

APL-2016-00130

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**STATE OF NEW YORK COURT OF APPEALS**

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**In the Matter of the Application of JONAS APONTE,**

*Petitioner-Respondent,*

**- against -**

**SHOLA OLATOYE, as Chairwoman of the New York City Housing  
Authority, and THE NEW YORK CITY HOUSING AUTHORITY**

*Respondents-Appellants.*

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**BRIEF FOR AARP AND AARP FOUNDATION AS AMICI CURIAE  
SUPPORTING PETITIONER-RESPONDENT**

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**December 18, 2017**

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## CORPORATE DISCLOSURE STATEMENT

The Internal Revenue Service has determined that AARP is organized and operated exclusively for the promotion of social welfare pursuant to Section 501(c)(4) of the Internal Revenue Code and is exempt from income tax. The Internal Revenue Service has determined that AARP Foundation is organized and operated exclusively for charitable purposes pursuant to Section 501(c)(3) of the Internal Revenue Code and is exempt from income tax. AARP and AARP Foundation are also organized and operated as nonprofit corporations under the District of Columbia Nonprofit Corporation Act.

Other legal entities related to AARP and AARP Foundation include AARP Services, Inc., and Legal Counsel for the Elderly. Neither AARP nor AARP Foundation has a parent corporation, nor has either issued shares or securities.

Dated: December 18, 2017

  
Susan Ann Silverstein

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## INTEREST OF AMICI CURIAE<sup>1</sup>

AARP is the nation's largest nonprofit, nonpartisan organization dedicated to empowering Americans 50 and older to choose how they live as they age. With nearly 38 million members and offices in every state, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, AARP works to strengthen communities and advocate for what matters most to families, with a focus on health security, financial stability, and personal fulfillment. AARP's charitable affiliate, AARP Foundation, works to ensure that low-income older adults have nutritious food, affordable housing, a steady income, and strong and sustaining bonds. AARP and AARP Foundation litigate on behalf of plaintiffs to challenge practices that violate the Fair Housing Act (FHA), 42 U.S.C. §§ 3601 *et seq.*, while preserving and expanding housing opportunities for low income families. *See, e.g., Mt. Holly Gardens Citizens in Action, Inc. v. Twp. of Mount Holly*, 658 F.3d 375 (3d Cir. 2011), *cert. granted*, 133 S. Ct. 2824 (2013), *cert. dismissed*, 134 S. Ct. 636 (2013) (Neighborhood group of mostly low income, older homeowners challenged local redevelopment plan that would have replaced their market-based affordable homes with housing outside their price range based on the disparate impact to African

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<sup>1</sup> Amici curiae certify that no party's counsel authored this brief in whole or in part, that no party or party's counsel contributed money intended to fund the preparation or submission of the brief, and that no person (other than amicus curiae, their members and their counsel) contributed money intended to fund the preparation or submission of the brief. Both parties consented to the filing of this brief.



American and Latino residents). AARP and AARP Foundation also participate in such cases as amici curiae. *See, e.g., Texas Dep't of Hous. and Cmty. Affairs v. Inclusive Cmty Project, Inc.*, 135 S. Ct. 2507 (2015) (holding that a state's decisions on where to locate low-income housing units could violate the FHA under a disparate-impact theory of liability).

AARP and AARP Foundation have a strong interest in participating in this case because they are deeply concerned about the fair housing rights of older adults who desire to age in place in their homes. AARP Foundation attorneys have litigated, written, and provided training extensively on these issues to ensure that seniors are afforded all of the rights to which they are entitled under the law, including the FHA, so that they may retain their independence, safety, and dignity and be free from discrimination throughout their lifespan. *See, e.g., Herriot v. Channing House*, No. 06-6323, 2008 U.S. Dist. LEXIS 65871 (N.D. Cal. Aug. 26, 2008), *reconsideration denied by, summary judgment granted by, judgment entered by Herriot v. Channing House*, No. 6-6323, 2009 U.S. Dist. LEXIS 6617 (N.D. Cal., Jan. 29, 2009) (holding that housing provider's policy of prohibiting residents who needed 24 hour care so they could remain in their independent living apartments instead of moving as required to shared assisted living rooms did not violate the FHA; subsequently settled by parties).

