

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT AT NASHVILLE, TENNESSEE

VICTORIA CUNNINGHAM,
INDIVIDUALLY AND AS NEXT FRIEND
FOR A.C. (a minor child)

v.

Case
Jury Demand

DEPARTMENT OF CHILDREN'S SERVICES
COMMISSIONER JENNIFER NICHOLS
DONNA DAVENPORT, JUDGE
TAMEIKA GRAY
MATTHEW WRIGHT

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT, PRAYER FOR
EMERGENCY INJUNCTIVE RELIEF
AND FOR DAMAGES**

Now comes the Plaintiff, Victoria Cunningham, individually and as next friend for A.C. and files this Complaint for damages, declaratory relief, and prayer for immediate emergency injunctive relief under the authority of 42 U.S.C. Sec. 1983 and 1985 and Fed. R. Civ. P. 65.

A. PARTIES

1. The Plaintiff, Victoria Cunningham, is an adult and mother of A.C. a minor child (born 2012). Plaintiff currently resides in Williamson County, Tennessee.

2. Defendant Department of Children's Services is an agency of the State of Tennessee and enjoys absolute immunity against monetary damages but is subject to the injunctive powers of this Court. DCS can be served with process through Commission Jennifer Nichols at 315 Deaderick St. UBS Tower, Nashville, TN 37243.
3. Defendant Jennifer Nichols is the Commissioner of the Department of Children's Services and responsible for the lawful operation of the agency. She can be served at the same address as the agency. Each cause of action against the Department of Children's Services is equally brought against Defendant Nichols in her official capacity as she has the ultimate authority to control the policies and practices of her agency. Nichols, in her official capacity, enjoys absolute immunity but is subject to the injunctive powers of this Court.
4. Defendant Donna Scott Davenport is an adult residing in Rutherford County, Tennessee. She is the juvenile court judge and enjoys absolute judicial immunity against monetary damages unless **she lacks jurisdiction** in her actions which she did here. She is also subject to the injunctive powers of this Court. She can be served with process at 1710 South Church Street, Murfreesboro, Tennessee, 37130.
5. Defendant Tameika Gray is an adult who is believed to be residing in Rutherford County. She is an employee of the Department of Children's Services. The constitutional violations stated herein are clearly established and therefore, Gray does NOT enjoy immunity from suit for monetary damages. She can be served with process at 434 Jayhawk Court, Murfreesboro, Tennessee, 37128. 615 217 8924.

6. Defendant Matthew Wright is an adult believed to be residing in Rutherford County, Tennessee. He is an employee of the Department of Children's Services and serves in the capacity of an attorney. In this case, Wright acted in an investigatory capacity and the constitutional violations stated herein are clearly established and therefore, Wright does NOT enjoy immunity from suit for monetary damages. He can be served with process at 434 Jayhawk Court, Murfreesboro, Tennessee, 37128. 615 217 8924.
7. Defendants Matthew Wright and Tameka Gray are named in their individual capacity for which the plaintiffs seek monetary damages.
8. All defendants are named in their official capacity for which the plaintiffs seek declaratory and injunctive relief.
9. All defendants are state actors.

B. VENUE AND JURISDICTION

This Court has jurisdiction over actions brought under 42 U.S.C. Sec. 1983 pursuant to 28 U.S.C. Sec. 1332. The acts complained of occurred in Williamson and Rutherford Counties.

The Department of Children's Services is located in Nashville, Davidson County making this Court the proper venue.

C. VERIFIED FACTS PLEAD BY THE PLAINTIFF

1. On or about Friday, June 7, 2019, Plaintiff decided to take a temporary separation from her husband and took her two minor children to the home of her mother in Brentwood, Williamson County, Tennessee. Because of the disruption in the

home, Plaintiff set an appointment for A.C. to meet with a child psychologist, Dr. Janie Berryman. The appointment was set for June 13, 2019.

2. On or about Saturday, June 8, 2019, Plaintiff received a phone call from a Detective who left a message on her cell phone. He wanted to meet with her regarding the minor child, A.C. He was clear that Plaintiff was not being accused of causing any harm to her daughter. He left a second message telling Plaintiff that she needed to bring the child to his office for an interview.
3. Plaintiff did not return his call. However, Detective Scott did speak to Plaintiff's mother (who is also an attorney) and he confirmed that Plaintiff was NOT an alleged perpetrator. The understanding was that DCS would be following up.
4. On Monday, June 10, 2019, Defendant Tameka Gray, left a message on the cell phone of Plaintiff asking for Plaintiff to call her.
5. On Monday, June 10, 2019, Defendant Plaintiff's mother (who is an attorney) sent a text message to Defendant Gray. Gray communicated that she needed to see A.C. the following day. Gray had a short conversation with Reguli who agreed to bring the children to see her the following day. A scheduled time was set for 3:00 pm on Tuesday, June 11, 2019. Defendant Gray again provided assurance that Plaintiff Cunningham had not being accused of harming her children.
6. On or about Tuesday, June 11, 2019, both minor children (A.C. and a younger brother) were transported 40 minutes to the Rutherford County DCS office by maternal grandmother/attorney, Connie Reguli, to meet Defendant Gray. The children arrived on time for the meeting set for 3:00 pm. Defendant Gray was 20 minutes late to the meeting.

