

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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J.M., P.Z., J.H., A.L., and DISABILITY RIGHTS  
NEW YORK

Plaintiffs,

-against-

NEW YORK STATE, UNIFIED COURT  
SYSTEM OF THE STATE OF NEW YORK, Honorable  
ROWAN D. WILSON, as Chief Judge of the New York  
State Unified Court System, Honorable JOSEPH A.  
ZAYAS, as Chief Administrative Judge of the New York  
State Unified Court System.

Defendants.

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COMPLAINT

CV:

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Plaintiffs JM, PZ, JH, AL, and Disability Rights New York (“DRNY”) bring this complaint for declaratory and injunctive relief against Defendants for subjecting JM, PZ, JH, AL, and individuals with disabilities to illegal and discriminatory guardianships under New York State Surrogate’s Court Procedure Act Article 17-a (“SCPA 17-a”), in violation of their Substantive and Procedural Due Process rights under the Fifth and Fourteenth Amendments of the Constitution of the United States, Equal Protection Rights under the Fourteenth Amendment and the New York State Constitution Article 1, Section 11, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973. DRNY seeks identical relief based on its own injury in representing individuals with disabilities as a result of said violations.

#### **NATURE OF THE CASE**

1. For decades, individuals with intellectual and developmental disabilities have been deprived of their constitutional rights and discriminated against because of their disabilities by Defendants through the appointment of plenary guardians pursuant to SCPA 17-a.

2. Through their administration of SCPA 17-a, Defendants permit the application of a statutory scheme that is unconstitutional on its face and discriminates against people with intellectual and developmental disabilities, resulting in the termination of all decision-making rights, including the right to decide where to live, with whom to associate, what medical treatment to seek and receive, whether to marry and have children, whether to vote, and where to work.

3. Plaintiffs JM, PZ, JH, AL, and DRNY on behalf of New Yorkers with intellectual and developmental disabilities, bring this action to defend the rights guaranteed by the United States Constitution, the New York Constitution, the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

**JURISDICTION AND VENUE**

4. This Court has jurisdiction over the subject matter of this action pursuant to NY CPLR § 301.

5. Plaintiffs bring this civil rights action under the New York State Constitution and 42 U.S.C. § 1983 to challenge the constitutionality of Article 17-a of the Surrogate's Court Procedure Act.

6. Plaintiffs' additional claims are made pursuant to 42 U.S.C. § 1983, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, N.Y. Const. Art 1, § 11; and Title II of the Americans with Disabilities Act 42 U.S.C. § 12132.

7. This Court has the authority to grant declaratory and injunctive relief under 28 U.S.C §§ 2201, 2202 and CPLR §§ 3001, 6311.

8. Venue is appropriate in this Court pursuant to NY CPLR § 503.

**PARTIES****Plaintiffs**

9. JM is a 45-year-old woman with a developmental disability.

10. JM resides in Suffolk County, New York.

11. JM's parents were appointed as her co-guardians by Order of the Suffolk County Surrogate's Court in 2001.

12. JM continues to be subject to the liberty restrictions of SCPA 17-a guardianship against her wishes.

13. PZ is a 31-year-old man with developmental disabilities.

14. PZ resides in Monroe County, New York.

15. PZ's grandfather and aunt were appointed as his co-guardians of the person by Order of the Ontario County Surrogate's Court in 2011.

16. PZ continues to be subject to the liberty restrictions of guardianship against his wishes.

17. JH is a 31-year-old man with developmental disabilities.

18. JH resides in Rockland County, New York.

19. JH's parents, DH and JH, were appointed as his co-guardians by Order of the Rockland County Surrogate's Court in 2011.

20. JH continues to be subject to the liberty restrictions of SCPA 17-a guardianship against his wishes.

21. AL is a 54-year-old woman with a mild intellectual disability.

22. AL resides in Cattaraugus County, New York.

23. AL's parents, GL and SL, were appointed as the co-guardians of her person by Order of the Cattaraugus County Surrogate's Court in 2007.

24. AL's co-guardians, GL and SL, and her stand-by guardian are deceased.

25. AL continues to be subject to the liberty restrictions of SCPA 17-a guardianship against her wishes.

26. Disability Advocates, Inc. is an independent non-profit corporation organized under the laws of the State of New York. It does business and has brought litigation under the name Disability Rights New York.

27. DRNY has offices located at 25 Chapel Street, Suite 1005, Brooklyn, NY 11201; 725 Broadway, Suite 450, Albany, NY 12208; and, 44 Exchange Blvd, Suite 110, Rochester, NY 14614.

28. Under the Developmental Disabilities Assistance and Bill of Rights Act (“DD Act”), Congress gives significant federal funding to states for services to individuals with disabilities, provided that the state establishes a Protection and Advocacy (“P&A”) system that meets certain specified conditions. 42 U.S.C. § 15041 *et seq.*

29. DRNY is New York State’s P&A system. N.Y. Exec. Law § 558(b).

30. DRNY is specifically authorized to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of individuals with intellectual and developmental disabilities. 42 U.S.C. § 15043(a)(2)(A)(i).

31. Since 2013, DRNY has used its authority under 42 U.S.C. § 15043(a)(2)(A)(i) to advocate for individuals with intellectual or developmental disabilities who are under SCPA 17-a guardianship or facing 17-a guardianship and those who wish to terminate or prevent a guardianship.

32. DRNY expends significant resources advocating for individuals with intellectual or developmental disabilities who are under SCPA 17-a guardianship or facing guardianship and who wish to terminate or prevent a guardianship.

33. DRNY has standing based on the burdens it has incurred and continues to incur as an organization in seeking to vindicate the rights of people with disabilities it is statutorily authorized to represent through litigation.

### **Defendants**

34. New York State is a public entity as defined by 42 U.S.C. § 12131(1)(A).

35. New York State is required to administer the laws of New York State in a manner that does not violate the Constitution.

36. New York State operates the Unified Court System (“UCS”) of the State of New York.

37. The UCS is a program or activity pursuant to 29 U.S.C. § 794(b)(1)(A).

38. The UCS has all the powers and duties set forth in Article VI of the New York State Constitution and as otherwise prescribed by law, statute, rules, and regulations.

39. The UCS is comprised of all the courts of the State of New York, including Surrogate’s Courts which have taken, and continue to take, actions of which Plaintiffs complain in this lawsuit.

40. The UCS Office of Court Administration is located at 25 Beaver Street - Rm. 852 New York, NY 10004.

41. Rowan D. Wilson is the Chief Judge of the State of New York, with all powers and duties set forth in Article VI of the New York State Constitution and as otherwise prescribed by law, statute, rules, and regulations.

42. Chief Judge Wilson serves as the Chief Judicial Officer of the State and the Chief Judge of the Court of Appeals.

43. The Chief Judge of the UCS establishes statewide standards and administrative policies for the UCS in the State of New York.

44. Chief Judge Wilson is sued in his official capacity.

45. While under Chief Judge Wilson’s control, Surrogate’s Courts have taken, and continue to take, actions of which Plaintiffs complain in this lawsuit.

46. Hon. Joseph A. Zayas, is the Chief Administrative Judge of the UCS of New York State, with all powers and duties set forth in Article VI of the New York State Constitution and as otherwise prescribed by law, statute, rules, and regulations.



47. Judge Zayas is sued in his official capacity.

48. While under Chief Administrative Judge Zayas' control, Surrogate's Courts have taken, and continue to take, actions of which Plaintiffs complain in this lawsuit.

49. Judge Zayas, as the Chief Administrative Judge in New York State, oversees the administration of a Do-it-Yourself petition and related forms to assist individuals seeking to obtain a 17-a guardianship over another person.

50. Judge Zayas, as the Chief Administrative Judge in New York State, is responsible for prescribing the content and use of the forms on the UCS website.

### **FACTUAL ALLEGATIONS**

51. In New York State, when an individual turns 18 years old, they are legally able to make decisions for themselves.

52. The imposition of SCPA 17-a guardianship is a complete deprivation of personal liberty and fundamental rights.

53. The fundamental rights that are impacted by the imposition of SCPA 17-a guardianship include decisions related to: marriage and relationships; reproduction; financial matters; education; health and medical affairs, including private communication between an individual and their health care provider; religious observation; place of residency; visitation and association; voting; travel; and daily life.

### **History of SCPA 17-a**

54. SCPA 17-a was enacted in 1969 to allow parents of people with intellectual and developmental disabilities an alternative to a committee, which was typically associated with people with mental illness.

55. SCPA 17-a was placed adjacent to Surrogate's Court Procedures Act Article 17, which governs the appointment of a guardian over a minor child.

56. The practice commentaries for SCPA 17-a state “[t]he guardianship of a mentally retarded or developmentally disabled person is very much like the guardianship of a child...” SCPA § 1761.

57. The term “mental retardation” was replaced with “intellectual disability” in SCPA 17-a in 2016. See SCPA § 1750 (2016).

58. For the purposes of SCPA 17-a,

a person who is intellectually disabled is a person who has been certified by one licensed physician and one licensed psychologist, or by two licensed physicians at least one of whom is familiar with or has professional knowledge in the care and treatment of persons with an intellectual disability, having qualifications to make such certification, as being incapable to manage him or herself and/or his or her affairs by reason of intellectual disability and that such condition is permanent in nature or likely to continue indefinitely. SCPA § 1750.

59. In 1986, SCPA 17-a was expanded to include other “developmental disabilities.” 1989 N.Y. Sess. Law 675 § 2 (McKinney).

60. For the purposes of SCPA 17-a:

a person who is developmentally disabled is a person who has been certified by one licensed physician and one licensed psychologist, or by two licensed physicians at least one of whom is familiar with or has professional knowledge in the care and treatment of persons with developmental disabilities, having qualifications to make such certification, as having an impaired ability to understand and appreciate the nature and consequences of decisions which result in such person being incapable of managing himself or herself and/or his or her affairs by reason of developmental disability and that such condition is permanent in nature or likely to continue indefinitely, and whose disability: (a) is attributable to cerebral palsy, epilepsy, neurological impairment, autism or traumatic head injury; (b) is attributable to any other condition of a person found to be closely related to intellectual disability because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with intellectual disabilities; or

(c) is attributable to dyslexia resulting from a disability described in subdivision one or two of this section or from intellectual disability; and (d) originates before such person attains age twenty-two, provided, however, that no such age of origination shall apply for the purposes of this article to a person with traumatic head injury. SCPA § 1750-a.

61. The provisions for the appointment and modification of guardianship under SCPA 17-a have remained the same since its enactment in 1969.

62. Under SCPA 17-a, the basis for appointing a guardian is largely diagnosis driven, that is, whether an individual has an intellectual or developmental disability.

63. If the diagnosis is one that is present along a spectrum, such as autism, there is no required consideration of where an individual's disability lies on that spectrum in determining whether to grant a SCPA 17-a guardianship.

64. SCPA 17-a guardianship can be granted based solely on the certifications of medical professionals that are completed on forms created and provided by Defendants.

65. SCPA 17-a does not require either medical professional to interview or independently evaluate the person facing guardianship.

66. SCPA 17-a does not require the medical professionals to appear in court and testify about their knowledge of the person facing guardianship, the person's disability, how the person's disability impacts the person's decision-making capacity, the formal and informal supports available to the person, or whether there are less restrictive options.

67. SCPA 17-a does not require the court to make any findings of fact regarding the nature or extent of the powers requested by the petitioner, the functional abilities and limitations of the person with a disability, alternatives to guardianship, or why it is necessary for a guardian to be appointed.

68. A SCPA 17-a guardianship may be granted based solely on hearsay information contained on a form prescribed by Defendants.

69. SCPA 17-a does not require that the person with a disability be provided with meaningful notice of the nature or scope of plenary guardianship.

70. SCPA 17-a does not provide for the appointment of counsel for the person with a disability.

71. A SCPA 17-a guardianship can be established without a hearing.

72. A SCPA 17-a guardianship can be established without the Surrogate judge ever putting eyes on the person with a disability.

73. SCPA 17-a provides only for the appointment of plenary guardianship of the person, property, or person and property.

74. Under SCPA 17-a, the powers of the guardian are not tailored to meet the person's needs.

75. SCPA 17-a does not require consideration of less restrictive interventions.

76. SCPA 17-a guardianship is permanent unless and until a dissolution proceeding is commenced.

77. SCPA 17-a does not require guardians to report on the health, safety, or financial condition of the person under guardianship.

78. SCPA 17-a does not have any mechanism to verify the continued ability and availability of the guardian to serve in such a capacity.

79. In stark contrast to SCPA 17-a, New York enacted an alternative statutory guardianship scheme - Article 81 of the Mental Hygiene Law ("MHL 81") - to provide

constitutional and non-discriminatory protection to persons with disabilities for whom guardianship is sought.

