No. 14-CV-292

IN THE

DISTRICT OF COLUMBIA COURT OF APPEALS

DISTRICT OF COLUMBIA

Appellant,

V.

MELVERN REID, *et al.*,

Appellees.

ON APPEAL FROM AN ORDER OF THE
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

BRIEF OF AMICI CURIAE THE WASHINGTON LEGAL CLINIC FOR THE HOMELESS, BREAD FOR THE CITY, CHILDREN'S LAW CENTER, DC FISCAL POLICY INSTITUTE, DISTRICT ALLIANCE FOR SAFE HOUSING, FAIR BUDGET COALITION, GOOD FAITH COMMUNITIES, HOMELESS CHILDREN'S PLAYTIME PROJECT, THE LEGAL AID SOCIETY OF THE DISTRICT OF COLUMBIA, MIRIAM'S KITCHEN, NATIONAL ALLIANCE TO END HOMELESSNESS, NATIONAL ASSOCIATION FOR THE EDUCATION OF HOMELESS CHILDREN AND YOUTH, NATIONAL CENTER ON HOUSING AND CHILD WELFARE, NATIONAL COALITION FOR THE HOMELESS, NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, SASHA BRUCE YOUTHWORK, AND PROFESSORS ROBERT D. DINERSTEIN, DEBORAH EPSTEIN, MATTHEW FRAIDIN, JEFFREY GUTMAN, ANN SHALLECK, JESSICA STEINBERG

IN SUPPORT OF APPELLEES, REQUESTING AFFIRMANCE

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RULE 28(a)(2)(B) DISCLOSURE STATEMENT

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INTERESTS OF *AMICI CURIAE*

The Washington Legal Clinic for the Homeless ("Legal Clinic") is a private, non-profit legal services and advocacy organization in the District of Columbia. Its mission is to use law and advocacy to meet the needs and alleviate the suffering of clients who struggle with homelessness and poverty. The Legal Clinic was intimately involved in the drafting, passage and enforcement of the Homeless Services Reform Act of 2005 and the "private room" amendment to the Homeless Services Reform Act in 2010. The enforcement of the right to severe weather shelter is a core part of the Legal Clinic's work such that we provide legal information, advice or representation to hundreds of families and individuals seeking to assert their rights to shelter in freezing temperatures every winter.

Bread for the City is a private, non-profit social services organization that offers free food, clothing, medical care, social services and legal assistance to impoverished residents of the District of Columbia. Its different program areas serve over 4500 families per month, many of whom suffer from homelessness, are at risk of losing their homes, or reside in units containing significant housing code violations that jeopardize the health, safety, and comfort of their families and friends. Bread for the City works to alleviate these problems by providing direct assistance to clients and through extensive advocacy efforts, both on an individual and system-wide basis. The clients' situations clearly reflect a severe shortage of housing for low-income households in the District of Columbia, which for many results in the need for emergency shelter. For Bread for the City's clients, the ability to find and maintain work, keep families together, and meet the vast array of other challenges faced by the poor all stems from having a stable, decent place to live.

Children's Law Center works to give every child in the District of Columbia a solid foundation of family, health and education. The organization is the largest provider of free legal services in the District and the only to focus on children's comprehensive needs. Last year, its 90-person staff partnered with local pro bono attorneys to help more than 5,000 at-risk children and their families. Children's Law Center also uses this experience to advocate for changes in the District's laws, policies and programs to benefit all children.

The DC Fiscal Policy Institute (DCFPI) is a private, non-profit research and public education organization that focuses on budget and tax issues in the District of Columbia, with a particular emphasis on issues that affect low- and moderate-income residents. By preparing timely analyses that are used by policy makers, the media, and the public, DCFPI seeks to inform public debates on budget and tax issues and to ensure that the needs of lower-income residents are considered in those debates. DCFPI's areas of work include analyzing the impact of tax and other revenue policies on the District's long-term fiscal health and on the equity of its tax system; working to ensure that programs serving low- and moderate-income residents, such as shelter and other homeless services, are well designed, effective, and adequately funded; and conducting research on income and poverty trends in the District and on serious problems facing low-income residents, such as the growing shortage of affordable housing.

The District Alliance for Safe Housing (DASH) was founded in 2006 to provide relief to survivors of domestic and sexual violence, through emergency and long-term safe housing, and innovative homelessness prevention services. In less than four years, DASH has helped to transform how safe housing is operated and accessed throughout the District, and has grown to become the city's largest dedicated housing provider for victims of violence and their children.

DASH staff testified against the repeal of the apartment-style shelter protections in the law in 2010.

Since its founding in 1994, the Fair Budget Coalition has brought together human service and legal services providers, community members directly impacted by poverty, advocates, faith organizations and concerned District residents to advocate for a District budget and public policies that address human needs. FBC has grown to represent over 80 organizations plus dozens of concerned citizens and people impacted by poverty who come together to engage in advocacy and organizing around social and economic justice in the District of Columbia.

