

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

-----X  
BRIAN A., by his next friend, Bobbi Jean Brooks; )  
TRACY B., by her next friend, Pamela Pallas; )  
JACK and CHARLES C., by their next friend, )  
Linda Lloyd; )  
AMY D., by her next friend, Frank Koon; )  
DENISE E., by her next friend, Linda Lloyd; )  
CHARLETTE F., by her next friend, Juanita Veasy; )  
TERRY G., by her next friend, Carol Oldham; )  
ANDREW H., by his next friend, Laura Hash; )  
KENNETH I., by his next friend, Russell Morel; )  
NANCY J., by her next friend, Laura Hash; and )  
DONNA K., by her next friend, Laura Hash; and )  
KIERA L., by her next friend, Laura Hash; ) Civil Action No. 3-00-0445  
JOSHUA M., by his next friend, Angela Blevins; )  
on their own behalf and on behalf of all others ) Judge Campbell  
similarly situated, ) Magistrate Brown  
)  
Plaintiffs, )  
)  
--against-- )  
)  
PHIL BREDESEN, Governor of the State )  
of Tennessee; and )  
VIOLA MILLER, Commissioner of the )  
Tennessee Department of Children’s Services, )  
)  
Defendants. )  
-----X

---

**SECOND SUPPLEMENTAL COMPLAINT  
FOR INJUNCTIVE AND DECLARATORY RELIEF**

---

Pursuant to Rule 15(d) of the Federal Rules of Civil Procedure, Plaintiffs supplement their Complaint (Docket No. 1) (the “Original Complaint”) as follows:

1. Plaintiffs incorporate herein by reference, in its entirety and as if set forth verbatim, their Original Complaint, including each and every allegation, cause of action, and request for relief set forth therein.

2. Plaintiffs also incorporate herein by reference, in its entirety and as if set forth verbatim, their Proposed Supplemental Complaint dated November 9, 2009 (attached as Exhibit A to Docket No. 335), including each and every allegation, cause of action, and request for relief set forth therein.

### **JURISDICTION**

3. This is an action pursuant to 42 U.S.C. § 1983, alleging violations of the United States Constitution and federal statutes, and of the Consent Decree in this action, which has the force of federal law. This court has jurisdiction over these federal claims pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3). This Court also has continuing jurisdiction to enforce the terms of the Consent Decree in this matter.

### **SUPPLEMENTAL PLAINTIFF AND NEXT FRIEND**

4. Joshua M. is 15 years old and resides in Union County.<sup>1</sup> He was removed from his home by the Tennessee Department of Children's Services ("DCS") on or about November 9, 2009 on an allegation that he is dependent and neglected. On or about November 9, 2009, a bench order was issued by the Juvenile Court of Union County, ordering that temporary legal custody of Joshua M. be awarded to DCS, and further ordering that a hearing be held on

---

<sup>1</sup> A pseudonym has been used in order to protect the identity of the minor Plaintiff in this Second Supplemental Complaint.

November 13, 2009. At the time of the filing of the instant Second Supplemental Complaint, Joshua M. is in the legal custody of DCS awaiting his commitment hearing, at which the judge of the Juvenile Court will determine whether he should remain in DCS custody, be returned to his home, or be placed with a relative or other non-DCS caregiver. At the time of the filing of the instant Second Supplemental Complaint, Joshua M. is not committed to the legal custody of DCS based solely upon an allegation or adjudication of a delinquent or criminal act.

5. Plaintiff Joshua M. appears through his Next Friend Angela Blevins. Ms. Blevins is the Guardian Ad Litem attorney for Joshua M. pursuant to an order issued by the Juvenile Court of Union County. Ms. Blevins maintains her principal office at 109 Leinart Street, Suite 101, Clinton, TN 37716.

6. Joshua M., Supplemental Plaintiff in this Second Supplemental Complaint, is at imminent risk of harm from Defendants' implementation of Section 30 of Tennessee Public Chapter No. 531, which created a new subsection "f" to Tennessee Code Annotated ("T.C.A.") § 37-2-205 and became effective on July 7, 2009 (the "Over-Commitment Law").

## **CAUSES OF ACTION**

### **First Cause of Action**

#### **(Contempt of § I(A)(2) of the Consent Decree)**

7. Each and every allegation in this Second Supplemental Complaint is incorporated herein as if fully set forth.

8. The Over-Commitment Law, on its face and as applied, violates the rights of the Supplemental Plaintiff in this Second Supplemental Complaint and all other similarly situated

class members under § I(A)(2) of the Consent Decree, and thus places Defendants in contempt of § I(A)(2) of the Consent Decree.

9. Because the Over-Commitment Law, as developed and implemented by Defendants in contravention of the Consent Decree, has caused and is likely to continue to cause an immediate and substantial risk of serious harm to children in the class, Plaintiffs seek immediate relief from this Court pursuant to § XVIII(B)(2)(c) of the Consent Decree.