This case is particularly important because it involves the rights of low-income older residents, who are most likely to need to rely on informal caregiving to be able to age in place. Informal caregiving requires loved ones and friends to contribute significant resources to providing care to the older person, including temporarily or permanently leaving their own home. Many informal caregivers themselves are age 50 or older and have unmet health or economic needs. AARP considers the issue of caregiving to be the backbone of our care system and dedicates significant resources to protecting their rights in the court system. AARP and AARP Foundation have also participated as amici curiae in cases supporting the importance of the rights of paid caregivers to receive the full wages to which they are entitled under the law. *Home Care Ass'n of Am. v. Weil*, 799 F.3d 1084 (D.C. Cir. 2015), *cert. denied*, 136 S. Ct. 2506 (2016).

## SUMMARY OF ARGUMENT

The Court's decision to find respondent's determination denying petitioner succession rights to his mother's apartment to be arbitrary and capricious is reasonable not only as a matter of law but also as a matter of policy. *Aponte v Olatoye*, 138 A.D. 3d 440 (2016). Caregivers in New York, and nationwide, decide to take on the burden of caring for older adults out of a sense of responsibility and compassion. "Faced with a parent, spouse, or other loved one who needs help, caregivers frequently assume the job with limited knowledge of how to begin or what resources are available to help sustain them." AARP, Council of Senior Centers and Services of New York City & New York State Caregiving & Respite Coalition, *Report: Caregivers in Crisis – Why New York must act* 13 (Nov. 2013), <http://states.aarp.org/wp-content/uploads/2013/11/Caregivers-in-Crisis-FINAL.pdf> (hereinafter AARP, *Caregivers in Crisis*). Over the coming years, caregivers are going to be spending a larger portion of their own lives providing more intensive and expensive care to their loved ones, as modern technology and medicine make it possible for older adults to live longer lives. The contribution of those caregivers provides both the opportunity for older people to fulfill their goal of living at home for as long as possible and the collective societal resource to achieve this social goal.

Each person needing care and each informal caregiver must negotiate an individual relationship and arrangement. For the care-recipient, whether the caregiver can move in or not may make the difference between institutionalization and staying in the community while retaining equal enjoyment of their rental housing. For a particular caregiver, such as Jonas Aponte, the adult son of 87-year-old New York City Housing Authority (“NYCHA”) resident Victoria Aponte, the difference between being able to become a permanent member of his mother’s household and making a temporary sojourn might determine the outcome of the inherent physical, emotional, and financial risks of providing live-in care. In turn, whether or not Mr. Aponte could care for his mother in her home, as a member of her household, could make the difference between whether his mother could age in place in her home for her remaining years or likely need to rely on a nursing facility, raising the public cost of her care and forcing her into an institutional setting.

## ARGUMENT

**AFFIRMING THE LOWER COURT’S DECISION IS CONSISTENT WITH PUBLIC POLICY BECAUSE INFORMAL CAREGIVERS DELAY INSTITUTIONALIZATION FOR AGING AMERICANS AND SAVE HEALTHCARE SYSTEMS BILLIONS OF DOLLARS AT GREAT PERSONAL EXPENSE AND SACRIFICE.**

**A. An Increasing Number of Aging Americans, Especially Those Who Are Most Vulnerable, Will Not Be Able To Achieve Their Goal of Aging at Home Without Informal Caregiving.**

The vast majority of Americans over the age of 50 have a desire to age at home. Rodney Harrell et al., AARP Pub. Policy Inst., *What Is Livable? Community Preferences of Older Adults* 7 (2014), [http://www.aarp.org/content/dam/aarp/research/public\\_policy\\_institute/liv\\_com/2014/what-is-livable-report-AARP-ppi-liv-com.pdf](http://www.aarp.org/content/dam/aarp/research/public_policy_institute/liv_com/2014/what-is-livable-report-AARP-ppi-liv-com.pdf). These individuals also express a desire to remain close to the community, schools, stores, banks, and other amenities that they have gotten used to. *Id.* at 10. Yet, it can become nearly impossible to maintain a healthy and safe home environment without help from others, due to the increasing probability of developing a variety of disabilities as one ages. Nat’l Acad. of Scis., *Families Caring for an Aging America* 44 (Richard Schulz and Jill Eden eds., 2016), <https://www.ncbi.nlm.nih.gov/books/NBK396397/>.