### **Harms Suffered by Plaintiffs**

#### JM

80. JM is a 45-year-old-woman with developmental disabilities. JM was diagnosed with Asperger's Syndrome, Attention Deficit/Hyperactivity Disorder ("ADHD"), Learning Disorder, Anxiety Disorder, and Mild Cerebral Palsy.

81. After JM completed 10<sup>th</sup> grade, she began attending a university in her county.

82. In 2004, JM graduated with a bachelor's degree Summa Cum Laude.

83. JM's parents were appointed as her SCPA 17-a guardians by Order of the Suffolk County Surrogate's Court in 2001.

84. JM's father passed away in 2022, leaving JM's mother as her sole guardian.

85. When the SCPA 17-a guardianship was established, JM was 22 years old and had not previously been subjected to guardianship.

86. JM's parents submitted a petition with forms and certifications prescribed by the Defendants.

87. The petition and forms contained hearsay information and privileged medical information that JM did not consent to have used against her.

88. JM was not provided meaningful notice of the nature of the proceedings or the plenary and permanent nature of SCPA 17-A guardianship.

89. After the petition was filed, the Suffolk County Surrogate's Court did not appoint an attorney for JM.

90. There was no formal hearing with testimony and evidence considered other than the hearsay statements in the petition and medical certifications to determine whether SCPA 17-a guardianship should be granted.

91. According to the petition, JM's parents sought SCPA 17-a guardianship because JM is their "son [sic] and [they are] concerned for his [sic] welfare."

92. JM's parents filed forms and certifications in support of SCPA 17-a guardianship that are located on the Defendants' website at <https://ww2.nycourts.gov/forms/surrogates/guardianship.shtml>.

93. Both certifications were completed by medical doctors.

94. The certifications contained hearsay allegations and lacked any details justifying that JM needed a SCPA 17-a guardianship.

95. One of the certifications stated that JM "is highly intelligent but has deficits that impair her ability to function independently; she needs constant structure and social cueing; she cannot tell directions or drive, etc."

96. The certification did not say why SCPA 17-a guardianship was necessary to provide JM with structure, cueing, or transportation.

97. The other certification stated that JM "is very intelligent but her disorders impair her ability to function independently. She requires constant supervision."

98. The certification did not state how SCPA 17-a guardianship is relevant to supervision.

99. Both certifications purported that JM's alleged need for supervision justified a need for guardianship. Neither certification contemplated whether supervision or support could be provided by a staff person and not a guardian.

100. Both certifications confirmed that JM is highly intelligent. Neither stated that her disability affects her ability to understand the nature and consequence of her decisions.

101. Neither certification stated that JM lacks the intelligence and analytical ability to coordinate her own care and support by hiring staff to assist her without the need for a guardian.

102. Both physicians asserted that JM was an individual with a developmental disability based on her diagnoses of Asperger's Syndrome, Attention Deficit Hyperactive Disorder, Bipolar Disorder, Learning Disorder, Anxiety Disorder, and Mild Cerebral Palsy.

103. Both physicians relied on the same 1991 evaluation, completed when JM was 13.

104. The 1991 evaluation described JM as a "youngster with a visio perceptually-based learning disability compounded by ADHD and generalized motoric dysfunction."

105. JM's Full Scale IQ score was in the superior range at 133.

106. They also relied on a 2000 evaluation stating JM had Asperger's Syndrome and an IQ of 106.

107. JM had agreed to her parent's request that she have an evaluation in 2000 to update her cognitive/academic profile.

108. JM was not informed that the purpose of this evaluation was to assist her parents in obtaining SCPA 17-a guardianship.

109. JM did not provide her consent to share the results of this evaluation with her parents, other medical professionals, or the court.

110. JM is a fully competent, independent member of society.

111. JM has lived independently in her own apartment since 2008. She consistently makes decisions for herself with minimal assistance from others.

112. JM's SCPA 17-a guardian provides minimal assistance or support to JM.

113. JM's guardian has repeatedly interfered with JM's management of her own services, at times threatening to terminate staff contrary to JM's expressed wishes.

114. JM attempted to get information on how to terminate her SCPA 17-a guardianship when she was unhappy about her guardian exerting control over her decisions.

115. JM requested help from her service providers because she did not know how to go about challenging her SCPA 17-a guardianship without assistance.

116. JM was unable to seek a removal of her SCPA 17-a guardianship until she located an attorney to represent her.

117. JM filed a petition in Suffolk County Surrogate's Court on June 24, 2022.

118. That proceeding is still pending.

PZ

119. PZ is a 31-year-old adult man with autism and ADHD.

120. PZ is a 2023 college graduate.

121. PZ's grandfather and aunt were appointed as PZ's SCPA 17-a co-guardians of the person by Order of the Ontario County Surrogate's Court in 2011.

122. At the time that PZ was placed under SCPA 17-a guardianship he had graduated from high school, was living in a group home, and was planning to attend college.

123. At the time that PZ was placed under SCPA 17-a guardianship, he was 18 years old and had never been subjected to guardianship.

124. In 2011, PZ's grandfather passed away, leaving his aunt as his sole guardian.

125. PZ's co-guardians filed forms and certifications in support of SCPA 17-a guardianship that are located on the Defendants' website at <https://ww2.nycourts.gov/forms/surrogates/guardianship.shtml>.



126. The forms and certifications contained hearsay allegations.
127. The forms and certifications lacked any details justifying that PZ needed guardianship.
128. The petition form completed by the co-guardians contained no facts or allegations that supported the assertion that PZ needed a guardian based on his functional abilities.
129. The petition alleged that PZ was an individual with a developmental disability. The petition did not allege a connection between his diagnoses and his decision-making ability.
130. The petition did not contain any information about the availability of less restrictive alternatives to guardianship.
131. The two medical professionals that completed the certifications listed different diagnoses. One stated PZ had a significant Mood Disorder with Bipolar Disorder and Intermittent Explosive Disorder.
132. The second certification stated that PZ was diagnosed with Asperger's Disorder, Bipolar Disorder, and ADHD.
133. Neither certification contained details of PZ's functional or decision-making capacity, nor how his specific diagnosis rendered him unable to understand the nature and consequences of his decisions.
134. One certification recommended PZ be excluded from the hearing but did not allege why exclusion would be in PZ's best interest, other than the proceeding could lead to frustration.
135. PZ did not consent to the release of his private medical information.
136. PZ was never served with or provided a copy of the petition filed against him seeking SCPA 17-a guardianship over his person.

137. PZ was never provided meaningful notice explaining the nature of the SCPA 17-a proceeding or 17-a guardianship.

138. PZ was never provided with notice explaining his right to be represented by counsel or his right to object to the proceedings.

139. PZ was not appointed counsel for his SCPA 17-a guardianship proceeding.

140. The court appointed a guardian ad litem (“GAL”) for PZ.

141. PZ expressed concerns about the imposition of guardianship and the lack of contact he has with grandfather and aunt to the SCPA 17-a appointed GAL.

142. PZ did not participate in a hearing regarding the SCPA 17-a guardianship petition. PZ was placed under a 17-a guardianship without any non-hearsay evidence having been presented to the court to demonstrate a need for a guardian.

143. Upon information and belief, PZ was not present in court for a hearing on the merits of the SCPA 17-a guardianship petition.

144. PZ was not given a meaningful opportunity to confront the evidence submitted against him and was simply told by the court that the SCPA 17-a guardianship was imposed.

145. When the SCPA 17-a guardianship petition was granted, PZ was not aware of the impact of being placed under guardianship.

146. PZ was not told that his rights to make decisions about his person would be terminated when the SCPA 17-a guardianship was granted.

147. PZ was also not told that through SCPA 17-a guardianship his guardians were seeking the ability to make all decisions related to his person.

148. PZ would have told the court that he was not in favor of SCPA 17-a guardianship had he been given an opportunity and had he known what it meant to be placed under guardianship.

149. PZ remains under SCPA 17-a guardianship.

150. PZ does not know the exact whereabouts of his guardian and has no direct contact with her. She does not participate in his decision-making.

151. PZ's SCPA 17-a guardianship puts a strain on his relationship with his family and holds him back from developing adult relationships with them.

152. PZ attended college full time at the University of Brockport and graduated in December 2023 with a Bachelor of Science degree.

153. PZ intends to enter graduate school in 2024, focusing on Social Work.

154. PZ resides independently in an apartment supported by a provider agency, which assists people with mental health issues. His services are unrelated to a developmental disability.

155. PZ does not receive services from the Office for People with Developmental Disabilities ("OPWDD") because he does not meet the criteria for eligibility.

156. PZ is seeking to terminate his SCPA 17-a guardianship in Ontario County Surrogate's Court.

157. PZ attempted to get information on how to terminate his SCPA 17-a guardianship from the Defendants' website by doing an online search.

158. PZ determined that the process for terminating a SCPA 17-a guardianship is complicated.

159. PZ did not find any information on Defendant UCS's website to assist him with terminating his SCPA 17-a guardianship.

160. PZ was unable to seek a removal of his SCPA 17-a guardianship until he located an attorney to represent him.

161. PZ's 2011 SCPA 17-a guardianship has never been reviewed by the Surrogate's Court.

JH

162. JH is a 31-year-old man with a mild intellectual disability. He is also diagnosed with tuberous sclerosis, a condition which causes seizures that he manages with medication, and a visual impairment.

163. JH's parents, DH and JH, were appointed as his SCPA 17-a co-guardians by Order of the Rockland County Surrogate's Court in 2011.

164. At the time the SCPA 17-a guardianship was established, JH was 18 years old and had never been subjected to guardianship before.

165. JH's prospective co-guardians filed forms and certifications that are located on the Defendant's website at <https://ww2.nycourts.gov/forms/surrogates/guardianship.shtml>.

166. The forms and certifications used to obtain a SCPA 17-a guardianship over JH contained hearsay allegations.

167. The forms and certifications lacked any details justifying that JH needed guardianship.

168. The SCPA 17-a petition form completed by the co-guardians stated that they "want to have authority to make medical and financial decisions for [JH]" and that they were concerned parents who have been involved in his care. The form did not contain any details as to why transferring such authority to JH's parents would be necessary or appropriate.

169. The petition alleged that JH was an individual with a developmental disability. The petition failed to allege a connection between his diagnoses and his decision-making ability.

170. The petition did not contain any information about the availability of less restrictive alternatives to guardianship.

171. Neither medical certification contained details of JH's functional or decision-making capacity, nor how his specific diagnosis rendered him unable to understand the nature and consequences of his decisions.

172. JH did not consent to the release of this private medical information relied on in the certifications.

173. When the SCPA 17-a guardianship petition was filed, JH was not provided notice of the full impact of being placed under guardianship.

174. JH was not told that his rights to make decisions about his person or property would be terminated when the SCPA 17-a guardianship was granted.

175. JH was also not told that through SCPA 17-a guardianship his parents were seeking the ability to make all decisions related to his person and property.

176. After the petition was filed, the Rockland County Surrogate's Court did not appoint an attorney to JH.

177. Instead, the Surrogate's Court, appointed Mental Hygiene Legal Service ("MHLS") to make a recommendation to the court as to whether the appointment of a SCPA 17-a guardian was in JH's best interest.

178. The MHLS attorney interviewed JH in the presence of his future guardian.

179. The MHLS attorney recommended to the court that a guardian be appointed.

180. The Surrogate's Court held a hearing, but JH was not afforded the right to counsel at this proceeding. JH was not given a meaningful opportunity to confront the evidence submitted against him.

181. JH recalls that the only question he was asked at the hearing was whether he was okay with having a SCPA 17-a guardianship.

182. JH believes he would have told the court that he was not in favor of SCPA 17-a guardianship had he known what it meant to be placed under guardianship.

183. JH has only recently learned, through news stories and other efforts to educate himself, the impact of living under SCPA 17-a guardianship and the limitations that it poses on his ability to exercise his rights.

184. JH currently lives with one of his guardians and works at a job that he's good at and enjoys.

185. JH understands that if he wants to make changes to his housing or employment or make other life decisions like entering into a relationship, his guardians will have the power to make those decisions for him.

186. JH's SCPA 17-a guardianship puts a strain on his relationship with his family and holds him back from developing adult relationships with them.

187. JH's guardians have been resistant to his attempts to discuss his concerns about his SCPA 17-a guardianship and his desire to terminate it.

188. JH is currently in the process of exploring other less restrictive alternatives to guardianship.

189. After learning more about the rights restrictions of SCPA 17-a guardianship, JH contacted the court to ask about how he could seek termination.

190. The court provided JH with information about how to contact DRNY.

191. JH's SCPA 17-a guardianship has not been reviewed by the Surrogate's Court since the guardianship was appointed in 2011.

