island Training School v. Martinez, 465 F. Supp. 2d 131 (D.R.I. 2006) (granting ACLU's motion for approval of the payment and disbursement of attorneys' fees and costs in a class action suit commenced in 1971 by juvenile inmates; class action plaintiffs obtained consent decree in 1973); Office of the Child Advocate v. Lindgren, 296 F. Supp. 2d 178 (D.R.I. 2004) (denying motion to vacate 1988 consent decree precluding DCYF from placing children in its care in night-to-night placement); Corrigan v. Affleck, 523 F. Supp. 498 (D.R.I. 1981) (awarding injunctive relief in class action suit against Rhode Island

Department of Social and Rehabilitative Services challenging method of computing AFDC benefits); Davis v. Robinson, 346 F. Supp. 847 (D.R.I. 1972) (awarding injunctive and declaratory relief in class action brought by impoverished children against Rhode Island education officials regarding National School Lunch Program). In such federal cases, some claimants have succeeded, some have failed. But unlike the Plaintiffs in this case (children in state custody who have been victimized by a flawed DCYF system), the others have at least had their day in court.

2. Access to the Federal Court is Critical to Protecting One's Constitutional Rights.

The United States Supreme Court has recognized the fundamental importance of a person's right to be heard in federal court. The recognition exists both in "access to court" cases and cases dealing with other constitutional concerns. The District Court failed to recognize the fact that its ruling, for practical purposes, visited upon the Plaintiff Children the same harm the Supreme Court has sought to avoid in various contexts.

In Christopher v. Harbury, 536 U.S. 403 (2002), the Court considered the case of a widow of a Guatemalan rebel leader executed by Guatemalan army officers. The Plaintiff claimed that the United States Government intentionally misled her, and withheld information from her, about her husband's situation.

Id. at 405-09. She claimed that the deception prevented her from bringing a suit that may have saved her husband's life. Id. at 409-10. Her access to court claim failed because she lacked a viable, underlying claim compromised by the alleged deceptive conduct. Id. at 405.

While rejecting the Plaintiff's claim, the Court acknowledged two distinct categories of access to court cases. The first category involves "claims that systemic official action frustrates [the preparation] and filing of suits at the present time."[4] Id. at 413. The second category involves claims that "official acts have caused the loss or inadequate settlement of a meritorious case . . . or the loss of an opportunity to seek some particular order of relief . . . ." Id. at 413-414. The Court's recognition of these categories, while not directly apposite here, highlights the importance of the underlying interest at stake – access to court.

One access to court case involving interests akin to those at stake in this case is M.L.B. v. S.L.J., 519 U.S. 102 (1996). M.L.B., the biological mother whose parental rights vis-à-vis her two children had been permanently terminated, sought to appeal the termination ruling. Id. at 106-09. But she could not afford to pay for transcript preparation and the Supreme Court of

[4] See, e.g., Bounds v. Smith, 430 U.S. 817 (1977) (fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers).

Mississippi denied her leave to proceed *in forma pauperis*. Id. at 108-09. The Court noted that its decisions "concerning access to judicial processes . . . reflect both equal protection and due process concerns." Id. at 120. In explaining why M.L.B.'s interests warranted the Court's intervention, the Court stated as follows: "She is endeavoring to defend against the State's destruction of her family bonds, and to resist the brand associated with parental unfitness adjudication. Like a defendant resisting criminal conviction, she seeks to be spared from the State's devastatingly adverse action." Id. at 125.

In Boumediene v. Bush, 128 S. Ct. 2229 (2008), the Court considered whether aliens designated as enemy combatants and detained at the United States Naval Station at Guantanamo Bay, Cuba had the constitutional privilege of habeas corpus, a privilege not to be withdrawn except in conformance with the Suspension Clause, Art. I, § 9, cl. 2. The Petitioners in Boumediene had been detained in Afghanistan and other places before being transferred to Guantanamo Bay. Id. at 2241. They sought a writ of habeas corpus in federal court. Id. During the travel of the proceedings, the United States Court of Appeals for the District of Columbia Circuit held that the Military Commissions Act of 2006 ("MCA") divested the courts of jurisdiction to consider applications for habeas corpus writs of persons properly detained as enemy combatants. Id. at 2242.

The Supreme Court, however, opened the courthouse doors for these alien detainees. The Court found that the petitioners enjoyed the habeas corpus privilege and the MCA operated as an unconstitutional suspension of the writ. Id. at 2274. Although the Court admonished that it had not decided whether the President had authority to detain the petitioners or that the writ must issue, it unequivocally held that the petitioners could "invoke the fundamental procedural protections of habeas corpus" which the Court deemed "a right of first importance." Id. at 2277.

In this case, the Plaintiff Children, through their Next Friends, seek to halt devastatingly adverse actions resulting from DCYF practices which harm Rhode Island Children. A perverse and illogical result follows from the District Court's outright denial of the Plaintiffs' access to justice in federal court. The law requires that prisoners must receive help in pursuing legal action; alleged terrorists, not citizens of this country, must be allowed the habeas corpus writ; and indigent mothers must be allowed to appeal termination rulings without paying costs. Yet, innocent Rhode Island children, who are victims of neglect and abuse, cannot get into federal court because they already have state guardian *ad litems* in Family Court proceedings and because the "next friends" willing to help lack a sufficiently close relationship with the children to satisfy the District Court. Simply put, this is an unjust and erroneous result.