Among those in Victoria Aponte’s situation —i.e., those who are 85 or older and who live in the community— more than half require help with activities of

daily living such as bathing, dressing, preparing meals or shopping because of a physical or mental impairment. Congressional Budget Office, *Rising Demand for Long-Term Services and Supports for Elderly People* 12 (2013), <https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/44363-ltc.pdf> (hereinafter CBO). For people age 65-74 who live in the community, one out of five need such help. *Id.* However, once people have reached the age of 65, during the remainder of their life about two-thirds or more will need help from others to perform personal care and household tasks because of a functional impairment. *Id.*

Very few individuals or families can afford to simply purchase this assistance on the private market. In 2016, the average annual cost of full-time home health care was approximately \$46,480, assisted living was \$43,539, and nursing facility care was \$92,378. Social Sec. Admin., *Fact Sheet*, <https://www.ssa.gov/news/press/factsheets/basicfact-alt.pdf> (last visited Nov. 16, 2017); Nat'l Acad. of Scis., *supra*, at 127.<sup>2</sup> In 2017, the average annual income for a person receiving Social Security retiree benefits is \$16,428; across the board Social Security benefits represent one third of income to all retirees. Social Sec.

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<sup>2</sup> In New York the costs are much higher. For example, the average annual cost of a nursing facility in New York City is about \$144,348, and in Central New York, the region that has the lowest average cost, the annual average cost of a nursing facility is about \$111,024. N.Y. Dep't of Health, *Estimated Average New York Nursing Home Rates*, [https://www.health.ny.gov/facilities/nursing/estimated\\_average\\_rates.htm](https://www.health.ny.gov/facilities/nursing/estimated_average_rates.htm)

Admin., *supra*. The average income for all public housing residents, not just those who are elderly or disabled, as of October, 2017, is \$14,686. U.S. Dep't Hous. and Urban Dev., *Resident Characteristics Report 2* (Oct. 2017), [https://hudapps.hud.gov/public/picj2ee/Mtcsrcr?category=rcr\\_income&download=false&count=0&sorttable=table1](https://hudapps.hud.gov/public/picj2ee/Mtcsrcr?category=rcr_income&download=false&count=0&sorttable=table1).

Unfortunately, neither private nor public health insurance makes up for most Americans' inability to pay for this crucial need out of their own income or savings. Less than 3% of adults in the U.S. had long-term care insurance in 2011. CBO, *supra*, at 28. Although Medicaid and Medicare, the two primary federal health care and insurance programs, pay for about two-thirds of long-term services, help through these government-funded programs is exceedingly limited by the population served and the scope of services provided. CBO, *supra*, at 10. Medicaid eligibility requires recipients to have both very low income and very limited resources, and long-term care services in the community reach only small, targeted segments of the population that are optional and vary by state.<sup>3</sup> *Id.* Medicare home-based care is generally restricted to short bouts of care directly after

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<sup>3</sup> See *infra* Section D, discussing New York State programs supporting caregivers.

hospitalizations. *Id.* at 23. For many adults, the only long-term care option becomes institutionalization.<sup>4</sup>

Thus, family and friends who can become caregivers provide an invaluable service to their loved ones: the ability to delay, and sometimes prevent, institutionalization. Richard W. Johnson and Joshua M. Wiener, Urban Institute, *A Profile of Frail Older Americans and Their Caregivers* 1 (2006), <https://www.urban.org/sites/default/files/publication/42946/311284-A-Profile-of-Frail-Older-Americans-and-Their-Caregivers.PDF>; AARP, *Caregivers in Crisis*, *supra*, at 13. Not only is institutionalization an undesirable outcome for most individuals, it is associated with several negative outcomes such as increased mortality, restricted quality of life, as well as questionable quality of care. Melanie Lippa et al., Oxford University Press, Prediction of Institutionalization in the Elderly: A Systematic Review, *Age and Ageing* 31 (Jan. 2010), <https://doi.org/10.1093/ageing/afp202>.