AL

192. AL is a 54-year-old woman with mild intellectual disabilities.

193. Since the age of 21, AL has resided in various group homes in Western New York.

194. She now lives in a supported apartment.

195. AL attends a day program run by a private provider agency that serves individuals with intellectual and developmental disabilities in Cattaraugus and Niagara counties.

196. AL's parents, GL and SL, were appointed as the SCPA 17-a co-guardians of her person by Order of the Cattaraugus County Surrogate's Court in 2007. By the same order, AL's sister, DG, was named standby guardian, subject to confirmation by the court.

197. When the SCPA 17-a guardianship petition was filed, AL was not aware of the impact of being placed under guardianship.

198. AL was not told that her rights to make decisions about her person would be terminated permanently when the guardianship was granted.

199. AL was not aware that she was permitted to object to the SCPA 17-a guardianship.

200. When the SCPA 17-a guardianship was established, AL was 38 years old and had not previously been subjected to guardianship.

201. AL's prospective co-guardians filed forms and certifications that are located on the Defendant's website at <https://ww2.nycourts.gov/forms/surrogates/guardianship.shtml>.

202. The forms and certifications used to place AL under SCPA 17-a guardianship contained hearsay allegations.

203. The SCPA 17-a petition form completed by the co-guardians stated that they were seeking guardianship because "[AL] is our daughter and because we love her very much, and [sic] concerned about her care, we want to help her make the best decisions possibly [sic]." The form

did not contain any details as to why transferring authority to make decisions to AL's parents would be necessary or appropriate.

204. The petition alleged that AL was an individual with a developmental disability. The petition failed to allege a connection between her diagnoses and her decision-making ability.

205. The petition did not contain any information about the availability of less restrictive alternatives to guardianship.

206. AL was never provided meaningful notice explaining the nature of the SCPA 17-a proceeding or 17-a guardianship.

207. AL was never provided with notice explaining her right to be represented by counsel or her right to object to the SCPA 17-a proceedings.

208. Neither medical certification contained details of AL's functional or decision-making capacity, nor how her specific diagnosis rendered her unable to understand the nature and consequences of her decisions.

209. The first medical professional opined that there were no circumstances warranting AL's nonappearance at a hearing.

210. The second medical professional asserted that AL's presence at the hearing should be dispensed with because she was "not capable to understand [the] proceeding."

211. After the petition was filed, the Cattaraugus County Surrogate's Court did not appoint an attorney for AL.

212. Instead, the Surrogate's Court appointed a GAL to make a recommendation to the court as to whether the appointment of a guardian was in AL's best interest.

213. The GAL interviewed AL in the presence of her prospective co-guardians.



214. The GAL stated in his report, “it is my belief that [AL] did not fully understand the nature and extent of the control the guardians would have over her person.” Nevertheless, he went on to opine that AL was “agreeable” to “having her mother and father take care of her.”

215. The GAL recommended to the court that GL and SL be appointed as AL’s co-guardians.

216. The Surrogate’s Court held a hearing, but AL was not afforded the right to counsel at this proceeding.

217. AL was not given a meaningful opportunity to confront the evidence submitted against her.

218. AL recalls that the judge asked her if she agreed to her parents becoming her guardians and she said yes.

219. AL would have told the court that she was not in favor of SCPA 17-a guardianship had she known that she would permanently lose all her decision-making rights and had she known she could oppose it.

220. In 2021, GL and SL passed away within three weeks of one another.

221. No standby guardian came forward to be confirmed by the Court because GL and SL were predeceased by AL’s sister, DG, who died in 2016.

222. There is no process in place to notify the court in the event of the death of a guardian and/or standby guardian.

223. Upon information and belief, the Surrogate’s Court is unaware that AL’s co-guardians and standby guardian are deceased.

224. Since her parents’ deaths in 2021, AL has functioned independently without a guardian.

225. Despite the death of her co-guardian and standby guardian, some of AL's service providers have expressed reluctance to allow AL full decision-making authority because there is still a SCPA 17-a guardianship in place.

226. For example, without a guardian's signature, the psychologist from the private provider agency supporting AL is unwilling to grant AL the privilege of eight hours of independence in the community, resulting in her requiring supervision from staff.

227. AL wishes to marry someday but being under SCPA 17-a guardianship will prevent her from entering into a marriage contract.

228. Over the summer of 2023, AL requested information from her care coordinator on how to end her SCPA 17-a guardianship.

229. AL's care coordinator provided contact information for DRNY and assisted AL to complete an intake.

230. AL could not have sought removal of her SCPA 17-a guardianship until she located an attorney.

231. AL's SCPA 17-a guardianship has not been reviewed by the Surrogate's Court since the guardianship was appointed in 2007.

DRNY

232. DRNY expends significant resources protecting and enforcing the rights of clients who are under SCPA 17-a guardianship or facing guardianship and those who wish to terminate or prevent a guardianship.

233. Protecting their decision-making, constitutional, and civil rights falls squarely within the zone of interest intended by the DD Act, which authorizes P&A systems such as DRNY

to pursue legal remedies “to protect the legal and human rights of individuals with developmental disabilities.” 42 U.S.C. § 15041; 15043(a)(2)(A)(i).

234. DRNY’s representation of people under guardianship or at risk of guardianship is a core function of DRNY’s statutory mandate.

235. Public and private entities and individuals regularly contact DRNY seeking legal representation to terminate or prevent the imposition of SCPA 17-a guardianships.

236. Since 2016, DRNY has provided legal services to 44 individuals facing or seeking to terminate a SCPA 17-a guardianship.

237. DRNY is unable to locate any pro bono private attorneys or firms that provide legal assistance to individuals seeking to terminate a SCPA 17-a guardianship.

238. DRNY has taken on the state-wide burden of representing individuals to terminate SCPA 17-a guardianships.

239. SCPA 17-a guardianship representation requires DRNY to spend hours conducting extensive case review and case development, including interviewing clients and potential witnesses, obtaining records, investigating facts, drafting a petition and supporting documents, engaging in motion practice as necessary, attending multiple court appearances, hearing preparation, and trial advocacy—even when the petition for removal is unopposed.

240. Most of DRNY’s clients are not in possession of the essential records needed to assess and pursue their cases.

241. Some Surrogate’s Courts have refused to provide records, asserting an individual under SCPA 17-a guardianship is not entitled to them or requiring the consent of the guardian to obtain them, even though they were parties to the proceeding.

242. DRNY's clients have no knowledge of what evidence, if any, was reviewed by the court before imposing guardianship.

243. DRNY is forced to spend its resources gathering facts that are hidden from its clients because of SCPA 17-a's constitutional and discriminatory deficits.

244. The injury to DRNY posed by representation in these cases is significant. Since 2016, DRNY has spent nearly 10,000 billable hours representing individuals with intellectual and developmental disabilities under or facing SCPA 17-a guardianship.

245. The use of these resources has prevented DRNY from providing legal representation to individuals with intellectual and developmental disabilities in other matters.

246. The demand for DRNY's representation has grown each fiscal year, resulting in more resources expended to address civil rights violations for those at risk of or living under SCPA 17-a guardianship. The total staffing cost to DRNY, to date, for its work on guardianship cases (not including overhead) is \$435,219.77.

247. DRNY's SCPA 17-a guardianship practice accounts for nearly 10% of DRNY's staffing costs for representation of people with intellectual and developmental disabilities during the years 2016-2023.

### **SCPA 17-a is Unconstitutional and Discriminatory**

#### **No Specific Factual Allegations Required in Petition**

248. SCPA 17-a does not require any specific factual allegations about the person's capacity to manage themselves or their affairs by reason of disability.

249. Instead, SCPA 17-a requires that the petition be filed with the court on forms prescribed by the Defendants. SCPA § 1752.

250. There are currently 20 fillable forms on the UCS website to assist those seeking to obtain SCPA 17-a guardianship.

251. None of the forms on the UCS website are to defend against or terminate a SCPA 17-a guardianship. See <http://ww2.nycourts.gov/forms/surrogates/guardianship.shtml>.

252. In addition, the UCS continues to make available a “Do-it-Yourself” application for people seeking SCPA 17-a guardianship over an individual with a disability.

253. Defendant Zayas has issued the SCPA 17-a fillable forms on the UCS website. See <https://www.nycourts.gov/forms/surrogates/guardianship.shtml>.

254. These SCPA 17-a fillable forms assist petitioners in requesting guardianship and simplify the process for obtaining a guardianship over individuals with disabilities.

255. The Defendants’ forms require only that a petitioner submit certifications of two physicians or one licensed psychologist and one physician with the petition. Id.

256. The physician or psychologist must opine whether the individual is incapable of managing himself or herself and/or his or her affairs by reason of an intellectual or developmental disability and whether such condition is permanent in nature or likely to continue indefinitely. Id.

257. The Defendants’ forms allow the physician or psychologist to check boxes regarding these fundamental conclusions. Id.

258. The physician or psychologist are not directed to describe in detail how the existence of an intellectual or developmental disability makes the individual incapable of managing themselves or their affairs.

259. Instead, the physician or psychologist must “describe, in detail, the nature, degree and origin of the disability.” See [http://www.nycourts.gov/courts/7jd/monroe/Surrogate/PDFs/SCPA\\_Changes\\_Petition.pdf](http://www.nycourts.gov/courts/7jd/monroe/Surrogate/PDFs/SCPA_Changes_Petition.pdf).

260. The Defendants' forms specifically permit the courts' use of uncontested affidavits which are attached to the petition.

261. Neither Defendants' forms nor SCPA 17-a require that the medical professionals meet personally with the individual for whom guardianship is sought.

262. If the individual alleged to require a guardian is a minor, the physician or psychologist can provide this privileged information without the minor's knowledge or consent.

263. In contrast, MHL 81 requires the petition to include "a description of the alleged incapacitated person's functional level including that person's ability to manage the activities of daily living, behavior, and understanding and appreciation of the nature and consequences of any inability to manage the activities of daily living." MHL § 81.08(3).

264. MHL 81 requires the petition to include "specific factual allegations as to the personal actions or other actual occurrences involving the person alleged to be incapacitated which are claimed to demonstrate that the person is likely to suffer harm because he or she cannot adequately understand and appreciate the nature and consequences of his or her inability to provide for personal needs" and property management. MHL § 81.08(4)-(5).

265. MHL 81 further requires the petition to include "the particular powers being sought and their relationship to the functional level and needs of the person alleged to be incapacitated." MHL § 81.08(6).

266. Additionally, MHL § 81.08 requires the petitioner to identify available resources.

267. "Available resources" are defined as "resources such as, but not limited to, visiting nurses, homemakers, home health aides, adult day care and multipurpose senior citizen centers, powers of attorney, health care proxies, trusts, representative and protective payees, and residential care facilities." MHL § 81.03.

268. Unlike MHL 81, SCPA 17-a does not require a petitioner to state the specific powers requested and the relationship between the powers sought and the individual's functional limitations.

269. Unlike MHL 81, SCPA 17-a does not require a petitioner to state why the individual would likely suffer harm if the court did not appoint a guardian. Id.

270. The petition under SCPA 17-a does not put an individual with an intellectual or developmental disability on actual notice of the reasons why the guardianship is sought, the extent of the powers sought, the right to contest the proceeding at a hearing, or the right to be represented by an attorney.

271. SCPA 17-a petitions and certifications are often incomplete, and questions asking for elaboration are ignored.

272. The bare bones petition filed against JM would not meet the minimum standard for imposing guardianship under MHL 81.

273. The bare bones petition filed against PZ would not meet the minimum standard for imposing guardianship under MHL 81.

274. The bare bones petition filed against JH would not meet the minimum standard for imposing guardianship under MHL 81.

275. The bare bones petition filed against AL would not meet the minimum standard for imposing guardianship under MHL 81.

276. DRNY has represented and continues to represent individuals who have encountered the same obstacles and violations described in paragraphs 248 to 275.

No Meaningful Notice to the Respondent

277. SCPA 17-a requires that the respondent be served with the citation and petition, providing the date and time of the initial appearance. Neither the citation nor the petition contains information about the meaning or impact of guardianship.

278. Rather, the statute directs that upon presentation of a petition, “process shall issue to” the respondent. SCPA § 1753(1)(c).

279. SCPA 17-a makes no provision to tailor notice requirements to ensure that the individual with intellectual or developmental disabilities is fully informed of the nature and implications of the proceeding.

280. SCPA 17-a does not require that the person for whom guardianship is sought be provided with an explanation of what 17-a guardianship means.

281. SCPA 17-a does not require that the individual with intellectual or developmental disabilities be notified of their right to contest the appointment of a guardian, be present at a hearing, or be represented by an attorney.