The Good Faith Communities Coalition is an alliance of faith communities in the District of Columbia started in late 2010. The 25 member faith communities have come together voluntarily to educate themselves on issues related to homelessness and affordable housing in the District and to advocate with and for brothers and sisters who are without a permanent home. At a bare minimum, Good Faith believes and supports the rights of homeless families to have shelter which is safe, private, in a humane setting and with an emphasis on caring for the needs of helpless children.

The mission of the Homeless Children's Playtime Project is to nurture healthy child development and reduce the effects of trauma among children living in temporary housing programs in Washington, D.C. The Playtime Project sets up children's play programs in family homeless shelters, where our volunteers provide opportunities to learn and heal through play for 600 children each year through thirteen weekly programs. The Playtime Project seeks to help create a city that provides every opportunity for homeless children to succeed by advocating for affordable housing and safe shelters for all families. Staff from the Playtime Project testified against the repeal of the apartment-style shelter protections in the law in 2010.

The Legal Aid Society of the District of Columbia was formed in 1932 to provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs. Legal Aid By-Laws, Art. II, Sec. 1. Legal Aid is the oldest general civil legal services program in the District of Columbia. Legal Aid has long represented many homeless individual and families seeking temporary shelter and longer-term housing in the District.

Miriam's Kitchen advocates for permanent supportive housing as a long-term solution to chronic homelessness while it meets the short-term needs of its homeless guests by providing healthy meals and high-quality social services to more than 4300 chronically homeless persons each year. In addition, Miriam's Kitchen educates elected officials towards more effective public policies and believes that homeless advocacy is most effective when it has been informed by those who have experienced homelessness.

The National Alliance to End Homelessness (Alliance) works toward ending homelessness by improving homelessness policy, building on-the-ground capacity, and educating opinion leaders. The Alliance is a leading voice on federal homelessness policy. From advocating for improved federal policy to analyzing enacted and proposed legislation, the Alliance actively engages in the legislative process. The Alliance works collaboratively with public, private, and nonprofit partners to develop, analyze, and advocate for policy solutions to homelessness.

The National Association for the Education of Homeless Children and Youth (NAEHCY) is a national membership association dedicated to supporting the educational success of children and youth experiencing homelessness. NAEHCY connects educators, service providers, advocates, and young people to ensure school attendance and overall success for youth whose

lives have been disrupted by the lack of safe, permanent and adequate housing. Medical and social science research show negative effects on physical and mental health and educational success from overcrowding, lack of privacy, fear associated with living with strangers, and the trauma caused by unsafe and inappropriate shelter. For these reasons, NAEHCY advocates for safe, appropriate living conditions for all children and youth experiencing homelessness—living conditions that provide adequate safety, privacy and space for the critical developmental needs of children and youth.

The National Center for Housing and Child Welfare (NCHCW) links housing resources and knowledge to child welfare agencies in order to improve family functioning, prevent family homelessness, and reduce the need for out-of-home placement. NCHCW's work also includes a focus on youth permanency and independent living to ensure that older youth in foster care have a connection to permanent family as well as a solid plan for stable housing and services to help them be successful as adults. NCHCW works at the local, regional, and national level to create cross-agency partnerships to enable communities to respond appropriately to families and youth who are caught at the intersection of homelessness and child welfare.

The National Coalition for the Homeless (NCH) is a national network of people who are currently experiencing homelessness or who were once homeless, activists and advocates, community and faith-based homeless service providers, and others committed to a single mission: to end homelessness. NCH is committed to creating the systemic and attitudinal changes necessary to prevent and end homelessness. At the same time, NCH works to meet the immediate needs of people who are either currently homeless or at risk of homelessness. NCH takes as our first principle of practice that people who are currently experiencing homelessness or have formerly experienced homelessness must be actively involved in all of our work. NCH

remains a substantive voice in the federal legislative process for people who are experiencing homelessness. In its policy advocacy, NCH works diligently to ensure that mainstream resources and opportunities are available to families and individuals who are either homeless or at risk of homelessness.

The National Law Center on Homelessness & Poverty is the only national legal group dedicated to ending and preventing homelessness. Through policy advocacy, public education, and impact litigation, the Law Center's national programs address the root causes of homelessness and meet the immediate and long-term needs of those who are homeless or at risk of becoming homeless. This case, with its focus on shelter standards in the District of Columbia, implicates one of our fundamental beliefs – that all people have the right to safe, decent, affordable housing. Staff from the Law Center testified against the repeal of the apartment-style shelter protections in the law in 2010.

The mission of Sasha Bruce Youthwork is to improve the lives of runaway, homeless, abused, and neglected and at-risk youth and their families in the Washington D.C. area. Sasha Bruce achieves this by providing shelter, counseling, life skills training and positive youth development activities to approximately 1,500 youth and 5,000 family members each year. The director of Sasha Bruce testified against the repeal of the apartment-style shelter protections in the law in 2010.

