

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 00-2116-CIV-MORENO

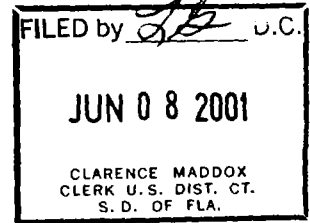
FOSTER CHILDREN BONNIE L., by and
through her next friend Donald Haddock, *et. al.*,

Plaintiffs,

vs.

JEB BUSH, as Governor of the State of Florida,
et. al.,

Defendants.



**ORDER DENYING PLAINTIFFS' EMERGENCY MOTION FOR
TEMPORARY INJUNCTION PENDING APPEAL**

On May 29, 2001, Plaintiffs filed an Emergency Motion for Temporary Injunction Pending Appeal pursuant to Fed.R.Civ.P 62(c). Rule 62(c) provides that the court in its discretion may grant an injunction during an appeal of an order denying an injunction. Having failed to persuade this Court that it should grant an injunction on the merits and prevent Defendants from terminating Plaintiff's benefits, Plaintiff now seeks to have this Court temporarily enjoin Defendants from terminating her benefits while her appeal is before the Eleventh Circuit.

As grounds, Plaintiff directs the attention of the Court to Subparagraph IV.B. of an attachment to Defendants' April 11, 2001 Response Regarding the Status of Agreement for Continued Services. That subparagraph states:

The recipient by executing this agreement does not waive or agree to waive any state or federal constitutional rights that she may have. At the same time, the recipient understands and agrees that the Department is authorized to terminate the agreement if the recipient fails to comply with any of the terms of the agreement, notwithstanding a contention that the noncompliance is an exercise of a constitutional

right.

Proposed Agreement for Continued Services at ¶ IV.B. Plaintiff argues that the Court's understanding of Defendants' position is contradicted by the language of that subparagraph.

In its April 30, 2001 Order, the Court acknowledged in its holding that Defendants' proposed written service agreement is ambiguous about whether signing the agreement would result in the relinquishment of constitutional rights and nothing in Plaintiff's submission alters this understanding. Plaintiff's submission makes Plaintiff's lack of standing and ripeness evident as the Court was not and has not been presented with a complete and final agreement with which to rule on the underlying constitutional issues raised by Plaintiff.

Subparagraph IV.B. does not constitute a waiver of constitutional rights at the moment the individual signs the agreement as Plaintiff contends. Instead, it allows for the possibility that the Department will be able to terminate the benefits for the failure to comply with any of the terms of the agreement. Plaintiff must show that she is in immediate danger of sustaining a direct injury as a result of the conduct of Defendants, and not just a conjectural or hypothetical injury. *City of Los Angeles v. Lyons*, 461 U.S. 95, 101-2, 103 S.Ct 1660, 1665 (1983).

After receiving Defendants' response filed on June 6, 2001 to Plaintiff's motion for temporary injunction pending appeal, it now appears that the motion is moot in any event as Defendants have agreed to continue services to Plaintiff Leslie F. for 45 days or until the Eleventh

Circuit rules. Accordingly, Plaintiff's motion is DENIED as moot.

DONE AND ORDERED in Chambers at Miami, Florida, this 7 day of June, 2001.


FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

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