282. In contrast, MHL 81 requires detailed notice by service of the petition and summons and information about the meaning and implication of an imposition of guardianship.

283. MHL 81 requires a notice to the allegedly incapacitated individual which includes a clear and easily readable statement of the rights of the individual in twelve point or larger bold face double-spaced type as follows:

**IMPORTANT**

An application has been filed in court by \_\_\_\_\_ who believes you may be unable to take care of your personal needs or financial affairs. \_\_\_\_\_ is asking that someone be appointed to make decisions for you. With this paper is a copy of the application to the court showing why \_\_\_\_\_ believes you may be unable to take care of your personal needs or financial affairs. Before the court makes the appointment of someone to make decisions for you the court holds a



hearing at which you are entitled to be present and to tell the judge if you do not want anyone appointed. This paper tells you when the court hearing will take place. If you do not appear in court, your rights may be seriously affected.

You have the right to demand a trial by jury. You must tell the court if you wish to have a trial by jury. If you do not tell the court, the hearing will be conducted without a jury. The name and address, and telephone number of the clerk of the court are:

The court has appointed a court evaluator to explain this proceeding to you and to investigate the claims made in the application. The court may give the court evaluator permission to inspect your medical, psychological, or psychiatric records. You have the right to tell the judge if you do not want the court evaluator to be given that permission. The court evaluator's name, address, and telephone number are:

You are entitled to have a lawyer of your choice represent you. If you want the court to appoint a lawyer to help you and represent you, the court will appoint a lawyer for you. You will be required to pay that lawyer unless you do not have the money to do so. MHL § 81.07.

284. The MHL 81 notice must inform the individual of the right to a hearing, to present evidence, call witnesses, cross-examine witnesses, and be represented by counsel of their choice. MHL §§ 81.07; 81.11

285. The MHL 81 court must also appoint a qualified person to explain “to the person alleged to be incapacitated, in a manner which the person can reasonably be expected to understand, the nature and possible consequences of the proceeding, the general powers and duties of a guardian, available resources, and the rights to which the person is entitled, including the right to counsel.” MHL § 81.09

286. SCPA 17-a does not provide the notice protections of MHL 81.

287. Plaintiff JM had no knowledge of her right to contest or participate in the guardianship process.

288. JM did not know she was facing the loss of constitutionally protected rights and liberties if guardianship were imposed.

289. JM was unaware of the information provided by, or even the identities of, the medical providers who completed certifications.

290. JM was legally an adult at the time a petition was filed against her, yet her informed consent to release her private medical information to her prospective guardians or to the court was not sought or obtained.

291. The failure to provide information to JM prevented her from objecting to the release of her private medical information.

292. The lack of notice prevented JM from being fully informed about the nature and consequences of the proceedings against her – proceedings that removed her fundamental rights.

293. The lack of notice prevented JM from being fully informed of her right to object to the allegations in the petition, including the medical certifications.

294. The lack of notice prevented JM from being fully informed of her right to seek private or appointed counsel.

295. Plaintiff PZ had no knowledge of his right to contest or participate in the guardianship process.

296. PZ did not know he was facing the loss of constitutionally protected rights and liberties if guardianship were imposed.

297. PZ was unaware of the information provided by, or even the identities of, the medical providers who completed certifications.

298. PZ was legally an adult at the time a petition was filed against him, yet his informed consent to release his private medical information to his prospective guardians or to the court was not sought or obtained.

299. The failure to provide information to PZ prevented him from objecting to the release of his private medical information.

300. The lack of notice prevented PZ from being fully informed about the nature and consequences of the proceedings against him—proceedings that removed his fundamental rights.

301. The lack of notice prevented PZ from being fully informed of his right to object to the allegations in the petition, including the medical certifications.

302. The lack of notice prevented PZ from being fully informed of his right to seek private or appointed counsel.

303. Plaintiff JH had no knowledge of his right to contest or participate in the guardianship process.

304. JH did not know he was facing the loss of constitutionally protected rights and liberties if guardianship were imposed.

305. JH was unaware of the information provided by, or even the identities of, the medical providers who completed certifications.

306. JH was legally an adult at the time a petition was filed against him, yet his informed consent to release his private medical information to his prospective guardians or to the court was not sought or obtained.

307. The failure to provide information to JH prevented him from objecting to the release of his private medical information.

308. The lack of notice prevented JH from being fully informed about the nature and consequences of the proceedings against him—proceedings that removed his fundamental rights.

309. The lack of notice prevented JH from being fully informed of his right to object to the allegations in the petition, including the medical certifications.

310. The lack of notice prevented JH from being fully informed of his right to seek private or appointed counsel.

311. Plaintiff AL had no knowledge of her right to contest or participate in the guardianship process.

312. AL did not know she was facing the loss of constitutionally protected rights and liberties if guardianship were imposed.

313. AL was unaware of the information provided by, or even the identities of, the medical providers who completed certifications.

314. AL was legally an adult at the time a petition was filed against her, yet her informed consent to release her private medical information to her prospective guardians or to the court was not sought or obtained.

315. The failure to provide information to AL prevented her from objecting to the release of her private medical information.

316. The lack of notice prevented AL from being fully informed about the nature and consequences of the proceedings against her - proceedings that removed her fundamental rights.

317. The lack of notice prevented AL from being fully informed of her right to object to the allegations in the petition, including the medical certifications.

318. The lack of notice prevented AL from being fully informed of her right to seek private or appointed counsel.

319. DRNY has represented and continues to represent individuals who have encountered the same obstacles and violations described in paragraphs 277 to 318.

Focus on Diagnosis rather than Actual Need

320. Since the appointment of a guardian results in a deprivation of fundamental rights, there must be a clear and compelling need for the appointment.

321. SCPA 17-a procedures are designed to presume incapacity based on diagnoses alone.

322. Individuals with disabilities are referred to as “proposed wards” or “wards” from the time of filing.

323. A diagnosis alone is an insufficient indicator of the need for guardianship.

324. Under MHL § 81.02, a guardianship can only be imposed when the person is likely to suffer harm because:

- a. The person is unable to provide for personal needs and/or property management; and
- b. The person cannot adequately understand and appreciate the nature and consequences of such inability.

325. MHL 81 mandates consideration of the sufficiency and reliability of available resources to provide for personal needs or property management without the appointment of a guardian. See MHL §§ 81.02(a)(1) and (2); 81.03(d).

326. JM was subject to SCPA 17-a guardianship without a specific demonstration of incapacity or functional limitations.

327. JM was placed under guardianship without any showing she was unable to provide for personal needs and/or property management.

328. JM was placed under guardianship without any showing she could not adequately understand and appreciate the nature and consequences of such inability.

329. JM was placed under guardianship without consideration of the sufficiency and reliability of available resources to provide for personal needs or property management without the appointment of a guardian.

330. PZ was subject to SCPA 17-a guardianship without a specific demonstration of incapacity or functional limitations.

331. PZ was placed under guardianship without any showing he was unable to provide for personal needs and/or property management.

332. PZ was placed under guardianship without any showing he could not adequately understand and appreciate the nature and consequences of such inability.

333. PZ was placed under guardianship without consideration of the sufficiency and reliability of available resources to provide for personal needs or property management without the appointment of a guardian.

334. JH was subject to SCPA 17-a guardianship without a specific demonstration of incapacity or functional limitations.

335. JH was placed under guardianship without any showing he was unable to provide for personal needs and/or property management.

336. JH was placed under guardianship without any showing he could not adequately understand and appreciate the nature and consequences of such inability.

337. JH was placed under guardianship without consideration of the sufficiency and reliability of available resources to provide for personal needs or property management without the appointment of a guardian.

338. AL was subject to SCPA 17-a guardianship without a specific demonstration of incapacity or functional limitations.

339. AL was placed under guardianship without any showing she was unable to provide for personal needs and/or property management.

340. AL was placed under guardianship without any showing she could not adequately understand and appreciate the nature and consequences of such inability.

341. AL was placed under guardianship without consideration of the sufficiency and reliability of available resources to provide for personal needs or property management without the appointment of a guardian.

342. DRNY has represented and continues to represent individuals who have encountered the same obstacles and violations described in paragraphs 320 to 341.

Hearing and Presence of the Respondent are Discretionary

343. SCPA 17-a directs the court to conduct a hearing but also permits the court “in its discretion to dispense with a hearing for the appointment of a guardian” where the application has been made by (a) both parents or the survivor; or (b) one parent and the consent of the other parent; or (c) any interested party and the consent of each parent. SCPA § 1754 (1)(a)-(c).

344. SCPA § 1752(7) and the forms promulgated by Defendants direct the petitioner to identify “any circumstances which the court should consider in determining whether it is in the best interest of the [alleged incapacitated] person ... to not be present at the hearing.”

345. The statutory standard for determining whether an individual subjected to an SCPA 17-a proceeding must be present is delineated in SCPA § 1754(3), which states:

If a hearing is conducted, the person who is intellectually disabled or person who is developmentally disabled shall be present unless it shall appear to the satisfaction of the court on the certification of the certifying physician that the person who is intellectually disabled or person who is developmentally disabled is medically incapable of being present to the extent that attendance is likely to result in physical harm to such person who is intellectually disabled or person who is developmentally disabled, or under such other circumstances which the court finds would not be in the best interest of the person who is intellectually disabled or person who is developmentally disabled.

346. The forms prescribed by Defendants do not provide any guidance to medical professionals regarding a standard for best interests.

347. The forms prescribed by Defendants do not explain that a SCPA 17-a guardianship can be imposed without a hearing and without the presence of the person with a disability if it is asserted that an individual's presence at a hearing would not be in their best interest.

348. Often, physicians are not provided with any context regarding the impact of their certification, including the conclusive weight the certification is given when determining whether to include an individual with a disability in a hearing.

349. By contrast, MHL 81 requires the court to conduct a hearing before the appointment of a guardianship; the hearing may be waived only if the alleged incapacitated person consents to the appointment of a guardian. MHL §§ 81.11, 81.02(a)(2).

350. Under MHL 81,

the hearing must be conducted in the presence of the person alleged to be incapacitated...so as to permit the court to obtain its own impression of the person's incapacity. If the person alleged to be incapacitated physically cannot come or be brought to the courthouse, the hearing must be conducted where the person alleged to be incapacitated resides unless...all information before the court clearly establishes that (i) the person alleged to be incapacitated is completely unable to participate in the hearing or (ii) no meaningful participation will result from the person's presence at the hearing. MHL § 81.11(c).



351. SCPA 17-a provides no requirement that the professionals who complete the certifications appear at a hearing or otherwise be subject to direct or cross-examination regarding their qualifications and the basis for their conclusion that the individual needs a guardian or that the hearing should be waived.

352. JM never had a hearing prior to the imposition of guardianship.

353. There are no court records of a hearing before a guardianship was imposed on PZ. The decree granting guardianship over PZ refers only to the petition, certifications, and GAL report in support of the guardianship.

354. Court records state that a hearing was held before a guardianship was imposed on JH. It is not possible to discern from the records whether he was permitted to testify or to call or question any witnesses.

355. There are no court records of a hearing before a guardianship was imposed on AL. The Decree granting guardianship refers only to the petition and certifications as evidence of the need for a guardian.

356. Even when a SCPA 17-a hearing does occur, in nearly all Surrogate's Courts in New York State, it is merely a formality at which no testimony is given.

357. JM was placed under plenary guardianship of unlimited duration without a non-discretionary right to a hearing.

358. JM was placed under plenary guardianship of unlimited duration without a non-discretionary statutory right to be present at a hearing.

359. PZ was placed under plenary guardianship of unlimited duration without a non-discretionary right to a hearing.

360. PZ was placed under plenary guardianship of unlimited duration without a non-discretionary statutory right to be present at a hearing.

361. JH was placed under plenary guardianship of unlimited duration without a non-discretionary right to a hearing.

362. JH was placed under plenary guardianship of unlimited duration without a non-discretionary statutory right to be present at a hearing.

363. AL was placed under plenary guardianship of unlimited duration without a non-discretionary right to a hearing.

364. AL was placed under plenary guardianship of unlimited duration without a non-discretionary statutory right to be present at a hearing.

365. DRNY has represented and continues to represent individuals who have encountered the same obstacles and violations described in paragraphs 343 to 364.

No Right to Counsel or Provision for Appointed Counsel

366. SCPA 17-a lacks any reference to the right to counsel for an individual facing guardianship and makes no provision for the appointment of counsel.

367. MHL 81 provides for the right to counsel.

368. MHL 81 requires the appointment of an attorney when the alleged incapacitated person: (1) requests counsel; (2) wishes to contest the proceeding; (3) does not consent to the authority requested in the petition; or when (4) the petition alleges the person is in need of major medical or dental treatment; (4) is being transferred to a nursing home or other residential facility; or (5) where the court determines that a possible conflict exists between the court evaluator's role and the advocacy needs of the person alleged to be incapacitated. MHL § 81.10(c).