The critical need for home-based long term care will only be further exacerbated by the changing demographics in this country. Not only are more people reaching retirement age than ever before, the result of the oft-discussed aging baby boomers, but also, people are also living longer than ever before. Nat'l

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<sup>4</sup> People are considered institutionalized if they live in a nursing home, a long-term care facility that provides 24 hour-a-day supervision, or a facility that offers assistance specifically for cognitive or functional limitations or supervises medication. CBO, *supra*, at 19.



Acad. of Scis., *supra*, at 58. Over half of all individuals between the ages of 85 and 89 will require some form of daily care due to their limitations; over 75% of individuals over age 90 will require such support. *Id.* at 44. These changes will result in an alarming drop in the ratio of potential family caregivers to people in need of care. One study predicts that this ratio will move from 7-to-1 in 2010, to 4-to-1 in 2030, and then to less than 3-to-1 in 2050. Donald Redfoot et al., AARP Pub. Policy Inst., *The Aging of the Baby Boom and the Growing Care Gap: A Look at Future Declines in the Availability of Family Caregivers* 1 (2013), [https://www.aarp.org/content/dam/aarp/research/public\\_policy\\_institute/ltc/2013/baby-boom-and-the-growing-care-gap-insight-AARP-ppi-ltc.pdf](https://www.aarp.org/content/dam/aarp/research/public_policy_institute/ltc/2013/baby-boom-and-the-growing-care-gap-insight-AARP-ppi-ltc.pdf). The magnitude of the problem will also increase. By 2050, one-fifth of the U.S. population will be 65 years or older. CBO, *supra* at 1. The need for informal in-home caregiving is part of a larger, and growing, trend of a rising demand for long-term services and supports for elderly people, and persons with disabilities of all ages.<sup>5</sup>

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<sup>5</sup> Using CDC's Disability and Health Data System (DHDS), it is reported that as of 2014, 22.5% of adults in the United States have a disability. Centers for Disease Control and Prevention, *Disability and Health Data System (DHDS)* (2016), <https://dhds.cdc.gov/dualareaprofiles/profile?profileId=34&geoTypeId=1&geoIds=36&comps=4|USA>. The average age of care recipients is 60.9 years. A plurality of caregivers (44%) take care of a person who is 75 years of age or older, and an additional 28% care for a person age 50 to 74. One in seven caregivers (14%) take care of an 18- to 49-year-old, and an equal proportion care for a child under the age of 18 (14%). National Alliance for Caregiving in collaboration with AARP, *Caregiving in the United States* 15 (2009), [http://www.caregiving.org/data/Caregiving\\_in\\_the\\_US\\_2009\\_full\\_report.pdf](http://www.caregiving.org/data/Caregiving_in_the_US_2009_full_report.pdf).

Thus, the Aponte family's household situation cannot be seen in isolation. Like so many others, Mr. Aponte moved in with his mother to provide critical long term services and supports ("LTSS"). In doing so, he left behind his previous home with his sister and exposed himself to the financial, emotional, and physical risks of live-in caregiving so that his mother could age in place in her home until the end of her life.

**B. Informal Caregiving Simultaneously Eases The Financial Burden On Our Healthcare System And Forms A Necessary Component Of Long Term Care Services And Supports.**

The most recent estimates suggest that there are approximately 40 million Americans providing an estimated 37 billion hours of care to adults who need assistance with daily activities. Susan C. Reinhard et al., AARP, *Valuing the Invaluable: 2015 Update 1* (2015), <http://www.aarp.org/content/dam/aarp/ppi/2015/valuing-the-invaluable-2015-update-new.pdf>. These hours of care provided by this volunteer force of informal caregivers contribute not only to those who directly benefit from their services, but also to the American economy. The economic value of such unpaid contributions is huge: approximately \$470 billion, an amount that surpasses total Medicaid spending on all healthcare, including hospitals, physician care, and drugs. *Id.* at 3. Informal caregivers provide more care in the home—free of charge—than the federal government provides in all settings combined. Laurie Young and Sandra