B. THE DISTRICT COURT'S RULE 17(c) ANALYSIS EXACERBATES THE FOSTER CHILDREN'S LEGAL VULNERABILITIES AND LEAVES THEM EXCLUSIVELY DEPENDENT UPON FAMILY COURT GUARDIANS *AD LITEM*, WHO MAY NOT HAVE AN INTEREST IN PROTECTING THE CHILDREN'S FEDERAL RIGHTS AND MAY ACTUALLY HAVE A CONFLICT OF INTEREST PRECLUDING THEM FROM EVER DOING SO.

The RI-ACLU adopts and supports Appellants' cogently stated and detailed analysis of Federal Rule of Civil Procedure 17(c) contained on pages 20–54 of their Brief. Appellants have clearly articulated the several procedural and substantive flaws in the District Court's unduly narrow analysis of Rule 17(c), which resulted in the abrupt dismissal of Plaintiffs' Amended Complaint. The RI-ACLU wishes to emphasize Appellants' reasonable and well-supported contention that Rule 17(c) must be applied to *provide access* to the federal courts for children and incompetent persons, particularly innocent victims such as the Plaintiffs. Respectfully, it is simply paradoxical that the District Court applied Rule 17(c) in such a rigid and unrealistic manner that it effectively (and potentially permanently) blockaded its doors to victims of Rhode Island's troubled child welfare system.

The legitimate and vitally necessary efforts of the Next Friends to advocate on Plaintiffs' behalf and protect their federal rights must not be thwarted merely because the Family Court has previously appointed guardians *ad litem* in distinct and unrelated proceedings. This is especially true where

there is clear record evidence that these guardians *ad litem* have not and will not likely challenge DCYF's actions and omissions because of alleged conflicts of interest.

While the District Court cited to Developmental Disabilities Advocacy Ctr., Inc. v. Melton, 689 F.2d 281 (1st Cir. 1982) to justify its dismissal of the Plaintiff's Amended Complaint (Add. 30; Decision and Order at 30), it failed to apply this Court's Rule 17(c) conflict analysis stated in that case. Particularly, this Court held in Developmental Disabilities Advocacy Ctr. that even when a plaintiff has a duly appointed guardian and Rule 17(c) would appear to preclude suit by a next friend, Rule 17(c) mandates that the District Court utilize its discretion to override the duly appointed guardian's position if necessary to protect the infant or incompetent person. Id. at 285-86. The District Court did not undertake any such conflict analysis. Instead, it merely pronounced without any detailed explanation that the Family Court guardians *ad litem* are the sole, conflict-free and proper protectors of the Plaintiffs' federal rights. This blanket conclusion was a clearly an abuse of discretion.

As the Fifth Circuit stated in Gaddis v. United States, 381 F.3d 444, 453-54 (5th Cir. 2004) (en banc):

> The need to protect the minor's or incompetent person's rights and interests in federal court proceedings is extremely vital; . . . This power to appoint guardians *ad litem* pursuant to Rule 17(c) is important not only to ensure that the minor's rights and interests are fully protected in cases where the minor is otherwise represented and there may be conflicts of interest, but also to ensure that the minor has proper access to the federal judicial system at all.

See also Adelman v. Graves, 747 F.2d 986, 989 (5th Cir. 1984) (citations omitted) ("[T]he district court should consider that access to the courts by aggrieved persons should not be unduly limited, particularly, as in the instant case, where an incompetent person raises allegations of violations attributable to his custodians, and further alleges a failure to act on the part of his legal guardian."); Ad Hoc Comm. of Concerned Teachers v. Greenburgh #11 Union, Free School Dist., 873 F.2d 25, 31 (2d Cir. 1989) ("The right of access to courts by those who feel they are aggrieved should not be curtailed; and this is particularly so in the instance of children who, rightly or wrongly, attribute such grievances to their very custodians.") (quoting Child v. Beame, 412 F. Supp. 593, 599 (S.D.N.Y. 1976)).

Rule 17(c) must be applied to safeguard access to the federal court for the most vulnerable who require it the most. A federal court must not rigidly interpret the Rule as a means to summarily dismiss claims that have been

properly pled by qualified and compassionate Next Friends, as is clearly the situation in this proceeding. Otherwise, as shown by the District Court's flawed analysis, innocent victims, such as Plaintiffs, are left with no place to turn to protect their constitutional and federal rights and no one to advocate on their behalf.

III. CONCLUSION

The District Court erred by ejecting the Plaintiffs from federal court. They, and other Rhode Island children suffering terribly because DCYF is failing them, desperately need to be heard through Next Friends appointed under Rule 17(c). Their right to be heard has been wrongly and unfairly denied; the courthouse doors slammed shut by a misinterpretation and misapplication of Rule 17(c). They need this Court to open those courthouse doors for them. It is the just and proper result.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE UNDER FED. R. APP. P. 32(a)(7)

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because: (1) this brief contains 3,087 words excluding the parts of the brief exempted by Fed. R. App. 32(a)(7)(B)(iii); and (2) this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a 14 point proportionally spaced typeface using Times New Roman font.

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I hereby certify that on this 19th day of August 2009, I have served two (2) copies of the within Brief by priority mail, postage prepaid upon:

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