369. In MHL 81 proceedings, where the person is indigent, the state or its appropriate subdivision is required to pay for assigned counsel. MHL § 81.10(f).

370. The Law Revision Commission explained why the right to the appointment of counsel is absolute, and the difference between the appointment of a guardian ad litem and an attorney:

[i]n the past it often has not been clear whether the guardians ad litem appointed pursuant to Article 77 and 78 were acting as advocates for the person who was the subject of the proceeding or as a neutral “eyes and ears” of the court. In order to alleviate the confusion, Article 81 distinguishes between the two roles of counsel and that of guardian ad litem, now known as court evaluator, and creates separate rules to govern each...The role of counsel...is to represent the person alleged to be incapacitated and ensure that the point of view of the person alleged to be incapacitated is presented to the court. At minimum that representation should include conducting personal interviews with the person; explaining to the person his or her rights and counseling the person regarding the nature and consequences of the proceeding; securing and presenting evidence and testimony; providing vigorous cross-examination; and offering arguments to protect the rights of the allegedly incapacitated person. Law Revision Commission comment under MHL § 81.10(f).

371. MHL 81 also grants the alleged incapacitated person “the right to choose and engage legal counsel of the person’s choice.” MHL § 81.10(a).

372. While individuals who may be subject to guardianship under MHL 81 are afforded appointed counsel, individuals subject to guardianship under SCPA 17-a rarely have appointed counsel.

373. JM did not have an attorney appointed to her in the SCPA 17-a guardianship proceeding.

374. Without counsel, JM was uninformed as to the true nature and consequences of being under guardianship.

375. Without counsel, JM was unaware of her ability to oppose the guardianship.

376. Without counsel, JM was unable to effectively contest the allegations against her.

377. Without counsel, JM was unable to effectively object to the procedural flaws with her prospective guardians' petition.

378. Without counsel, JM was unable to effectively object to the constitutional violations and discrimination of SCPA 17-a.

379. PZ did not have an attorney appointed to him in the SCPA 17-a guardianship proceeding.

380. Without counsel, PZ was uninformed as to the true nature and consequences of being under guardianship.

381. Without counsel, PZ was unaware of his ability to oppose the guardianship.

382. Without counsel, PZ was unable to effectively contest the allegations against him.

383. Without counsel, PZ was unable to effectively object to the procedural flaws with his prospective guardians' petition.

384. Without counsel, PZ was unable to effectively object to the constitutional violations and discrimination of SCPA 17-a.

385. JH did not have an attorney appointed to him in the SCPA 17-a guardianship proceeding.

386. Without counsel, JH was uninformed as to the true nature and consequences of being under guardianship.

387. Without counsel, JH was unaware of his ability to oppose the guardianship.

388. Without counsel, JH was unable to effectively contest the allegations against him.

389. Without counsel, JH was unable to effectively object to the procedural flaws with his prospective guardians' petition.

390. Without counsel, JH was unable to effectively object to the constitutional violations and discrimination of SCPA 17-a.

391. AL did not have an attorney appointed to her in the SCPA 17-a guardianship proceeding.

392. Without counsel, AL was uninformed as to the true nature and consequences of being under guardianship.

393. Without counsel, AL was unaware of her ability to oppose the guardianship.

394. Without counsel, AL was unable to effectively contest the allegations against her.

395. Without counsel, AL was unable to effectively object to the procedural flaws with her prospective guardians' petition.

396. Without counsel, AL was unable to effectively object to the constitutional violations and discrimination of SCPA 17-a.

397. DRNY has represented and continues to represent individuals who have encountered the same obstacles and violations described in paragraphs 366 to 396.

Standard/Quantum of Proof is Subjective and Inadequate

398. SCPA 17-a permits Surrogate's Courts to terminate an individual's decision-making authority in every aspect of life and deprive the individual of fundamental liberty interests simply because the court has determined it is in the person's "best interest" to do so.

399. The statute does not specify what factors should be considered when determining best interest.

400. The best interest determination is often based on limited hearsay evidence along with vague allegations of the petitioner.

401. SCPA 17-a is silent as to the evidentiary standard required to determine that an individual has an intellectual or developmental disability within the meaning of the statute.

402. SCPA 17-a does not state the evidentiary standard required to weigh best interest.

403. In the absence of a statutory standard, Surrogate's Courts regularly apply the "preponderance of the evidence" standard.

404. In contrast, under MHL 81, a guardian may be appointed only where it has been established by clear and convincing evidence that a guardian is needed and there are no less restrictive options. See MHL §§ 81.02; 81.03(d)(e).

405. MHL Article 81.02(b) expressly requires courts to apply a "clear and convincing evidence" standard to prove an individual is incapacitated.

406. To establish incapacity, there must be clear and convincing evidence the person is likely to suffer harm because they are unable to provide for personal and/or property needs, and they cannot adequately understand and appreciate the nature and consequences of such inability. See MHL § 81.02(b).

407. In addition, for the appointment of a guardian of the person for an individual determined to be incapacitated by clear and convincing evidence, MHL § 81.15(b) requires the court to make specific findings on the record regarding the incapacitated person's functional abilities and understanding of personal needs and potential harm; the necessity of a guardian to prevent harm; the specific powers of the guardian which constitute the least restrictive form of intervention; the duration of appointment; and the right to reports submitted by the guardian.

408. For the appointment of a guardian of the property for an individual determined to be incapacitated by clear and convincing evidence, MHL § 81.15(c) requires the court to make specific findings on the record regarding the financial assets of the individual; their functional

limitations with respect to property management, their understanding of their financial needs, and potential harm; the necessity of a guardian to prevent harm; the powers of the guardian which constitute the least restrictive form of intervention; the duration of the appointment; and the right to receive reports submitted by the guardian.

409. JM was placed under guardianship without a showing, by clear and convincing evidence, she would suffer harm because she was unable to provide for personal needs and/or property management.

410. JM was placed under guardianship without a showing, by clear and convincing evidence, she would suffer harm because she could not adequately understand and appreciate the nature and consequences of such inability.

411. JM was placed under plenary guardianship of unlimited duration without findings on the record regarding:

- a. Her functional limitations relative to personal and/or property needs;
- b. Her lack of understanding and appreciation of her functional limitations;
- c. The likelihood she will suffer harm due to functional limitations and an inability to understand the consequences of such limitations;
- d. The necessity of the appointment of a guardian to prevent such harm;
- e. The specific powers of the guardian which constitute the least restrictive form of intervention;
- f. The duration of the appointment;
- g. The right to receive copies of annual reports submitted to the court by the guardian.

412. PZ was placed under guardianship without a showing, by clear and convincing evidence, he would suffer harm because he was unable to provide for personal needs and/or property management.

413. PZ was placed under guardianship without a showing, by clear and convincing evidence, he would suffer harm because he could not adequately understand and appreciate the nature and consequences of such inability.

414. PZ was placed under plenary guardianship of unlimited duration without findings on the record regarding:

- a. His functional limitations relative to personal and/or property needs;
- b. His lack of understanding and appreciation of his functional limitations;
- c. The likelihood he will suffer harm due to functional limitations and an inability to understand the consequences of such limitations;
- d. The necessity of the appointment of a guardian to prevent such harm;
- e. The specific powers of the guardian which constitute the least restrictive form of intervention;
- f. The duration of the appointment;
- g. The right to receive copies of annual reports submitted to the court by the guardian.

415. JH was placed under guardianship without a showing, by clear and convincing evidence, he would suffer harm because he was unable to provide for personal needs and/or property management.

416. JH was placed under guardianship without a showing, by clear and convincing evidence, he would suffer harm because he could not adequately understand and appreciate the nature and consequences of such inability.



417. JH was placed under plenary guardianship of unlimited duration without findings on the record regarding:

- a. His functional limitations relative to personal and/or property needs;
- b. His lack of understanding and appreciation of his functional limitations;
- c. The likelihood he will suffer harm due to functional limitations and an inability to understand the consequences of such limitations;
- d. The necessity of the appointment of a guardian to prevent such harm;
- e. The specific powers of the guardian which constitute the least restrictive form of intervention;
- f. The duration of the appointment;
- g. The right to receive copies of annual reports submitted to the court by the guardian.

418. AL was placed under guardianship without a showing, by clear and convincing evidence, she would suffer harm because she was unable to provide for personal needs and/or property management.

419. AL was placed under guardianship without a showing, by clear and convincing evidence, that she would suffer harm because she could not adequately understand and appreciate the nature and consequences of such inability.

420. AL was placed under plenary guardianship of unlimited duration without findings on the record regarding:

- a. Her functional limitations relative to personal and/or property needs;
- b. Her lack of understanding and appreciation of her functional limitations;
- c. The likelihood she will suffer harm due to functional limitations and an inability to understand the consequences of such limitations;

- d. The necessity of the appointment of a guardian to prevent such harm;
- e. The specific powers of the guardian which constitute the least restrictive form of intervention;
- f. The duration of the appointment;
- g. The right to receive copies of annual reports submitted to the court by the guardian.

421. DRNY has represented and continues to represent individuals who have encountered the same obstacles and violations described in paragraphs 398 to 420.

Powers of the Guardian are Plenary Rather than Need-Based

422. SCPA 17-a provides only for the appointment of plenary guardianship of the person, property, or both person and property, and it is not individually tailored to meet the individual's needs or provide the least restrictive level of guardianship.

423. The Defendants' UCS's guidance on SCPA 17-a states, "[a]n Article 17A Guardianship is very broad and covers most decisions that are usually made by a parent for a child such as financial and healthcare decisions." See [www.nycourts.gov/courthelp/Guardianship/17A.shtml](http://www.nycourts.gov/courthelp/Guardianship/17A.shtml).

424. Under SCPA 17-a, there is no provision for a less restrictive option than the appointment of a plenary guardian.

425. SCPA 17-a makes no provision for a Surrogate's Court to limit or tailor a guardianship.

426. SCPA 17-a, provides: "[i]f the court is satisfied that the best interests of the person who is intellectually disabled or person who is developmentally disabled will be promoted by the

appointment of a guardian of the person or property, or both, it shall make a decree naming such person or persons to serve as such guardians.” SCPA § 1754(5).

427. The State’s Olmstead Cabinet found that “Article 17A does not limit guardianship rights to the individual’s specific incapacities, which is inconsistent with the least-restrictive philosophy of *Olmstead*. Once guardianship is granted, Article 17A instructs the guardian to make decisions based upon the ‘best interests’ of the person with a disability and does not require the guardian to consult with the person with a disability and does not require the guardian to examine the choice and preference of the person with a disability.” Olmstead Report p.28.

428. By contrast, MHL 81 requires the court to limit or tailor the guardianship to “the least restrictive form of intervention by appointing a guardian with powers limited to those which the court has found necessary to assist the incapacitated person in providing for personal needs and/or property management.” MHL § 81.16(c)(2).

429. The Legislature specifically declared that the purpose of MHL 81 was to create a “guardianship system which is appropriate to satisfy either personal management needs of an incapacitated person in a manner tailored to the individuals needs of that person which... affords the person the greatest amount of independence and self-determination and participation in all the decisions affecting such person’s life.” MHL § 81.01.

430. The order from the court for an MHL 81 guardianship must accomplish “the least restrictive form of intervention by appointing a guardian with powers limited to those which the court has found necessary to assist the incapacitated person in providing the personal needs and/or property management.” MHL § 81.16(c)(2).

431. JM is subjected to a plenary guardianship which is not tailored to her individual functional abilities and limitations.

432. JM is subjected to a plenary guardianship that did not require the Surrogate's Court to determine if guardianship was the least restrictive form of intervention.

433. PZ is subjected to a plenary guardianship which is not tailored to his individual functional abilities and limitations.

434. PZ is subjected to a plenary guardianship that did not require the Surrogate's Court to determine if guardianship was the least restrictive form of intervention.

435. JH is subjected to a plenary guardianship which is not tailored to his individual functional abilities and limitations.

436. JH is subjected to a plenary guardianship that did not require the Surrogate's Court to determine if guardianship was the least restrictive form of intervention.

437. AL is subjected to a plenary guardianship which is not tailored to her individual functional abilities and limitations.

438. AL is subjected to a plenary guardianship that did not require the Surrogate's Court to determine if guardianship was the least restrictive form of intervention.

439. DRNY has represented and continues to represent individuals who have encountered the same obstacles and violations described in paragraphs 422 to 438.

#### Unlimited Duration of Guardianship

440. Under SCPA 17-a, guardianships are created for an unlimited duration and end only when the individual subject to guardianship dies or if they are terminated by the court. SCPA § 1759(1).