Professors Robert D. Dinerstein (American University, Washington College of Law*), Deborah Epstein (Georgetown University Law Center*), Matthew Fraidin (University of the District of Columbia David A. Clarke School of Law*), Jeffrey Gutman (George Washington University Law School*), Ann Shalleck (American University, Washington College of Law*), and Jessica Steinberg (George Washington University Law School*) are all law professors who

have a longstanding professional interest in the problem of homelessness and the furtherance of social justice. *University affiliation is provided for identification purposes only.

ARGUMENT

I. The HSRA mandates that all severe weather placements for families be in apartment-style shelters or private rooms.

All parties agree that the Homeless Services Reform Act (HSRA) unconditionally and repeatedly conveys a right to shelter in severe weather conditions as a critical part of the Continuum of Care. The Continuum of Care section of the HSRA establishes the basic outline of the homeless services continuum by 1) delineating the range of possible services that *can* be offered (D.C. Code § 4-753.01 (b)) (everything from crisis intervention to long term housing); 2) stating what *must* be in the continuum (§ (c)(1) ("the District shall make available appropriate space in District of Columbia public or private buildings and facilities…" to persons who are homeless in severe weather.);[1] and 3) stating what *cannot* be in the continuum (§ (d)) ("the Mayor shall not place homeless families in non-apartment-style shelters" or, if such spaces are not available, placements must be in "non-apartment-style-shelters that are private rooms."). While the District asserts that the "Client Rights" section of the HSRA, § 4-754.11 (5), is the only section this Court should consider when determining the scope of a client's right to shelter in severe weather (Appellant's Br. at 23, 26), this Court must consider the HSRA as a whole and give meaning to its text and intent.[2] *United States v. Borden Co.*, 308 U.S. 188, 198 (1939)

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[1] The District states in its brief that the existence of D.C. Code § 4-753.01 (c)(2), which prevents D.C. from using schools "currently being used for educational purposes without prior approval of the Mayor," supports its contention that the HSRA contemplated the use of communal spaces as severe weather shelter. Appellant's Br. at 33. That is true—just not for families. Communal spaces have been used as severe weather shelter for individuals without minor children for decades, including vacant schools such as Gales School, Franklin School, and others. But no school has ever been used to shelter families, to our knowledge.

[2] The "Continuum of Care" section of the HSRA is at the beginning of the statute, with only definitions and the Interagency Council on Homelessness sections before it. That placement supports a reading that it was intended to frame the scope of homeless services throughout the document. *See In re Nathan Edmonds, Jr.*, No. 13-FM-28 (D.C., July 31, 2014) (noting the

("When there are two acts upon the same subject, the rule is to give effect to both if possible."); *Burton v. Office of Empl. Appeals*, 30 A.3d 789, 792 (D.C. 2011) (language of a statute should be interpreted "in... light of the statute taken as a whole") (citation and quotations omitted). Viewed as a whole, the HSRA unambiguously requires that severe weather shelter be "appropriate space in" a building (§ 4-753.01 (c)) that provides private or apartment-style rooms to families (§ 4-753.01 (d)) rather than simply space in a building as the District contends.[3]

The District asserts that the mandate for "*appropriate space* in District of Columbia public or private buildings or facilities" contained in D.C. Code § 4-753.01 (c)(1) (emphasis added) does not apply to shelter in severe weather conditions. Appellant's Br. at 24. The District's construction would evince odd legislative intent as it is precisely severe weather conditions that are the most dangerous for homeless families with children. If the Council intended for this section to merely mimic the definition of hypothermia shelter— "a public or private building," § 4-751.01 (21)—it would have done so or just referenced the "Client Right" to shelter in severe weather conditions. Instead, the Council added the phrase "appropriate space in, thereby deliberately mandating that "appropriate space" in such buildings be made available. *See Baltimore v. District of Columbia*, 10 A.3d 1141, 1150 (D.C. 2011) (finding a "clear statutory entitlement embodied in Section 4-753.01 (c), and that is the right to 'appropriate space in District of Columbia public or private buildings and facilities' in severe weather."). Such language cannot be disregarded as mere surplus under well established canons of statutory construction. *See Mail Order Ass'n v. United States Postal Serv.*, 300 U.S. App. D.C. 46, 52, 986 F.2d 509, 515 (1993) ("we are to construe statutes, where possible, so that no provision is

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significance of the "'immediate statutory environment surrounding [those] two sections…'") (quoting *O'Rourke v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 46 A.3d 378, 385 (D.C. 2012).

[3] Severe weather shelters must also meet minimal provider standards (D.C. Code §§ 4-754.21, 4-754.22).

rendered 'inoperative or superfluous, void or insignificant.'") (quoting *Public Citizen Health Research Group v. FDA,* 227 U.S. App. D.C. 151, 156 704 F.2d 1280, 1285 (1983)) (internal quotations omitted). For families, "appropriate space" is, at a bare minimum, either apartment-style or private room shelter.

