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**MAJOR CHALLENGE TO NYC FOSTER CARE SYSTEM GETS SECOND CHANCE  
AFTER FEDERAL APPEALS COURT FINDS THAT DISTRICT COURT ERRED**

**Second Circuit Reverses District Court Decision Denying Class Action Status To New York  
City Foster Children**

**NEW YORK, September 19, 2023**—In a strongly worded decision, the Second Circuit Court of Appeals today reversed and remanded a 2021 decision by the district court denying class action status to a long-running lawsuit challenging a range of practices by the New York City foster care system.

Citing the extensive evidence relied on by the plaintiffs, the appeals court ruled that the district court had erred in its consideration of commonality and typicality “under the proper legal framework” and had not sufficiently considered the evidence in plaintiffs’ application in support of class certification.

The child plaintiffs in the case are represented by A Better Childhood and Cravath, Swaine & Moore LLP.

“This is a major decision analyzing and supporting the requirements for the certification of a class,” said Marcia Robinson Lowry, Executive Director of non-profit A Better Childhood, one of the lawyers for plaintiffs. “It is a significant victory for children in the New York City foster care system, in which the appeals court noted that the practices on which the plaintiffs relied in support of class certification showed many of ACS’s practices departed from its written policies.”

Antony L. Ryan, partner at Cravath, Swaine & Moore LLP, said: “In addition to the impact this will have on the legal standard for class certification in public interest class actions, today’s decision allows us to continue efforts in this case to improve conditions for approximately 7,000 children in the foster care system in New York City.”

The appeals court noted “to the extent the district court categorically concluded that none of the class allegations ‘flow from unitary, non-discretionary policies’ and that they were ‘too broad and generalized,’ as a matter of law to satisfy commonality, this too was error.”

The examples cited by the appeals court which would satisfy the standards for class action status, and which the district court incorrectly rejected, included the asserted absence of a process for

matching children with appropriate placements, delegating care and case planning authority to caseworkers without adequate training standards, failure to ensure adequate case plans are timely developed and implemented, and the state's failure "to effectively exercise adequate and meaningful oversight over ACS (the Administration for Children's Services) and the Contract Agencies."

In addition, the appeals court rejected the district court's "suggestion that the New York State Family Court's role in each child's case creates 'dissimilarities within the proposed class' that 'impede the generation of common answers' is grounded on the same misunderstanding of plaintiffs' claims that permeates the rest of its analysis."

The case is being sent back to the district court for a reconsideration of the denial of class action status.

Read the decision [here](#).

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#### **About A Better Childhood**

A Better Childhood ("ABC") is a national nonprofit advocacy organization that uses the courts to reform dysfunctional child welfare systems around the country. ABC currently has cases in New York, New Jersey, Mississippi, Oregon, West Virginia, Alaska, California, Indiana, and Texas. For more information, please visit [www.abetterchildhood.org](http://www.abetterchildhood.org).

#### **About Cravath, Swaine & Moore LLP**

Cravath, Swaine & Moore LLP has been widely recognized as one of the premier U.S. law firms for more than two centuries. Each of the Firm's practice areas is highly regarded, and Cravath lawyers are recognized around the world for their commitment to the representation of clients' interests. Since inception, challenging pro bono work has been a cornerstone of Cravath's practice, and the full resources of the Firm are brought to bear in support of every pro bono matter. The Firm maintains offices in New York, London and Washington, D.C.