441. SCPA § 17-a contains no provisions to permit a guardianship to be limited in duration or effective only for a discrete purpose.

442. The lack of flexibility in SCPA 17-a contributes to its overbroad nature because an individual found to require a guardian for any event is thus appointed a guardian indefinitely, even if a single transaction or limited duration guardianship would otherwise suffice.

443. The permanent nature of SCPA 17-a also fails to address instances where the guardian(s) and stand-by guardian(s), if any, predecease or are otherwise unable to effectively serve as guardian.

444. Conversely, MHL § 81.01 requires a petitioner to specify in their petition the duration of the powers they are seeking over the respondent.

445. MHL 81 provides courts with the ability to appoint a special guardian to effectuate a protective arrangement or a single transaction on behalf of an individual found to be incapacitated rather than a long-term guardian. MHL § 81.16(b).

446. JM has been subject to the permanent removal of all her decision-making rights without consideration of less restrictive interventions tailored to her needs.

447. JM has been subject to a permanent removal of all her decision-making rights without consideration of limiting the duration of the guardianship based on her needs.

448. JM has been subject to a permanent removal of all her decision-making rights without safeguards for her needs should a guardian become unavailable.

449. PZ has been subject to a permanent removal of all his decision-making rights without consideration of less restrictive interventions tailored to his needs.

450. PZ has been subject to a permanent removal of all his decision-making rights without consideration of limiting the duration of the guardianship based on his needs.

451. PZ has been subject to the permanent removal of all his decision-making rights without safeguards for his needs should a guardian become unavailable.

452. JH has been subject to a permanent removal of all his decision-making rights without consideration of less restrictive interventions tailored to his needs.

453. JH has been subject to the permanent removal of all his decision-making rights without consideration of setting a fixed duration of the guardianship based on his needs.

454. JH has been subject to a permanent removal of all his decision-making rights without safeguards for his needs should a guardian become unavailable.

455. AL has been subject to a permanent removal of all her decision-making rights without consideration of less restrictive interventions tailored to her needs.

456. AL has been subject to a permanent removal of all her decision-making rights without consideration of limiting the duration of the guardianship based on her needs.

457. AL has been subject to a permanent removal of all her decision-making rights without safeguards for her needs should a guardian become unavailable.

458. DRNY has represented and continues to represent individuals who have encountered the same obstacles and violations described in paragraphs 440 to 457.

#### No Explicit Fiduciary Obligations of Guardians

459. SCPA 17-a permits any person over the age of 18 not otherwise subjected to guardianship to be appointed as a guardian. SCPA § 1752(5).

460. The petition for guardianship need only provide the name, age, address, education “and other qualifications,” and consent of the proposed guardian if other than the parent, spouse, adult child if eighteen years of age or older or adult sibling if eighteen years of age or older. Id.

461. SCPA 17-a does not specify the qualifications of the guardian, nor does it identify the guardian’s responsibilities to the person under guardianship.

462. SCPA 17-a lacks any requirements regarding the nature or frequency of required contact between the guardian and person under guardianship.

463. The only provision even remotely related to guardian conduct is SCPA § 1755, which permits modification of a guardianship order if, in the court’s judgment, “the interests of the guardian are adverse to those of the person who is intellectually disabled or person who is developmentally disabled . . .”

464. By contrast, MHL 81 provides detailed considerations for who should be appointed a guardian including, among others, the unique needs of the person and their existing supports. MHL § 81.19.

465. MHL 81 further requires guardians to receive training approved by Defendant Zayas that covers, among other obligations, the legal duties and responsibilities of the guardian, the rights of the incapacitated person, and the available resources to aid the incapacitated person. MHL 81.39.

466. MHL 81 also mandates that guardians “afford the incapacitated person the greatest amount of independence and self-determination with respect to personal needs in light of that person's functional level, understanding and appreciation of that person's functional limitations, and personal wishes, preferences and desires with regard to managing the activities of daily living.” MHL § 81.20.

467. MHL § 81.20(a)(5) requires court-appointed guardians to visit the person under guardianship a minimum of four times per year.

468. The purpose of these requirements is to ensure guardians exercise care and diligence in actions on behalf of the person under guardianship.

469. The failure of SCPA 17-a to specify a guardian's qualifications, fiduciary duties, and contact requirements puts people under 17-a guardianship at greater risk of harm.

470. JM has been appointed guardians with plenary powers without consideration of her actual needs and limitations.

471. Upon information and belief, JM has been appointed guardians who are not explicitly informed of their fiduciary duties to her.

472. Upon information and belief, JM has been appointed guardians who have not been trained regarding their fiduciary responsibilities.

473. PZ has been appointed guardians with plenary powers without consideration of his actual needs and limitations.

474. Upon information and belief, PZ has been appointed guardians who are not explicitly informed of their fiduciary duties to him.

475. Upon information and belief, PZ has been appointed guardians who have not been trained regarding their fiduciary responsibilities.

476. JH has been appointed guardians with plenary powers without consideration of his actual needs and limitations.

477. Upon information and belief, JH has been appointed guardians who are not explicitly informed of their fiduciary duties to him.

478. Upon information and belief, JH has been appointed guardians who have not been trained regarding their fiduciary responsibilities.

479. AL has been appointed guardians with plenary powers without consideration of her actual needs and limitations.



480. Upon information and belief, AL has been appointed guardians who are not explicitly informed of their fiduciary duties to her.

481. Upon information and belief, AL has been appointed guardians who have not been trained regarding their fiduciary responsibilities.

482. DRNY has represented and continues to represent individuals who have encountered the same obstacles and violations described in paragraphs 459 to 481.

No Notice of Appointment of Guardian or Right to Appeal

483. There is no provision in Article 17-a requiring service of the order of appointment of a guardian upon the individual subject to the guardianship.

484. JM was not served with a copy of the order appointing a guardian of her person or property.

485. JH was not served with a copy of the order appointing a guardian of his person or property.

486. AL was not served with a copy of the order appointing a guardian of her person.

487. Pursuant to CPLR 5513(a), a notice of appeal must be filed within 30 days after “service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry[.]”

488. When the person under guardianship is not served with a copy of the order appointing them a guardian, the time in which they could file a notice of appeal never commences.

489. Without service of the order and an explanation of its meaning and legal ramifications, individuals placed under SCPA 17-a guardianship have no meaningful notice of the right to appeal the guardianship order.

490. Consequently, any legal issues that could be raised pertaining to the sufficiency of the evidence or the way the guardianship proceeding was conducted remain unchallengeable unless the person under guardianship affirmatively compels service of the order.

491. By contrast, under MHL 81, once the court has issued an order appointing a guardian, a copy of the order and judgment “shall be personally served upon and explained to the person who is the subject of the proceedings in a manner which the person can reasonably be expected to understand by the court evaluator, or by counsel for the person, or by the guardian.” MHL § 81.16(e).

492. JM was placed under plenary guardianship of unlimited duration without service and explanation of the order of appointment.

493. JM was placed under plenary guardianship of unlimited duration without any notice of the right to appeal the order.

494. PZ was placed under plenary guardianship of unlimited duration without service and explanation of the order of appointment.

495. PZ was placed under plenary guardianship of unlimited duration without any notice of the right to appeal the order.

496. JH was placed under plenary guardianship of unlimited duration without service and explanation of the order of appointment.

497. JH was placed under plenary guardianship of unlimited duration without any notice of the right to appeal the order.

498. AL was placed under plenary guardianship of unlimited duration without service and explanation of the order of appointment.

499. AL was placed under plenary guardianship of unlimited duration without any notice of the right to appeal the order.

500. DRNY has represented and continues to represent individuals who have encountered the same obstacles and violations described in paragraphs 483 to 499.

No Required Reporting or Review after Appointment of Guardian

501. SCPA 17-a lacks any reporting and oversight provisions once a guardianship is established.

502. SCPA 17-a has no mandatory mechanism for a court to ensure an individual is still in need of a guardian over time.

503. SCPA 17-a has no mandatory mechanism to ensure a guardian is still appropriate and acting in the individual's best interest.

504. SCPA 17-a has no mandatory mechanism to even ensure the guardian is still alive and otherwise able to fulfill his or her fiduciary duties.

505. By contrast, MHL 81 imposes rigorous reporting and oversight provisions once a guardianship is established. MHL §§ 81.30, 81.31, 81.32, 81.33.

506. Reporting requirements, such as those contained in MHL §§ 81.30 and 81.31, allow the court to determine whether the guardian remains involved, is fulfilling their fiduciary responsibility, and is ensuring the individual's autonomy is being preserved to the maximum extent possible.

507. MHL §§ 81.30 and 81.31 require the guardian to submit written initial and annual reports describing “the social and personal services that are to be provided for the welfare of the incapacitated person,” MHL § 81.30(c)(2), and “information concerning the social condition of the incapacitated person, including: the social and personal services currently utilized by the incapacitated person; the social skills of the incapacitated person; and the social needs of the incapacitated person.” MHL § 81.31(b)(6)(iv).

508. The reporting requirement of MHL 81 also requires information concerning the incapacitated person’s medical and residential needs and requires the guardian to submit in their report all facts indicating a need to terminate or modify the terms of the guardianship.

509. Preservation of the alleged incapacitated person’s autonomy to the fullest extent possible is one of the avowed purposes of the reporting requirements. See Law Revision Commission Comments MHL § 81.31.

510. JM has been placed under plenary guardianship of unlimited duration without procedural protections to ensure she continues to require a guardian.

511. JM has been placed under plenary guardianship of unlimited duration without any procedural protection ensuring her guardians are complying with their fiduciary duties.

512. JM has been placed under plenary guardianship of unlimited duration without any procedural protection ensuring her guardians are respecting her autonomy to the fullest extent possible.

513. JM has been placed under plenary guardianship of unlimited duration without any procedural requirement to ensure her physical, medical, and financial well-being is protected if her guardian(s) are unable to carry out their duties.

514. PZ has been placed under plenary guardianship of unlimited duration without procedural protections to ensure he continues to require a guardian.

515. PZ has been placed under plenary guardianship of unlimited duration without any procedural protection ensuring his guardians are complying with their fiduciary duties.

516. PZ has been placed under plenary guardianship of unlimited duration without any procedural protection ensuring his guardians are respecting his autonomy to the fullest extent possible.

517. PZ has been placed under plenary guardianship of unlimited duration without any procedural requirement to ensure his physical, medical, and financial well-being is protected if his guardian(s) are unable to carry out their duties.

518. JH has been placed under plenary guardianship of unlimited duration without procedural protections to ensure he continues to require a guardian.

519. JH has been placed under plenary guardianship of unlimited duration without any procedural protection ensuring his guardians are complying with their fiduciary duties.

520. JH has been placed under plenary guardianship of unlimited duration without any procedural protection ensuring his guardians are respecting his autonomy to the fullest extent possible.

521. JH has been placed under plenary guardianship of unlimited duration without any procedural requirement to ensure his physical, medical, and financial well-being is protected if his guardian(s) are unable to carry out their duties.

522. AL has been placed under plenary guardianship of unlimited duration without procedural protections to ensure she continues to require a guardian.

523. AL has been placed under plenary guardianship of unlimited duration without any procedural protection ensuring her guardians are complying with their fiduciary duties.

524. AL has been placed under plenary guardianship of unlimited duration without any procedural protection ensuring her guardians are respecting her autonomy to the fullest extent possible.

525. AL has been placed under plenary guardianship of unlimited duration without any procedural requirement to ensure her physical, medical, and financial well-being is protected if her guardian(s) are unable to carry out their duties.

526. DRNY has represented and continues to represent individuals who have encountered the same obstacles and violations described in paragraphs 501 to 525.

#### Vague or Non-Existent Provisions about Termination of Guardianship

527. SCPA 17-a guardianships are of unlimited duration with no requirement for periodic or even subsequent review of the need for continued guardianship. SCPA § 1759(1).

528. Modification or termination of a SCPA 17-a guardianship occurs only when the person under guardianship or another person on their behalf petitions the court to modify, dissolve, or amend the guardianship order. SCPA § 1759(2).

529. SCPA 17-a is silent as to the evidentiary standard for when a guardianship is to be modified or dissolved; however, Surrogate's Courts apply the subjective "best interest" analysis to the proceedings, even when the petition is unopposed.

530. Removal of SCPA 17-a guardianship without counsel is very difficult.

531. Defendants offer no model forms, guides, instructions, or other resources for individuals seeking termination of their guardianships.

532. JM had difficulty obtaining copies of the records of the original proceeding placing her under guardianship.

533. PZ had difficulty obtaining copies of the records of the original proceeding placing him under guardianship.

534. DRNY has been required to file notices of appearance and participate in court conferences simply to view a client's SCPA 17-a guardianship file.