Central to the District's appeal, of course, is its argument that D.C. Code § 4-753.01 (d) does not apply to the right to shelter, that the restriction on the Continuum of Care for placement of families in only private or apartment-style rooms is somehow both mandatory ("the Mayor shall not…") and unenforceable. Appellant's Br. at 28. *See Peoples Drug Stores v. District of Columbia*, 470 A.2d 751, 753 (D.C. 1983) (en banc) (finding that the primary and general rule of statutory construction is that the intent of the legislature can be found in the language it has used). Notably, this prohibition against the placement of families in non-apartment-style or non-private rooms is a prohibition that is not limited to placements in temporary shelter. Indeed, this provision modifies the entire spectrum of shelter types available to families by using the term "shelter," which the HSRA defines as "severe weather shelter, low barrier shelter, and temporary shelter." § 4-751.01 (37). Thus, the prohibition unquestionably applies to family placements in severe weather shelter.

II. While the District is wrong to rely solely on the "Entitlement" provision of the HSRA, D.C. Code § 4-755.01 (a), such reliance still leads to an entitlement to apartment-style or private room shelter for families.

The District argues that, when determining the scope of the enforceable entitlement to shelter in severe weather conditions, the only relevant section of the HSRA is the right outlined in the "Client Rights" section found at D.C. Code § 4-754.11 (5).[4] Appellant's Br. at 23, 26.

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[4] The District admits that the Client Right to "shelter in severe weather conditions," can be expanded by the definition section of the HSRA, yet strangely looks only to the definition of

Appellant reaches that conclusion by relying entirely on § 4-755.01 (a) which states that "no provision of this chapter shall be construed to create an entitlement (either direct or implied) on the part of any individual or family to any service within the Continuum of Care, other than shelter in severe weather conditions as authorized by § 4-754.11 (5)." Appellant provides no justification for its claim that this section's reference to the Client Rights section means that that is the only section a court should look to when determining the scope of this right, nor does it explain why so many other sections of the HSRA are superfluous. *See Public Citizen Health Research Group v. FDA,* 227 U.S. App. D.C. 151, 704 F.2d 1280, 1285 (1983) (where the court "found no reason to depart from the principle of statutory construction favoring interpretations that give effect to every provision of a statute so that no part is rendered 'inoperative or superfluous, void or insignificant.'") (citation omitted). Contrary to the Appellant's contention, this section merely limits the entitlement to the right to shelter in severe weather conditions by excluding unrelated services. This section is not intended to separately define or conscribe the right to shelter itself.[5]

Nevertheless, even if this section were the sole section of the HSRA from which all interpretation must follow, the HSRA still grants an entitlement for families to apartment-style or private room shelters in severe weather. First, D.C. Code § 4-755.01 (a) specifically refers to an entitlement "within the Continuum of Care," a continuum that is expressly limited to apartment-

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severe weather shelter in its analysis. "Shelter" is defined more broadly than just severe weather shelter; instead it includes "severe weather shelter, low barrier shelter, and temporary shelter." § 4-751.01 (37). The District ends its analysis at the definition of hypothermia shelter, a subset of severe weather shelter, concluding that "the only entitlement related to cold-weather shelter is to a 'public or private building.'" Appellant Brief at 28.

[5] If the Council had wanted to so limit the interpretation of the right to shelter to the Client Rights section alone, it would not have used the words "as authorized by." The District's position might have more merit if the Council had written "no provision of this chapter shall be construed to create an entitlement (either direct or implied) on the part of any individual or family to any service within the Continuum of Care, *other than* § 4-754.11 (5)."

style or private-room placements for families. Second, the Client Rights section does not simply grant a right to "shelter in severe weather conditions" as the District implies. Appellant's Br. at 28. Instead, § 4-754.11 (5), when read in its entirety, states that "Clients served *within the Continuum of Care* shall have the right to… (5) Shelter in severe weather conditions." (emphasis added). In other words, the Client Right to "shelter in severe weather conditions," upon which Appellant relies, directly references the very section of the statute that Appellant contends is merely advisory—§ 4-753.01. Accordingly, families are entitled to placements in severe weather that comport with the Continuum of Care requirements to receive appropriate and apartment-style or private room placements.

III. The District's narrow reading of the "Entitlement" provision would lead to bizarre and unjust results for individuals and families.

The District's narrow reading of the right to shelter would lead to injustice, harm to D.C. residents and would disregard the policies undergirding the legislature's creation of the right to shelter during severe weather that is embodied in the HSRA. *See In re C.L.M.*, 766 A.2d 992 996-97 (D.C. 2001) ("Because the legislature must be presumed to have acted rationally and reasonably, with an awareness of the goals of the statutory scheme as a whole, the courts eschew interpretations that lead to unreasonable results, that create obvious injustice, or that produce results at variance with the policies intended to be furthered by the legislation."). By claiming that the Client Rights section of the HSRA referenced by the entitlement provision is the only section clients may enforce in a court of law, the District seeks unbridled discretion in placing D.C. residents in any private or public building in the District, regardless of safety or appropriateness. The District's interpretation of the HSRA would completely eviscerate the right to shelter, contradict the public policy interest in protecting homeless persons during severe weather, and could result in serious harm or even death to D.C. residents.