### **Second Cause of Action**

#### **(Contempt of § I(A)(12) of the Consent Decree)**

10. Each and every allegation in this Second Supplemental Complaint is incorporated herein as if fully set forth.

11. The Over-Commitment Law, on its face and as applied, violates the rights of the Supplemental Plaintiff in this Second Supplemental Complaint and all other similarly situated class members under § I(A)(12) of the Consent Decree, and thus places Defendants in contempt of § I(A)(12) of the Consent Decree.

12. Because the Over-Commitment Law, as developed and implemented by Defendants in contravention of the Consent Decree, has caused and is likely to continue to cause an immediate and substantial risk of serious harm to children in the class, Plaintiffs seek immediate relief from this Court pursuant to § XVIII(B)(2)(c) of the Consent Decree.

**Third Cause of Action**

**(Contempt of § I(A)(13) of the Consent Decree)**

13. Each and every allegation in this Second Supplemental Complaint is incorporated herein as if fully set forth.

14. The Over-Commitment Law, on its face and as applied, violates the rights of the Supplemental Plaintiff in this Second Supplemental Complaint and all other similarly situated class members under § I(A)(13) of the Consent Decree, and thus places Defendants in contempt of § I(A)(13) of the Consent Decree.

15. Because the Over-Commitment Law, as developed and implemented by Defendants in contravention of the Consent Decree, has caused and is likely to continue to cause an immediate and substantial risk of serious harm to children in the class, Plaintiffs seek immediate relief from this Court pursuant to § XVIII(B)(2)(c) of the Consent Decree.

**Fourth Cause of Action**

**(Equal Protection of the Laws  
under the Fourteenth Amendment to the United States Constitution)**

16. Each and every allegation in this Second Supplemental Complaint is incorporated herein as if fully set forth.

17. The Over-Commitment Law, on its face and as applied, violates the rights of the Supplemental Plaintiff in this Second Supplemental Complaint and all other similarly situated class members to the equal protection of the laws under the Fourteenth Amendment to the United States Constitution. The Over-Commitment Law creates classifications among similarly situated

children subject to commitment decisions and treats them differently without legally sufficient justification.

**Fifth Cause of Action**

**(Due Process under the Fourteenth Amendment  
to the United States Constitution)**

18. Each and every allegation in this Second Supplemental Complaint is incorporated herein as if fully set forth.

19. The Over-Commitment Law, on its face and as applied, violates the rights of the Supplemental Plaintiff in this Second Supplemental Complaint and all other similarly situated class members awaiting judicial commitment decisions to a fair hearing and to due process under the Fourteenth Amendment to the United States Constitution.

**PRAYER FOR RELIEF**

20. WHEREFORE, Plaintiffs respectfully request that this Honorable Court, pursuant to its powers under Rule 57 of the Federal Rules of Civil Procedure and its continuing jurisdiction of this matter under the Consent Decree,

- a. Declare that:
  - i. The Over-Commitment Law, on its face and as applied, violates §§ I(A)(2), I(A)(12), and I(A)(13) of the Consent Decree, and places Defendants in contempt of the Consent Decree;
  - ii. The Over-Commitment Law, on its face and as applied, violates Plaintiffs' rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;
  - iii. The Over-Commitment Law, on its face and as applied, violates Plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution;

- b. Preliminarily and permanently enjoin the implementation of the Over-Commitment Law, T.C.A. § 37-2-205(f);
- c. Award to Plaintiffs the reasonable costs and expenses incurred in the prosecution of this action, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988 and 28 U.S.C. § 1920, and Federal Rules of Civil Procedure 23(e) and (h); and
- d. Grant such other and further equitable relief as the Court deems just, necessary and proper to protect Plaintiffs from further harm by Defendants.

DATED: November 12, 2009

Respectfully Submitted,

**ATTORNEYS FOR PLAINTIFFS:**

/s/ Marcia Robinson Lowry  
MARCIA ROBINSON LOWRY (*pro hac vice*)  
IRA LUSTBADER (*pro hac vice*)  
YASMIN GREWAL-KOK (*pro hac vice*)  
PATRICK S. ALMONRODE (*pro hac vice*)  
CHILDREN'S RIGHTS, INC.  
330 Seventh Avenue, 4th Fl.  
New York, NY 10001  
(212) 683-2210

/s/ David L. Raybin  
DAVID L. RAYBIN (TN BPR #003385)  
JACQUELINE B. DIXON (TN BPR #012054)  
HOLLINS, WAGSTER,  
WEATHERLY & RAYBIN, P.C.  
SunTrust Center, 22nd Floor  
424 Church Street  
Nashville, TN 37219  
(615) 256-6666

RICHARD B. FIELDS (TN BPR #4744)  
688 Jefferson Avenue  
Memphis, TN 38105  
(901) 543-4299

JOHN W. PIEROTTI (TN BPR #7851)  
ROBERT LOUIS HUTTON (TN BPR #15496)  
Glankler Brown, PLLC  
One Commerce Square, Suite 1700  
Memphis, TN 38103  
(901) 525-1322

WADE V. DAVIES (TN BPR #016052)  
Ritchie, Fels & Dillard, P.C.  
606 W. Main Street, Suite 300  
Knoxville, TN 37902  
(865) 637-0661