Newman, National Center of Caregiving, *Caregiving and Retirement Planning: What Happens to Family Caregivers Who Leave the Work Force* 1 (2003), [https://www.caregiver.org/sites/caregiver.org/files/pdfs/op\\_2003\\_retirement\\_planning.pdf](https://www.caregiver.org/sites/caregiver.org/files/pdfs/op_2003_retirement_planning.pdf). The CBO, relying on a conservative data set and formula, estimated that the value of donated informal care totaled approximately \$234 billion in 2011, an amount much higher than all other total health care spending in the economy on long term care and supports, including by Medicaid, Medicare, private insurance, and out-of-pocket payments. CBO, *supra*, at 2-3, 9-10 (2013). Were it not for the contributions of informal caregivers, either the cost of healthcare in the United States would double or the most vulnerable among us would be left without adequate care. Reinhard et al., *supra*, at 3.<sup>6</sup>

Even with the enormous contribution of donated care, monetary payments for LTSS are expected to rise dramatically. Whereas LTSS payments now constitute 1.3% of gross domestic product (GDP), that share is expected to rise to anywhere from 1.9% to 3.3% of GDP by 2050. *Id.* at 4. The CBO projects that the demand for non-elderly people to provide care to elderly people will increase from having to deploy 5% of the total non-elderly population to provide formal and

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<sup>6</sup> The total Medicaid spending in 2013, including both federal and state contributions for both health care and LTSS, was \$449 billion while the economic value of informal caregiving was \$470 billion. Reinhard et al., *supra*, at 3.

informal aid to elderly adults in 2010 to deploying 7-11% of all non-elderly adults to provide such care by 2050. *Id.* at 31.

Thus, due to the combination of changing demographic trends and the medical realities of aging, the United States will have to figure out how to provide more intensive, and expensive, care to a larger number of people for a longer amount of time. In order to ease the strains on the healthcare system and to help seniors achieve their goal of aging at home, informal caregiving will have to continue to play a major role in solving this growing problem.

**C. Caregivers Provide Support To Loved Ones At Great Personal Expense.**

Despite the critical role family caregivers like Mr. Aponte play in the economy and the benefit they provide to society at large, caregivers in the United States frequently sacrifice their financial, physical, and emotional wellbeing in order to care for their loved ones in times of need. Although family members take on the task of caregiving willingly, or out of a sense of duty or responsibility, 88% of them still report that “family caregiving was harder than they anticipated, necessitating more emotional strength, patience, and time than expected.”

Reinhard, *supra*, at 5. Some studies have shown that the longer the caregiving role continues, the more likely they are to suffer negative consequences such as anxiety, depression, social isolation, and financial losses. Nat’l Acad. of Scis., *supra*, at 49-50. This is particularly relevant in light of the previously examined

demographic trends. As seniors continue to live longer, caregivers will be required to spend a larger portion of their lives caring after them, which will in turn significantly affect their own mental and financial wellbeing.

Caregiving is time consuming. On average, primary unpaid caregiver responsibility for personal care for an elderly person takes approximately half as much time as a full-time job. Johnson, *supra*, at 29. The geographic proximity between caregiver and care recipient plays an important role in determining the extent of the negative impact that the relationship will have on the caregiver. If a caregiver lives far from the recipient, the added “expense of travel, difficulties in communication...and other logistical challenges in meeting someone’s needs” will negatively affect the caregiver. Nat’l Acad. of Scis., *supra*, at 56. The distance that a caregiver lives from the care recipient also correlates to the type of care that is given, with closer caregivers being more likely to provide personal care and more distant caregivers more limited to tasks such as financial planning, coordination, and emotional support. *Id.* at 82.

Here, Ms. Aponte’s needs and Mr. Aponte’s circumstances are exactly what NYCHA should have considered in making its reasonable accommodation determination on a “case-by-case basis.” Joint Statement of the Dep’t of Hous. and Urban Dev. and the Dep’t of Justice, *Reasonable Accommodations Under the Fair Housing Act* 7 (May 17, 2004),

[https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint\\_statement\\_r\\_a.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_r_a.pdf). In particular, the housing provider must consider “the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs.” *Id.* For instance, a resident may need primarily assistance with personal care at intervals over the course of 24 hours with daily tasks like using the toilet, washing-up, and dressing. If the family member cannot be on hand at least once every 3-4 hours, the resident cannot remain at home. The family member may have to give up a residence in one part of the country or city, making the only way for the resident to retain their NYCHA housing would be to be able to add the caregiver to the household as a permanent member. Unfortunately, NYCHA denied the Aponte’s request for this accommodation without considering any of these circumstances.