It is indisputable that the statutory right to shelter in severe weather was enacted to protect people from unsafe conditions and, in particular, the life-threatening condition known as hypothermia, when a person's body temperature falls below 95 degrees Fahrenheit due to exposure to cold or wet conditions. *See* Mayor's Order 2001-161 (Oct. 31, 2001) at 1. The District's own Interagency Council on Homelessness' 2013-2014 Winter Plan acknowledges that: "[t]he HSRA mandates that by September 1 of each year, a plan be in place describing how those who are homeless and cannot access other shelter will be protected from cold weather injury." *Available at* http://s1066930.instanturl.net/wp-content/uploads/2014/01/Winter-Plan-2013-2014-final.pdf at 3. Ultimately, the purpose of the right to shelter in severe weather is to create safe havens where individuals and families may find protection from unsafe circumstances. The District's argument, that the only entitlement is to be placed in a public or private building during severe weather, would allow the District unbridled discretion and would undermine the public policies that form the basis of the statutory protections in the HSRA.

Under the District's suggested interpretation of the HSRA, the District would face no consequences if its winter placements failed to meet the provider standards for severe weather shelter. *See* D.C. Code § 4-754.21 (requiring beds, basic needs, toilets, cool water, and heating and cooling systems), § 4-754.22 (requiring "safe, clean and sanitary facilities" (2) among other things).[6] Thus, Appellant's interpretation would permit the District to protect people from freezing temperatures by placing them in buildings with no heat—a truly bizarre result. *See* *Bovat v. City of Waterbury*, 783 A.2d 1001 (Conn. 2001) (finding bizarre and unsupportable the city's interpretation of a statute where "the more culpable the conduct of the municipality, the less likely its liability under the statute"), *citing Southington v. Commercial Union Ins. Co.*, 757

[6] Provider standards are cumulative in the HSRA; thus, severe weather shelters must also meet the common provider standards expressed in § 4-754.21. D.C. Code § 4-754.22 ("In addition to the standards in § 4-754.21, providers of severe weather shelter shall provide...").

A.2d 549 (2000) ("We ordinarily read statutes with common sense and so as not to yield bizarre results."); *Peoples Drug Stores*, 470 A.2d at 754 ("the literal meaning of a statute will not be followed when it produces absurd results.") (citations omitted). The District would also have no obligation to provide beds or toilets. *See* §§ 4-754.21 (1), (3). While we would hope the District would never take such inhumane actions, the District is asking the Court to read the HSRA in such a manner as to provide no recourse to a homeless individual who was placed in an abandoned public or private building with no heat, electricity, plumbing or even a bed on which to sleep.

Similarly, the District's argument supposes that the "common standards" applicable to *all* providers, as delineated in D.C. Code § 4-754.21, are not enforceable even as applied to severe weather placements in shelter. Thus the District could, for instance, place D.C. residents in buildings that were patently unsafe and that violated every applicable D.C. building and fire code, such as an abandoned warehouse with exposed electrical wires and a blockaded fire exit, yet homeless persons could seek no judicial redress. *See* § 4-754.21 (2) ("Providers shall: Maintain safe, clean, and sanitary facilities that meet all applicable District health, sanitation, fire, building, and zoning codes.") With no definition of the word "building" contained in the HSRA (and given the District's failure to adhere to basic definitions of statutory terms, such as when Appellant argued that recreation center placements met the definition of "private room," Joint Appendix (JA) 245-47) and no mandate to comply with "building codes," the District could decide that a cardboard box, a tent, or a blanket fort over a park bench would all be acceptable "public or private buildings" in which to place D.C. residents in subfreezing temperatures.

If, as the District suggests, the right to shelter in severe weather is similarly not modified by the mandate that placements in severe weather be in "appropriate space," the District would

be free to place those who are homeless in any public or private building with no regard to the appropriateness of the building or part of the building as a shelter or the appropriateness for that individual or population. *See* D.C. Code § 4-753.01 (c) ("…the District shall make available *appropriate space* in District of Columbia public or private buildings and facilities…") (emphasis added). Consistent with the District's interpretation of the law, parts of buildings that are inappropriate for shelter such as stairwells or crawl spaces would be allowed. The District could also place D.C. residents, including children, in buildings or facilities which have a primary purpose that is inappropriate for use as a shelter, such as the D.C. morgue, marijuana cultivation centers or dispensaries, laundry facilities, or twenty-four hour restaurants. Lastly, the District could make placements with no regard to the appropriateness for the individual or population—for example, it could place children with sexual predators or domestic violence survivors in a men's shelter with no separation between the populations and no ability to protect these particularly vulnerable populations.

