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Proskauer Secures Unanimous Victory at the New York Court of Appeals on Behalf of Three Legal Services Organizations

For Good on **May 27, 2026**

In a unanimous decision, the New York Court of Appeals struck down regulations that would have created a new state-run system for parents to place their children with strangers. The Court held that the "Host Homes" program unlawfully strips away core protections for children and parents under New York State's voluntary foster care system, which is grounded in statute. I had the honor of serving as lead counsel in this case on behalf of The Legal Aid Society, Lawyers For Children, and the Legal Aid Bureau of Buffalo — three organizations that represent children in foster care proceedings.

New York State has long had a statutory framework with comprehensive procedural safeguards for children and families in crisis when parents or guardians feel unable to care for their own children. At issue in this case are regulations promulgated by the New York State Office of Children and Family Services (OCFS) that create, without statutory authority, a parallel, extrajudicial system of voluntary placement of children into Host Homes without mandated safeguards. The protections under current law hold OCFS and authorized private agencies accountable for the decision to take a child into placement, the care/treatment of the child while in placement, and the services provided to help the family reunify as quickly as possible.

Unlike existing law, the Host Homes program does not require the agency to provide supportive or preventive services to parents to avert placing children out of their homes or otherwise make efforts to reunify families. There is no requirement that the agency first attempt to place children with kin before placing them with strangers. There is no required court approval or court oversight of the placement and no appointment of counsel. As a result, children could languish in their Host Homes placement indefinitely. Children may even be sent to live out of state without any of the vetting or oversight of the child's placement that is required by the Interstate Compact on the Placement of Children when a child in foster care is placed outside of New York.

Indeed, under the Host Homes program, children separated from their families — who otherwise would be represented by our clients or comparable organizations — would have no means to express themselves or any legal recourse whatsoever.

In an opinion by Judge Anthony Cannataro, the Court found that “none of the statutes respondents invoke authorize OCFS to promulgate this program through regulation or indicate the legislature shared OCFS’s policy preferences for the placement of children in Host Homes rather than in foster care.” The Host Home regime, according to the Court, “purports to relieve its participants from some of the most important protections in the foster care system.” Those protections, however, represent policy judgments made by the legislature and cannot simply be ignored by OCFS. The Court concluded: “It is not for this Court nor respondents to rate the wisdom of these choices by countenancing a parallel regulatory system that attempts to evade them.”

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This decision is a victory for children and families. The practical effect here is that any program overseen by the State that removes children from their homes must include counsel, court oversight, and accountability. Notwithstanding four years of litigation and the complexities of the child welfare system, this case came down to a basic legal principle: an executive agency may not promulgate rules inconsistent with the relevant statutory language and its underlying purpose.

I am proud to lead the Proskauer team which includes pro bono counsel Michelle Moriarty and associates Hilda Kajbaf and Eamon Wizner.

Related Professionals

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