The financial burden placed on family caregivers can be calculated as both mounting out-of-pocket costs as well as lost opportunity cost due to time and resources spent caring for the older adult. Nat’l Acad. of Scis., *supra*, at 123. Out-of-pocket expenses can include things such as daily needs (food, clothing, etc.), travel expenses, and helping to modify the home so it is usable and accessible for the older adult. One of the key opportunity costs for caregivers is that they frequently have to sacrifice their own employment opportunities in order to spend

more time with the recipient. Of the half of American retirees that reported retiring early in 2015, 22% left their employment earlier than they wanted to because they took on the job of caring for a loved one. Ruth Helman, Employee Benefit Research Institute, *The 2015 Retirement Confidence Survey: Having a retirement savings plan a key factor in Americans' retirement confidence* 26 (2015), [https://www.ebri.org/pdf/briefspdf/EBRI\\_IB\\_413\\_Apr15\\_RCS-2015.pdf](https://www.ebri.org/pdf/briefspdf/EBRI_IB_413_Apr15_RCS-2015.pdf). An average caregiver giving up a minimum wage job for the average duration of an average caregiver's role, four years, could mean a loss of \$91,520,<sup>7</sup> not even considering Social Security or any benefits. Family Caregiver Alliance, National Center on Caregiving, *Caregiver Statistics: Demographics* 6 (2016), <https://www.caregiver.org/print/23216>.

The negative effects on caregivers' employment situations are not confined to early retirement—caregivers are also more likely to be less productive at work, cut back work hours, and take leaves of absence. Nat'l Acad. of Scis., *supra*, at 129-30. One study assessed the aggregate economic effects of caregiving on individuals over the age of 50 and determined that they will lose, on average,

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<sup>7</sup> The New York State Department of Labor provides that New York State's higher minimum wage as of December 31, 2016, is \$11.00 for large employers of 11 or more. N.Y. State Dep't of Labor, *Minimum Wage* 1 (2017), <https://labor.ny.gov/workerprotection/laborstandards/workprot/minwage.shtm>. Full-time work means working 2,080 hours each year, which is 40 hours each week. UC Davis Center for Poverty Research, *What Are The Annual Earnings For A Full-Time Minimum Wage Worker?* 1 (2016), <https://poverty.ucdavis.edu/faq/what-are-annual-earnings-full-time-minimum-wage-worker>.

\$303,880 in income and benefits over the course of their lifetimes. Peter S. Arno et al., The MetLife Mature Market Institute, *Caregiving Costs to Working Caregivers* 12 (2011), <http://www.caregiving.org/wp-content/uploads/2011/06/mmi-caregiving-costs-working-caregivers.pdf>.

For Mr. Aponte, and likely for many other low-income caregivers, the economic consequences are so severe that it is not a matter of how good one's retirement will be. Giving up his home with his sister and caring for his mother without being able to become a household member has resulted in the imminent risk of his becoming homeless. This is an socioeconomic catastrophe that should not be a required outcome for a family caregiver on a personal or social scale.

#### **D. Caregivers In New York State Face Many Of The Same Hurdles As Their Peers Do Across The Nation.**

In New York State, over four million informal caregivers provide approximately 2.68 billion hours of care each year, which is valued at approximately \$32 billion. AARP, *Caregivers in Crisis*, *supra*, at 1. Much like in the rest of the nation, the number of individuals providing support to an older family member or loved one is increasing. The most recent estimates suggest that 32% of New Yorkers provide care to an older adult, which is up from the 25% that did so throughout the 1990s. *Id.* at 9.

