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For Immediate Release

**FEDERAL APPEALS COURT UNANIMOUSLY HOLDS THAT HRA MAY EXCLUDE
ALL BUT THOSE TRANSACTING OFFICIAL BUSINESS
FROM ITS SERVICE CENTER WAITING ROOMS**

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New York, Aug. 10, 2004 – In an important interpretation of the First Amendment issued last Wednesday (Aug. 4, 2004), the U.S. Court of Appeals for the Second Circuit unanimously affirmed a lower court ruling upholding the New York City Human Resources Administration's (HRA's) policy of excluding third parties, including welfare advocates, from its service center waiting rooms when they are not present on HRA official business.

Although HRA's access policy dates back to the 1970s, the agency was precluded from implementing it due to Federal appellate decisions that have since been superceded by decisions issued by the Supreme Court. These decisions concern the circumstances under which private parties are given access, on First Amendment grounds, to various types of government property, including government offices, which typically are *nonpublic fora* (public property not traditionally open to public expression or intentionally designated by the government as a place for such expression).

Based on these changes in law, HRA began in the mid-1990s, to enforce its access policy as written, limiting center access only to those with official HRA business to transact. Thus, advocates "retained" or authorized by individual HRA clients to represent them are given access to HRA's service centers for representation purposes, while "unretained" advocates – or those not authorized by individual clients – are not. In 1998, Make the Road by Walking, Inc., and other advocacy groups sought access to the waiting rooms of HRA's Job Centers and other service centers. These groups sought waiting room access so that their "unretained" advocates could provide information, assistance and/or representation to HRA clients on the spot. When HRA declined to grant access, Make the Road and two of its members filed suit.

In a 3-0 decision, the Second Circuit rejected the arguments raised by Make the Road that HRA's access policy violated the First Amendment and the due process and equal protection clauses. The Circuit ruled that the exclusion of Make the Road and other advocacy organizations was "clearly reasonable" not only under HRA's official business policy of limiting center access to the transaction of official business, but also because the "exclusion ensured the success of HRA's legitimate goals by limiting disruption in general, and especially disruption resulting from the perceived endorsement by HRA of [Make the Road's] advice." Finally, the Court noted that Make the Road "offered no evidence that HRA's access policy was based on bias against its viewpoint rather than preserving the Job Centers for their intended purpose."

Verna Eggleston, HRA's Commissioner, said, "This decision supports HRA's position that our Job Centers and other service centers must concentrate on performing their function of providing temporary assistance to those seeking help in New York City, in a professional, confidential and efficient environment."

Janice Birnbaum, the attorney who handled *Sanchez v. Turner* in the District Court, noted, “The Second Circuit’s well-reasoned and thorough decision and analysis of the law governing access to government property recognized HRA’s right to preserve its Job Centers for their intended purpose, and that the potential disruption that can be caused by third-party access to governmental offices is a legitimate reason for excluding such access.” She also added, “We feel this decision will be applicable to other governmental settings with similar purposes and access limitations.”

Elizabeth Freedman of the Law Department’s Appeals Division handled the appeal, with the assistance of Appeals Chief Leonard Koerner and Senior Counsel Janice Birnbaum of the General Litigation Division.

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