This Court should reject Appellant's narrow reading of the entitlement to shelter in severe weather because its reading would lead to injustice, harm to D.C. residents and would eviscerate the policies undergirding the HSRA.

IV. The District's interpretation of the HSRA conflicts with legislative history and the purpose of the private room provision.

While we believe that the HSRA unambiguously grants an entitlement for families to apartment-style or private room shelters, the legislative history of the 2010 "private room" amendment illuminates a clear intent by the Council to memorialize such an entitlement. *See Peoples Drug Stores*, 470 A.2d at 754 ("words are inexact tools at best, and for that reason there is wisely no rule of law forbidding resort to explanatory legislative history no matter how clear the words may appear on superficial examination") (citations omitted).

This past winter was not the first winter that the District placed families in communal settings. In fact, during the winter preceding the 2010 HSRA "private room" amendment, the District used D.C. General as its sole severe weather shelter for families. When the District ran out of rooms in which to place families, it began to place multiple families together in common area rooms such as cafeterias. At the hearing on the 2010 HSRA amendments, Marta Beresin from the Washington Legal Clinic for the Homeless testified before the D.C. Council that:

> At the height of hypothermia season last year, as many as 18 families were placed in one room together at D.C. General, without regard to gender, age, mental or physical health disabilities, or domestic violence factors. Mothers were afraid to go to sleep at night and children were up until past midnight because of the chaos that accompanies this type of setting.

D.C. Council, Report on Bill 18-1059, the "Homeless Services Reform Amendment Act of 2010" ("2010 Comm. Report"), Attachment C at 92 (Dec. 1. 2010), available at http://dcclims1.dccouncil.us/images/0001/20110112172448.pdf. *See also* Jason Cherkis, *Inside D.C. General: Former Staffers Talk Mold, Bathroom Blowjobs, and Mismanagement*, WASHINGTON CITY PAPER, Mar. 29, 2010, *available at* http://www.washingtoncitypaper.com/blogs/citydesk/2010/03/29/inside-d-c-general-former-staffers-talk-mold-bathroom-blowjobs-and-mismanagement/ (photograph showing "cramped sleeping arrangements in the activity rooms" and "in one case, a supply closet became a bedroom. Families Forward tried to pressure two pregnant women to share that particular closet.").

The only reason the District stopped sheltering more than a dozen families in one room was because the Washington Legal Clinic for the Homeless threatened to file a class action on behalf of the families placed in unsafe conditions at D.C. General. *See* Jason Cherkis, *D.C. General's Family Shelter Back at Capacity*, WASHINGTON CITY PAPER, June 8, 2010, *available*

at http://www.washingtoncitypaper.com/blogs/citydesk/2010/06/08/d-c-generals-family-shelter-back-at-capacity/ ("According to internal e-mails, the Department of Human Services (DHS) began moving families into housing units after it faced the threat of a lawsuit by the Washington Legal Clinic for the Homeless.") Because the primary cause of action in the threatened class action was the HSRA's requirement that families be placed in apartment-style shelters, the District not only moved families into more appropriate settings in response, but also went to the D.C. Council to change the law:

> Beginning in March, DHS made a commitment to stop the overcrowding at that time, and to avoid this type of situation from recurring, and they did so because of the very prohibition that this Council is considering repeal of. Because of the prohibition in current law, DHS has committed, in conversations around the Winter Plan, that they will not place unrelated families together at D.C. General this year. But repeal of the apartment-style requirement will significantly reduce the incentive the government has to place families in safe and humane settings this winter.

Testimony of Marta Beresin, 2010 Comm. Report, Attachment C.

The District clearly understood that the statute imposed mandatory requirements about the form of shelter required for homeless families— apartment-style units. Therefore, it asked the Council to eliminate that requirement which would then enable placement in communal spaces. Whatever it may argue now, clearly the District understood back then that the statute's requirement for the form of family shelter is just that, a requirement.

More importantly, the Council denied the District's request and chose not to repeal the requirement. The District's requested repeal drew enormous opposition from homeless advocates. *See e.g.* Testimony of Marta Beresin, J.D., Staff Attorney, Washington Legal Clinic for the Homeless; Larisa Kofman, J.D., Policy Director, District Alliance for Safe Housing, Inc.; Tulin Ozdeger, Civil Rights Director, National Law Center on Homelessness & Poverty; Matthew Fraiden, Professor, University of the District of Columbia David A. Clarke School of

Law; Jamila Larson, Executive Director/Co-Founder, Homeless Children's Playtime Project. 2010 Comm. Report, Attachment C. After hearing testimony from Ms. Beresin and others, the D.C. Council rejected the District's requested repeal of the apartment-style requirement. Instead, it maintained that requirement, but added a provision permitting the District limited flexibility if no apartment-style shelters were available. In articulating an exception, the Council did not permit the District to place families anywhere it likes, as it now claims the right to do. Rather, the Council expressly required that when no apartment-style shelter was available, the District must still place families in private rooms.