In addition to the increasing number of caregivers, caregivers in New York's aging services network system are providing care in amounts greater than the



amount of care reported by caregivers in national studies. N.Y. State Office for the Aging, *Sustaining Informal Caregivers: New York State Caregiver Support Programs Participants Survey 9-10* (2009), <https://aging.ny.gov/ReportsAndData/CaregiverReports/InformalCaregivers/SustainingInformalCaregiversPOMPSurveyReport.pdf>. Half of New York caregivers spend more than 40 hours a week caring for their loved ones. *Id.* at 10. This means that half of caregivers take on the equivalent of a full-time job to care for the recipient. The necessity for this type of intensity of care can partially be explained by the spike in care required by individuals, such as Ms. Aponte in this case, with Alzheimer's and dementia. Of caregivers who look after individuals with these conditions, 46% reported that they spend an average of 10.3 hours *per day* looking after a loved one. *Id.* That number jumps to almost 13 hours per day for caregivers who also reside with the recipient. *Id.* Live-in caregivers reported that they provided an average of 90.4 hours per week of help, as compared to an average of 29.9 hours of care per week by non- resident caregivers. *Id.*

The New York legislature has made great strides in improving support for informal caregivers. In just the years between 2011 and 2014, the State went from being ranked 48th for support to being ranked 6th. Susan Reinhard et al., AARP, The Commonwealth Fund & The SCAN Foundation, *Raising Expectations: A State Scorecard on Long-Term Services and Supports for Older Adults, People*

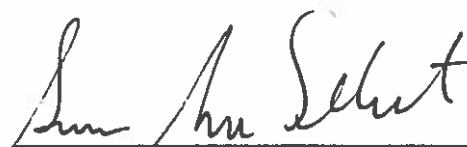
*with Physical Disabilities, and Family Caregivers* 24 (2011), [https://assets.aarp.org/rgcenter/ppi/ltc/lts\\_scorecard.pdf](https://assets.aarp.org/rgcenter/ppi/ltc/lts_scorecard.pdf); Susan Reinhard et al., AARP, The Commonwealth Fund & The SCAN Foundation, *Raising Expectations: A State Scorecard on Long-Term Services and Supports for Older Adults, People with Physical Disabilities, and Family Caregivers* 24 (2014), <https://www.aarp.org/home-family/caregiving/info-2014/raising-expectations-2014-AARP-ppi-health.html>. Nevertheless, with the rapidly changing demographics outlined above, much more needs to be done to avert a socioeconomic crisis. Many New York State caregivers have reported that “without the services of state programs supporting family caregivers, they would be forced to place their loved ones in institutional settings like nursing homes that are funded largely by taxpayers through the Medicaid program.” AARP, *Caregivers in Crisis*, *supra*, at 1. Supporting family caregivers like Mr. Aponte is especially important in the NYCHA community where 20% of its 396, 581 residents are 62 years or over. N.Y. City Hous. Auth., *NYCHA 2017 Fact Sheet* 3 (2017), <https://www1.nyc.gov/assets/nycha/downloads/pdf/factsheet.pdf>. Where a resident and a caretaker request, as Ms. Aponte and her son did, that the caregiver be made a permanent member of the household, NYCHA must consider the circumstances on a case-by-case basis or risk consigning the aging resident to worse health outcomes and eventually an institution.

## CONCLUSION

For the reasons stated above, this court should affirm the decision below.

Dated: December 18, 2017

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

This brief complies with type-volume limitation of CPLR 500.3(c)(1) and CPLR 500.3(c)(2) because this brief contains 4,274 words and does not exceed 20 pages, excluding the parts of the brief exempted by CPLR 500.3(c)(3).

This brief complies with the typeface requirements of CPLR 500.1(j) and the type style requirements of CPLR 500.1(j) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 Times New Roman in 14 point font.

Dated: December 18, 2017

  
Susan Ann Silvestein

## CERTIFICATE OF SERVICE

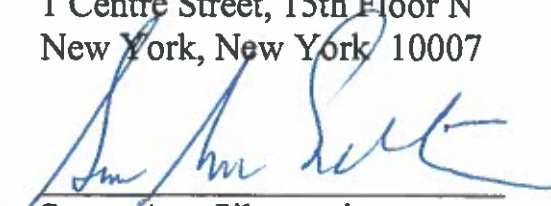
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