535. SCPA 17-a is silent as to which party has the burden when petitioning for modification or dissolution of the guardianship.

536. Surrogate's Courts almost always place this burden on the moving party, that is, the person under guardianship seeking termination.

537. In termination proceedings, Surrogate judges often require a full hearing with sworn testimony prior to terminating a 17-a guardianship.

538. Such requirements are in sharp contrast to the process of obtaining a plenary guardianship, which is usually done without the court ever hearing sworn testimony or reviewing competent evidence.

539. MHL 81, by contrast, specifically contemplates removal of the guardian or powers of the guardian when no longer necessary or appropriate. MHL § 81.36(a).

540. MHL 81 requires a hearing when a petition for modification or termination is initiated, as well as the right to a jury trial upon request. MHL § 81.36(c).

541. Significantly, under MHL 81, the party opposing the termination of guardianship bears the burden of proving, by clear and convincing evidence, that the grounds for guardianship or the need for the powers granted to the guardian continue to exist. MHL § 81.36(d).

542. In DRNY's experience, the Surrogate's Courts consistently place the burden of proof on the person seeking termination of the guardianship with few exceptions.

543. DRNY has represented and continues to represent individuals who have encountered the same obstacles and violations described in paragraphs 527 to 542.

Defendants' Forms and Website Endorse and Support the Use of Unconstitutional and Discriminatory Provisions

544. The UCS website, which is powered and overseen by Defendants, provides free resources and detailed step-by-step guidance for petitioners seeking to impose SCPA 17-a guardianship.

545. In addition, Defendants continue to make available a free "Do-it-Yourself" application for people seeking SCPA 17-a guardianship over an individual with a disability.

546. The computer application permits potential petitioners to answer a series of questions which are then used by the application to produce the required documentation for filing for guardianship. See <https://nycourts.gov/courthelp//diy/guardianship17A.shtml>.

547. Defendant's website page pertaining to SCPA 17-a does not offer any information about MHL 81 as an alternative guardianship option.

548. Defendants provide no information on the website to assist an individual facing guardianship with information on what guardianship is.

549. The Defendant's website provides no information to assist the person facing guardianship to object to the appointment of a guardian.



550. The Defendant's website provides no information to alert the person facing guardianship that they can seek counsel to assist in defending against guardianship.

551. The Defendant's website provides no forms to assist individuals living under guardianship seeking to modify or remove the guardianship.

552. There is no step-by-step guide on the Defendant's website for filing a petition to remove guardianship.

553. Through Defendants' choice and presentation of content, they endorse, promote, and support the use of an unconstitutional and discriminatory statutory scheme.

Failure to Remedy Unconstitutional and Discriminatory Provisions of SCPA 17-a

554. In 1990, the Legislature directed what was then called the Office for the Mentally Retarded and Developmentally Disabled (now known as the Office for People with Developmental Disabilities) to study and re-evaluate SCPA 17-a. See L. 1990, c. 561.

555. A three-year study of SCPA 17-a was conducted but not presented to the Legislature.

556. Also in 1990, the Legislature directed the New York State Law Revision Commission to examine committee and conservatorship proceedings under Mental Hygiene Law (MHL) Articles 77 and 78 in light of "momentous changes [which] have occurred in the care, treatment, and understanding of individuals [with disabilities]..." L. 1990, Ch. 516 § 1.

557. Based on the Law Revision Commission's study, the Legislature found that:

Conservatorship, which traditionally compromises a person's right only with respect to property frequently is insufficient to provide necessary relief. On the other hand, a committee, with its judicial finding of incompetence and the accompanying stigma and loss of civil rights, traditionally involves a deprivation that is often excessive and unnecessary. Moreover, certain persons require some

form of assistance in meeting their personal and property management needs but do not require either of these drastic remedies. MHL § 81.01.

558. Consequently, the Legislature enacted MHL Article 81 in 1992, declaring:

It is the purpose of this act to promote the public welfare by establishing a guardianship system which is appropriate to satisfy either personal or property management needs of an incapacitated person in a manner tailored to the individual needs of that person, which takes in account the personal wishes, preferences and desires of the person, and which affords the person the greatest amount of independence and self-determination and participation in all the decisions affecting such person's life. MHL § 81.01.

559. MHL 81 applies to all persons with disabilities that impact capacity.

560. MHL 81 does not distinguish between individuals with mental illness, intellectual disability, developmental disability, or any other disability.

561. Instead, MHL 81 requires courts to assess the alleged incapacitated person's "functional limitations which impair the person's ability to provide for personal needs or property management" regardless of the origin of the functional limitation. MHL § 81.02(c).

562. MHL 81 provides robust substantive and procedural due process protections for the person for whom guardianship is sought.

563. In contrast, SCPA 17-a applies only to people with intellectual and developmental disabilities, including people who suffered a traumatic brain injury.

564. The practice commentary following MHL § 81.01 describes the significant distinctions between MHL 81 and SCPA 17-a:

Although the enactment of Article 81 has had a profound impact on guardianship law in New York, it has not effected any change in Article 17-A of the Surrogate's Court Procedure Act which governs guardianship for persons with mental retardation or developmental disabilities. Article 17-A is markedly different from Article 81. The proceeding can only be brought in Surrogate's court; it is limited to persons with mental retardation and developmental disabilities; the petition must be accompanied by certificates of one licensed physician and one licensed psychologist or two licensed physicians; the appointment can be made without a

hearing or the presence of the person alleged to need a 17A guardian; and it does not provide the same due process protections, the limited or tailored authority of the guardian, nor the detailed accountability of the guardian as Article 81. See Law Revision Commission Comment MHL § 81.01.

565. In October 2013, New York State issued the Report and Recommendations of the Olmstead Cabinet pursuant to Executive Order Number 84. See <http://www.governor.ny.gov/sites/governor.ny.gov/files/archive/assets/documents/olmstead-cabinet-report101013.pdf>.

566. New York's Olmstead Cabinet concluded that “[u]nder Article 17A, the basis for appointing a guardian is diagnosis driven and is not based upon the functional capacity of the person with disability.” *Id.* at 28.

567. To meet the State's responsibility under the American with Disabilities Act, the Olmstead Cabinet recommended that SCPA 17-a be amended to include an examination of functional capacity and consideration of choice and preference in decision-making. *Id.*

568. As of the filing of this action, SCPA 17-a has not been so amended.

569. The Surrogate's Court Advisory Committee is comprised of current and former Surrogate judges and legal practitioners.

570. The Committee makes annual recommendations to the Chief Administrative Judge of the Courts of the State of New York on issues involving practice and procedures of the Surrogate's Courts.

571. In its 2020, 2021, 2022, and 2023 annual Reports to Defendant Zayas, the Committee recommended amendment of SCPA 17-a to “clearly define existing procedural requirements, while establishing new provisions that eliminate any perceived violations of due

process alleged to exist under the current Federal or State statutory framework.”

<https://www.nycourts.gov/LegacyPDFS/IP/judiciaryslegislative/pdfs/fcarcrep23.pdf>, at 210.

572. The specific amendments recommended by the Committee highlight many of SCPA 17-a’s unconstitutional and discriminatory provisions detailed in this complaint.

573. Despite the Committee’s persistent recommendations for reform, Defendants have not eliminated the constitutional violations and discriminatory impact of SCPA 17-a.

### **CLAIMS FOR RELIEF**

#### **First Claim for Relief – 42 U.S.C. § 1983 – Substantive Due Process**

574. Plaintiffs reassert and incorporate all prior paragraphs as though fully set forth herein.

575. The Fifth and Fourteenth Amendments of the U.S. Constitution provide that neither the federal nor state government shall deprive any person “of life, liberty, or property without due process of law.”

576. The Supreme Court has defined liberty broadly to include “the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God...and generally enjoy those privileges long recognized...as essential to the orderly pursuit of happiness by free men.” Roth v. Board of Regents, 408 U.S. 564, 572 (1972) citing Meyer v. Nebraska, 262 U.S. 390, 399 (1923).

577. The appointment of a plenary guardianship of the person under SCPA 17-a deprives persons of the power to make decisions about where they live, with whom they associate, whether to seek and receive medical treatment, whether to marry and have children, and where they work.

See In re Mark C.H., 28 Misc. 3d 765, 776 (N.Y. Surr. Ct. 2010) citing Matter of Chaim A.K., 26 Misc. 3d 837 (N.Y. Surr. Ct. 2009); In re D.D., 50 Misc. 3d 666 (N.Y. Surr. Ct. 2015).

578. Substantive Due Process under the Fifth and Fourteenth Amendments of the U.S. Constitution forbids the government from infringing on a fundamental liberty interest where the matter is not narrowly tailored to serve a compelling governmental interest.

579. Guardianship imposed under SCPA 17-a infringes on the fundamental rights, privileges, and liberties of JM, PZ, JH, AL, and individuals with developmental disabilities including:

- a. a fundamental right to privacy to engage in personal conduct without intervention from state government;
- b. a fundamental right to refuse unwanted medical treatment; and
- c. a fundamental right to make personal decisions regarding marriage, procreation, contraception, family relationships, child rearing, and education.

580. Where personal liberty is being deprived, courts must apply only the least restrictive form of intervention consistent with the clinical condition of a given individual.

581. SCPA 17-a is unnecessarily broad because it imposes a plenary guardianship of the person, property, or person and property that terminates all decision-making authority without conducting a functional assessment of the person's ability to care for him or herself and without narrowly tailoring the guardian's powers to those areas of need.

582. SCPA 17-a is likewise unnecessarily broad because it imposes a permanent deprivation of rights without any process for ensuring periodic verification that such deprivation is justified and no less restrictive alternatives are available.

583. There is no compelling governmental interest to continue to allow the imposition of SCPA 17-a guardianships.

**Second Claim for Relief – 42 U.S.C. § 1983 – Procedural Due Process**

584. Plaintiffs reassert and incorporate all prior paragraphs as though fully set forth herein.

585. The Fifth and Fourteenth Amendments of the U.S. Constitution provide that neither the federal nor state government shall deprive any person “of life, liberty, or property without due process of law.” The continued authorization of Article 17-a guardianships violates an individual’s right to procedural due process.

586. Courts look at three factors to determine whether a taking of liberty or property violated an individual’s rights to procedural due process: “First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” Mathews v. Eldridge, 424 U.S. 319, 335 (1976). See also People v. David W., 95 N.Y.2d 130, 136–137 (N.Y. 2000) (explaining that due process is a flexible concept and citing the three Mathews factors).

587. The appointment of a guardianship over JM, PZ, JH, AL, and individuals with developmental disabilities pursuant to SCPA 17-a is an official action of the State of New York through the Unified Court System.

588. The risk of erroneously depriving JM, PZ, JH, AL, and individuals with developmental disabilities of liberty and property interests through the process of an SCPA 17-a guardianship proceeding is high because:

a. the notice afforded the person does not reasonably ensure the person is meaningfully informed of the nature and possible consequences of the proceeding or the right to contest the proceeding;

b. the person is not entitled to legal representation;

c. the hearsay certifications of two physicians or a physician and psychologist are the primary evidence relied on to determine if guardianship should be imposed;

d. said certifications can be obtained without the knowledge or consent of persons who are minors;

e. the guardianship is imposed without considering the functional capacity of the person to make decisions;

f. there is no requirement that courts obtain and review evaluations and records used to justify conclusions made in the hearsay certifications;

g. the court may dispense with the person's presence in court;

h. the court may dispense with the hearing;

i. the decision is usually made upon a mere preponderance of the evidence;

j. the statute only permits the appointment of a plenary guardianship;

k. the court does not need to examine less restrictive alternatives to plenary guardianship;

l. the statute does not require service of the Order of Appointment or any other order establishing the guardianship;

- m. the statute does not require reporting and review of the need for the guardianship;
- n. there are no procedures for the regular review of guardianships or even the termination of the guardianship; and
- o. in the absence of uniform procedures, the process for removal of guardianship often places the burden on an individual seeking to remove the guardianship.

589. Further, the probative value of additional or substitute procedural safeguards is high, as demonstrated by the due process protections afforded by MHL 81 including:

- a. the notice must inform the allegedly incapacitated person of the nature and possible consequences of the proceeding and the right to contest the proceeding;
- b. the person is entitled to legal representation;
- c. appointment of guardianship based upon the functional capacity of the person to make decisions;
- d. procedures for ensuring the person's presence at the hearing;
- e. the court may not dispense with the hearing without the allegedly incapacitated individual's consent;
- f. a decision made upon clear and convincing evidence;
- g. the court must examine less restrictive alternatives to guardianship;
- h. the statute directs that if a guardianship is imposed, it is tailored to the person's needs;
- i. procedures for the regular review of guardianships and the termination of the guardianship;
- j. required reporting and review of the need for the guardianship; and



k. the process for removal of guardianship places the burden on an individual seeking to continue the guardianship.