Thus, the whole reason for the private room requirement was to limit placements to settings the Council considered minimally suitable for families with minor children. In adopting the private room provision, the Council rejected the District's effort to change the law so it could place families anywhere it likes. Instead, the Council made it clear that even when there are no apartment-style units available, families are still entitled, at a minimum, to placement in private room settings. In short, by adopting the private room requirement, the Council rejected exactly the position now advanced by the District in this appeal. *See Peoples Drug Stores*, 470 A.2d at 754 (asserting that delving into legislative history should be a "historical inquiry to determine how the enacting legislature would have answered the specific question before the court.")

V. Families placed in non-private settings will suffer irreparable harm.

Contrary to Appellant's claim, the threat of injury to children staying in non-private room settings like the recreation centers, with little or no privacy or security, is extremely likely. The lack of privacy and security and safety measures in the recreation centers exposed children and their parents to substantial risk of physical, emotional, and psychological harm—harm that is likely to reverberate, impacting educational outcomes and the long term well-being of children.

It is undisputed that the recreation centers failed to have adequate security measures to protect homeless families. The District's own witness testified about the lack of metal detectors or bag checks for anyone entering the recreation centers. JA 380. As a result, anyone—whether a person staying in the centers or a stranger off the street—could bring weapons or drugs into the recreation center and endanger all the families who could not protect themselves behind closed doors. Furthermore, nearly forty-five percent of homeless families in the D.C. region have experienced domestic violence, and many of these families are placed in the general shelter system because D.C.'s domestic violence programs do not have enough capacity to accommodate all of the families who need them. *See* Metropolitan Washington Council of Governments, *Homelessness in Metropolitan Washington: Results and Analysis from the 2014 Point-in-Time Count of Homeless Persons in the Metropolitan Washington Region* at 21 (2014) (finding that "Among [homeless] families, the most defining characteristic is an incidence of domestic violence, either the current episode which led to homelessness on the night of the enumeration, or having a history of domestic violence.") The risks of non-private room shelters to survivors of domestic violence has long been established. At the 2010 hearing on the HSRA "private room" bill, the public policy director of the District Alliance for Safe Housing ("DASH"), testified to the likelihood of harm arising from such placements:

> Communal shelter is the most dangerous housing model for domestic violence victims and children in the District's homeless shelter system. Victims and children living in close proximity to perpetrators of violence is one of the most dangerous and most common scenarios in communal shelters... If communal shelter is legalized during hypothermia season, lives of staff and D.C. residents will be in jeopardy.

2010 Comm. Report, Attachment C. Unlike all other shelters in the D.C. family shelter system, which have security measures in place, the recreation centers exposed those fleeing domestic violence to potential attacks from abusers who could simply follow them into the building.

The lack of security or privacy on the inside of the recreation centers also exposed families to harm. The lack of privacy or ability to enclose one's family in its own room meant an increased risk for children of abuse or assault by unrelated adults.[7] Children were also at greater risk of accidental injury because the living environment was constantly changing and parents were unable to "child-proof" or control their children's living environment. Very young children in particular are at risk of harm from electrocution, injury or accidental poisoning or drug consumption in such settings.

Any exposure to an unstable and unsafe environment such as that provided by the recreation centers can result in lasting harm to a child simply from the stress or fear it instills in that child. *See* Elizabeth K. Hopper et al., *Shelter from the Storm: Trauma-Informed Care in Homelessness Services Settings, 3,* OPEN HEALTH SERVICES and POL'Y J. 80 (2010) (defining trauma as "an experience that creates a sense of fear, helplessness, or horror, and overwhelms a person's resources for coping."). For parents and their children who have already experienced trauma related to homelessness, domestic violence, or other past experiences, the absence of privacy and security is likely to be further traumatizing. *Id.at* 82.

Children, understandably, could not sleep well in recreation centers both because of their fear and due to their exposure to outside stimuli—including lights, loud singing, vulgar language, smoke coming in from the outside, people dropping things objects on the floor, and strangers peering at them through partitions. JA 306-307, JA 320-322; JA 330. *See also* JA 384 (District caseworker Ted Joseph testifying that staff at the recreation centers would walk around at night to observe to make sure that families were sleeping, and that the lights were kept on all night

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[7] Additionally, the development of "learned helplessness" in children puts them at greater risk of harm in other circumstances. For example, a child who has learned helplessness may be more susceptible to kidnapping or sex trafficking, because if they are approached by an adult, they are less able to protect themselves or to remove themselves from the situation. (JA 350)

because turning them off would reduce security.); JA 322 (Jenique Fultz testifying that she stayed up all night "for the safety of my child and myself."). Sleep deprivation in children leads to trouble focusing in school, trouble retaining information taught by teachers as well as behavioral issues that look like hyperactivity. JA 346-48. The more sleep deprived a child is, the more likely they are to be hyperactive and not get enough sleep, thus creating a damaging cycle that has lasting effects on the child's ability to learn and thrive in school, irreparably harming the child's future. *Id.* In the long term, sleep deprivation and stress can lead to depression, anxiety disorders, and other chronic health problems that are caused by severe stress. JA 347-349. *See generally* Jack P. Shonkoff, M.D. and Andrew S. Garner, M.D. et al., *The Lifelong Effects of Early Childhood Adversity and Toxic Stress,* 129, Pediatrics, (2011) *available at* http://pediatrics.aappublications.org/content/early/2011/12/21/peds.2011-2663.full.pdf (finding that toxic stress in children can cause permanent impairments in physical and mental health).

Being in an overcrowded situation alone can have a lasting negative impact on a child. There is a significant correlation between being in an overcrowded environment and poor performance in school. *See* Dominique Goux & Eric Maurin, *The Effect of Overcrowded Housing on Children's Performance at School*, 89 J PUB ECON. 797, at 816 (2005) ("Specifically, the probability of being held back a grade in primary or junior high school increases very significantly with the number of persons per room in the home."); *See also* JA 332-333, 428-29 (Ms. Melvern Reid's testimony that son's study habits and grades suffered as a result of rec centers placement). Furthermore, chaotic and crowded environments, similar to that present at the recreation centers, have been associated with both behavioral and psychological consequences for children especially, including "social withdrawal, elevated levels of aggression, psychological distress, poor behavioral adjustment in school, and lower levels of

social and cognitive competency." Judith Samuels, Marybeth Shinn & John C. Buckner, *Homeless Children: Update on Research, Policy, Programs, and Opportunities,* U.S. Dep't of Health and Human Servs. Roundtable on Homeless Children (May 2010) at 22, *available at* http://aspe.hhs.gov/hsp/10/homelesschildrenroundtable/index.shtml (citing study on the negative effects of chaotic environments on childhood development.)

Overcrowded and chaotic environments, like those existing at the recreation centers, have also been shown to have a significant impact on the mental health and coping mechanisms of parents, which in turn affect their children. Studies have found that social withdrawal is a common coping strategy for someone placed in an environment in which they cannot regulate the amount of interpersonal contact to which they are exposed. *See generally* Gary W. Evans & Wachs, T.D. (Eds.), *Chaos and It's Influence on Children's Development: An Ecological Perspective* (2010), American Psychological Association. When parents are overwhelmed and withdraw, they may be less responsive to their young children, harming both parent and child. *See Id.* at 233, Gary W. Evans, John Eckenrode & Lysha Marcynyszm, *Chaos and the Macrosetting: The Role of Poverty and Socioeconomic Status* ("Crowding and noise…each interfere with the development and maintenance of warmth, supportive parent-child interactions.").

Finally, allowing the District to place families in non-private shelter space with no safety protections will most certainly deter families in need from seeking or returning to such placements, ultimately resulting in families staying in or returning to other unsafe situations. This past winter, attorneys at the Washington Legal Clinic for the Homeless spoke with survivors of domestic violence who chose to remain with abusive partners rather than be placed in a recreation center because they felt even less safe sharing a space with strangers. Other

families felt safer sleeping in stairwells of abandoned buildings to avoid the lack of privacy and lack of control over their surroundings in the recreation centers. JA 312. *See* Brigid Schulte, *D.C. to put newly homeless families into 2 rec centers*, THE WASHINGTON POST, January 31, 2014, *available at* http://www.washingtonpost.com/local/dc-to-put-newly-homeless-families-into-2-rec-centers/2014/01/31/953bd9ae-8ac8-11e3-916e-e01534b1e132_story.html ("Thursday night was the first night families were referred to a rec center. Seventeen were referred, and nine wound up staying. And by Friday, the number was down to one."); Appellant's Br. at 10 ("The average length of stay for a family in a recreation center was three days, but half the families only spent one night there.")

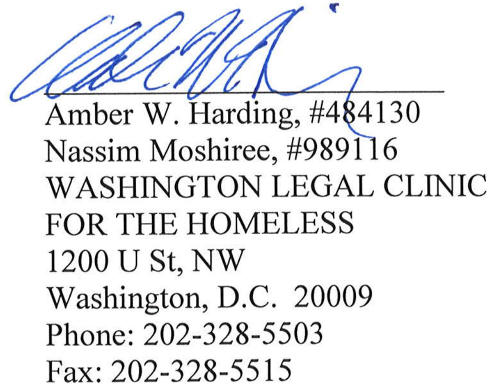
By creating an emergency shelter system that parents and children found even less safe than staying on the street, in cars, in stairwells, or with abusers, the District's use of recreation centers undermined the entire purpose of the right to shelter in hypothermic weather for families—to save lives and protect the health and safety of D.C.'s most vulnerable children.

CONCLUSION

For the foregoing reasons, the undersigned *amici curiae* support the Appellees and respectfully request that this Court affirm the D.C. Superior Court's preliminary injunction.

Respectfully submitted,

August 5, 2014



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