590. The nature and duration of the guardianship must bear some reasonable relation to the purpose for which the individual is committed to guardianship.

591. The Government's interest in appointing guardianship over an individual under Article 17-a is to protect the person with a disability. The appointment of guardianship without procedural due process protections is contrary to this governmental interest.

592. One of New York State's courts administered by defendants Chief Judge Wilson and Chief Administrative Judge Zayas has already concluded that the failure to periodically review SCPA 17-a guardianships is unconstitutional. See In re Mark C.H., 28 Misc.3d 765 (N.Y. Surr. Ct. 2010) (holding that periodic reporting is required so that “. . . the court can ascertain whether the deprivation of liberty resulting from guardianship is still justified by the ward's disabilities, or whether she has progressed to a level where she can live and function on her own.”)

593. The UCS is already equipped to provide the procedural protections needed to address the lack of due process in SCPA 17-a because the Supreme Courts, which defendants Chief Judge Wilson and Chief Administrative Judge Zayas also administer, already provide procedural due process protections to persons with developmental and intellectual disabilities brought under MHL 81.

### **Third Claim for Relief – 42 U.S.C. § 1983 – Equal Protection**

594. Plaintiffs reassert and incorporate all prior paragraphs as though fully set forth herein.

595. Under the Fourteenth Amendment of the U.S. Constitution, individuals subjected to SCPA 17-a guardianship proceedings are entitled to Equal Protection of the laws and should not be subject to a statute which denies them Equal Protection in comparison to others similarly situated.

596. The Fourteenth Amendment requires that where an individual's fundamental rights and liberties are implicated, "classification which might invade or restrain them must be closely scrutinized and carefully confined." See Harper v. Virginia State Bd. of Elections, 383 U.S. 663, 670 (1966).

597. Fundamental liberty interests protected by the U.S. Constitution encompass "not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children ... and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." Meyer v. Nebraska, 262 U.S. 390, 399 (1923).

598. Courts within New York State's Unified Court System have already ruled that guardianship constitutes a significant taking of liberty which implicates fundamental freedoms. See In re Mark C.H., 28 Misc. 3d 765, 775-77 (N.Y. Surr. Ct. 2010); In re D.D., 50 Misc. 3d 666, 668 (N.Y. Surr. Ct. 2015).

599. In cases involving deprivations of personal liberty, courts are required to impose only the least restrictive form of intervention consistent with the clinical condition of a given individual.

600. Guardianship proceedings for individuals living with intellectual or developmental disabilities may, under current law, be brought either pursuant to SCPA 17-a or Article 81.

601. MHL Article 81:

- a. limits the appointment of guardianship even if the person is found to be incapacitated;
- b. ensures sufficient notice is provided to reasonably inform the alleged incapacitated person of the nature and potential consequences of the proceeding and the right to a hearing and counsel;
- c. applies the clear and convincing standard for the appointment of guardianship;
- d. provides access to legal representation;
- e. mandates an evidentiary hearing be held to allow for the greatest participation of the alleged incapacitated person;
- f. mandates periodic reporting on the status of the guardianship;
- g. prescribes a mechanism for termination of guardianship;
- h. places the burden for the continuation of the guardianship on the party seeking to continue the guardianship;
- i. specifically directs that guardianship must be administered in the least restrictive manner after consideration of all other alternatives.

602. In stark contrast, SCPA 17-a:

- a. relies exclusively on the best interest standard for appointment of guardianship;
- b. applies a lesser evidentiary standard (preponderance of the evidence) for the appointment of guardianship;
- c. fails to provide notice reasonably certain to inform the allegedly incapacitated person of the nature and consequences of the proceeding;
- d. lacks any procedure for the appointment of legal counsel;

- e. permits hearings to be waived with the consent of a petitioner;
- f. permits the presence of the alleged incapacitated person at the hearing to be waived;
- g. places the burden on the person with a disability to modify or terminate the guardianship;
- h. specifically directs that all guardianships are plenary without consideration for any other lesser restrictive alternatives.

603. There is no compelling or legitimate governmental interest for applying greater protections for appointing a guardianship over JM, PZ, JH, AL, and individuals with developmental disabilities, who are people with intellectual or developmental disabilities, in one court proceeding (MHL 81) and applying a different and lesser standard over JM, PZ, JH, AL, and individuals with intellectual or developmental disabilities in another court (SCPA 17-a).

#### **Fourth Claim for Relief – Americans with Disabilities Act, 42 U.S.C. § 12132**

604. Plaintiffs reassert and incorporate all prior paragraphs as though fully set forth herein.

605. Under the Americans with Disabilities Act (42 U.S.C. § 12132) (“ADA”), a qualified individual with a disability may not be subject to discrimination for reason of his or her disability by any state entity or program receiving federal support. 42 U.S.C. § 12132.

606. A disability is defined as “a physical or mental impairment that substantially limits one or more major life activities of such individual.” 42 U.S.C. § 12102(1)(A).

607. The definition of disability must be construed in favor of broad coverage of individuals under the ADA. 42 U.S.C. § 12102(4)(A).

608. A “qualified individual with a disability” is defined as “an individual with a disability who ... meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” United States v. Georgia, 546 U.S. 151, 153–54 (2006) (quoting 42 U.S.C. § 12131(2)).

609. Individuals with intellectual disabilities and developmental disabilities qualify as having disabilities under New York Law. See SCPA §§ 1750-1750-a.

610. JM, PZ, JH, and AL are qualified individuals with disabilities.

611. The New York Unified Court System is the judicial arm of the New York State Government.

612. JM, PZ, JH, and AL did not have a choice of forum for the guardianship proceeding. The petitioner elected the forum.

613. Individuals with intellectual and developmental disabilities subject to SCPA 17-a do not have a choice of forum for the guardianship proceeding. Petitioners seeking guardianship elect the forum.

614. Failure to afford JM, PZ, JH, AL, and individuals with developmental disabilities the procedures and protections afforded to other individuals with disabilities through MHL 81—including consideration of the least restrictive form of intervention in determining the need for a guardian—has a discriminatory effect.

615. JM, PZ, JH, AL, and individuals with developmental disabilities cannot be subjected to a different guardianship standard that presents greater barriers to their full participation in society or enjoyment of their rights and liberties.

616. To avoid a discriminatory outcome, the Defendants must make reasonable modifications.

617. The Defendants recognize the discriminatory impact of the strict application of SCPA 17-a but have not taken steps to reasonably modify the practice of appointing guardianships.

**Fifth Claim for Relief – Rehabilitation Act Section 504, 29 U.S.C. § 794**

618. Plaintiffs reassert and incorporate all prior paragraphs as though fully set forth herein.

619. Section 504 of the Rehabilitation Act requires that “[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . .” 29 U.S.C. § 794(a).

620. A disability is defined as “a physical or mental impairment that substantially limits one or more major life activities of such individual.” 29 U.S.C. § 705(9)(B) citing 42 U.S.C. § 12102(1)(A).

621. The definition of disability must be construed in favor of broad coverage of individuals under Section 504. See 42 U.S.C. § 12102(4)(A).

622. Individuals with intellectual disabilities and developmental disabilities qualify as having disabilities under New York Law. SCPA § 1750-1750-a.

623. JM, PZ, JH, and AL are qualified individuals with disabilities.

624. The term “program and activity means all the operations of a department, agency, special purpose district, or other instrumentality of a State.” 29 U.S.C. § 794(b)(1)(A).

625. The New York Unified Court System is the judicial arm of the State of New York.

626. New York State receives federal financial assistance to operate programs and activities in New York State.

627. The Defendant New York State Unified Court System receives federal assistance in the form of grants which it distributes to programs it administers and is therefore a covered public entity under Section 504. See NY State Unified Court System, Fiscal Year 2016-2017 Budget at <https://www.nycourts.gov/admin/financialops/Budgets.shtml>.

628. JM, PZ, JH, and AL did not have a choice of forum for the guardianship proceeding. The petitioner elected the forum.

629. Individuals with intellectual and developmental disabilities subject to SCPA 17-a do not have a choice of forum for the guardianship proceeding. Petitioners seeking guardianship elect the forum.

630. Failure to afford JM, PZ, JH, AL, and individuals with developmental disabilities the procedures and protections afforded to other individuals with disabilities through MHL 81—including consideration of the least restrictive form of intervention in determining the need for a guardian—has a discriminatory effect.

631. JM, PZ, JH, AL, and individuals with developmental disabilities must not be subject to a different guardianship standard that presents greater barriers to their full participation in society or enjoyment of their rights and liberties.

632. In order to avoid a discriminatory outcome, Defendants must make reasonable modifications.

633. Defendants recognize the discriminatory impact of the strict application of SCPA 17-a but have not taken steps to reasonably modify the practice of appointing guardianships.

### **Sixth Claim For Relief – N.Y.S. Const. Art. I, § 11**

634. Plaintiffs reassert and incorporate all prior paragraphs as though fully set forth herein.

635. According to the New York State Constitution, “No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his or her civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state”. N.Y.S. Const. Art. I, § 11.

636. Courts within New York State’s Unified Court System have already ruled that guardianship constitutes a significant taking of liberty which implicates fundamental freedoms. See In re Mark C.H., 28 Misc. 3d 765, 775–77 (N.Y. Surr. Ct. 2010); In re D.D., 50 Misc. 3d 666, 668 (N.Y. Surr. Ct. 2015).

637. An individual with an intellectual or developmental disability could be subject to guardianship under either MHL Article 81 in Supreme Court or SCPA Article 17-a in Surrogate’s Court.

638. The person petitioning for guardianship chooses which forum to file a petition for guardianship.

639. Article 81 provides rights and protections to individuals whose prospective guardians chose the Supreme Court to petition for guardianship, while individuals whose prospective guardians chose to file a petition in Surrogate’s Court under SCPA 17-a are not afforded the same rights and protections.

640. JM, PZ, JH, AL, and individuals with developmental disabilities who are subjected to Article 17-a guardianships are unfairly discriminated against and denied equal protection



because Article 17-a fails to provide the same due process protections they would otherwise be entitled to under MHL Article 81.

641. Defendants' acts and omissions described in all the preceding paragraphs herein, while acting under color of state law, violate 42 U.S.C. § 1983 by depriving JM, PZ, JH, AL, their statutory and constitutional rights.

642. Defendants' acts and omissions described in all the preceding paragraphs herein, while acting under color of state law, violate 42 U.S.C. § 1983 by depriving individuals with disabilities of their statutory and constitutional rights.

### **RELIEF REQUESTED**

**THEREFORE**, Plaintiffs ask that this Court grant the following relief against Defendants, including:

- 1) Entering a declaratory judgment, pursuant to CPLR § 3001, stating that:
  - a. SCPA Article 17-a violates the United States Constitution and the N.Y.S. Constitution;
  - b. SCPA Article 17-a violates the Americans with Disabilities Act; and
  - c. SCPA Article 17-a violates Section 504 of the Rehabilitation Act of 1973.
- 2) Entering a permanent injunction requiring Defendants to:
  - a. notify all people who are currently subject to guardianship orders pursuant to SCPA 17-a of their right to request modification or termination the guardianship order; and
  - b. upon Defendants receiving such a request, to promptly hold a proceeding regarding termination or modification of the order, at which the burden of proof, by clear and convincing

evidence, shall be on the party opposing the termination or modification of the order, and which provides substantive and procedural rights to the allegedly incapacitated person that are no less than the substantive and procedural rights of an allegedly incapacitated person in an MHL Article 81 proceeding.

3) Permanently enjoining Defendants from adjudicating incapacity and appointing guardians pursuant to SCPA Article 17-a, until the Defendants ensure that the proceedings provide substantive and procedural rights that do not violate the United States Constitution, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973, and which are not inferior to the substantive and procedural rights enjoyed by allegedly incapacitated persons in MHL Article 81 proceedings.

4) Awarding JM compensatory damages in an amount to be determined by a jury trial.

5) Awarding PZ compensatory damages in an amount to be determined by a jury trial.

6) Awarding JH compensatory damages in an amount to be determined by a jury trial.

7) Awarding AL compensatory damages in an amount to be determined by a jury trial.

8) Awarding Plaintiff DRNY compensatory damages in an amount to be determined by a jury trial.

9) Awarding reasonable costs and attorneys' fees, and awarding any and all other relief, according to proof, that may be necessary and appropriate.

DATED: February 6, 2024  
Albany, New York

Respectfully submitted,

DISABILITY RIGHTS NEW YORK  
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