7. Defendant Gray invited the grandmother and the children into a “playroom” where Gray had the ability to make an inspection of the children and ask them questions in the presence of the grandmother. Gray did not express any concerns for their safety or welfare and did NOT tell the grandmother the allegations of abuse regarding A.C.
8. Defendant Gray asked to take A.C. into a private room outside of the presence of the grandmother to interview her and the grandmother declined but told Gray she could ask her questions about any safety issues. Reguli explained to Gray that an appointment had previously been set for June 13, 2019 for A.C. to meet with psychologist Dr. Janie Berryman and that it was the desire of the Plaintiff that A.C. meet with the psychologist prior to any other forensic interviews. Reguli was NOT told that this was impermissible.
9. Reguli assured Gray that DCS would be able to get information from the meeting the child had with Dr. Berryman on June 13, 2019.
10. Defendant Gray did not ask any meaningful questions of the children regarding their health, welfare, or safety. Gray did not express any immediate concerns for the safety of the children. Grey told the grandmother that Gray would need to see the home where the children reside and grandmother told Gray that would be fine and told her they were residing in Brentwood, TN. The grandmother, Connie Reguli, also informed Defendant Gray that Reguli would serve as attorney in any legal action.
11. Plaintiffs assert that Gray is not qualified to perform a sensitive interview with a child regarding allegations of sexual assault. She asked A.C. if anything made her

feel unsafe and A.C. looked puzzled. Then A.C. was asked if she knew what that meant and A.C. shook her head no. Plaintiffs also asserts that the employees of CAC (Child Advocacy Center) are not qualified for sensitive interviews. Children are put into an artificial environment with observations mirrors, video recording, and a person strange to the child and interrogated on their body parts. They have been observed holding a child in the room after the child has asked several times to leave and causing anxiety in children with sensitive questions about body parts. CAC is nothing more than an extension of the prosecutorial arm of DCS. They are paid through DCS, their videos and reports to directly to DCS, and they only take interviews from DCS referrals. CAC feasts upon serial inappropriate interviews of children.

12. On June 12, 2019, Defendant Gray showed up at the home of the grandmother at about 7:00 pm. Thinking that Defendant Gray was there to make in inspection of the home, she was invited to step inside the door and introduced to Plaintiff as the mother of A.C. When asked to come in for the home visit, Gray stated she was not there for a home visit. Defendant Gray handed the attached “Ex Parte Order Allowing DCS Investigation” to Plaintiff/Mother. **EXHIBIT 1** – Ex Parte Order
13. This order did NOT include a copy of the “verified application” cited in the first line of the order. Defendant Gray was asked for the rest of the pleading and she was stated that was all that there was. Defendant Gray was asked if she told the judge that A.C. already had an interview set up with a psychologist. Gray said she told her attorney Defendant Wright but would never confirm that she told the judge prior to the entry of the order.

14. Dr. Janie Berryman is a licensed psychologist who has a contract with DCS for forensic services and also provides private therapeutic services. She has historically been a resource for DCS for interviewing children where there are concerns of abuse or neglect. Defendant Gray did not voice any concerns over the qualifications of Berryman.
15. The attached order relies solely on TCA 37-5-512(b) and 37-1-406(e) stating that DCS has authority and responsibility to investigate reports of harm to the children of this state.
16. The Ex Parte Order does NOT claim that the Plaintiff/Mother has caused any harm to the child or risk of harm, nor does it state that the child is at imminent risk of harm, nor does it state that Mother has failed to protect the children from any risk of harm.
17. The Ex Parte Order compels (Para. 1) the Plaintiff and grandmother, Connie Reguli, to “allow entrance into the home, school, or place where the child is located by duly authorized representatives of DCS, for the purposes of an examination of the child, the child’s home and/or to complete its investigation. Further that the Mother and Ms. Reguli will allow DCS to conduct a face to face interview with the Child outside of their presence and outside the presence of other 3rd parties; further the Mother and Ms. Reguli will allow the child to be forensically interviewed by representatives of the CAC (Child Advocacy Center).” [emphasis added]

18. This order goes on to provide (Para. 2) that “if necessary to complete the investigation required by Tenn. Code Ann. **37-5-512(b)**¹ and **37-1-406(e)**², DCS may take the subject child into its temporary physical custody for the purpose of observing and interviewing the child and to obtain physical, psychological, or psychiatric examinations by qualified persons; that DCS has the authority to place the child in any suitable health care facility for the purpose of conducting said examinations; and that DCS has the authority to consent to any ordinary procedures necessary to the examinations. The interviews and examinations

¹ Tenn. Code Ann. 37-5-512(b) states that, if admission to the places, facilities or homes of the entities or persons involved in the care, supervision, instruction or treatment of the child is denied or delayed for any reason, the chancery, circuit, or juvenile court of the county where the entity or person is located shall, upon cause shown by the department of children’s services in investigations of abuse or neglect or sexual abuse involving any person or entity or in any of its licensing or approval activities, or upon cause shown by the departments of education or human services in any certification, licensing or approval activity, immediate, by ex parte order, direct the persons in charge of such places, facilities or any persons having responsibility for the care, supervision, instruction or treatment, of the child or children to allow entrance for the review of records, inspection of the premises, and to permit any interviews with or examinations of children as permitted pursuant to chapter 1, of this title, title 49, chapter 1, part 11, or title 71, chapter 3, part 5.

² Tenn. Code Ann. 37-1-406(e) states the investigation shall include a visit to the child's home, an interview with and physical observation of the child, and an interview with the parent or parents or other custodian of the child and any other person in the child home. If the investigator deems it necessary, the investigation shall also include medical, psychological or psychiatric examinations of the child and any other children in the child home or under the care of any person alleged to have permitted or caused abuse, neglect, or sexual abuse to the child. If the investigator determines, based on a visit to the child's home, observation of an interview with the subject child, an interview with other persons in the child's home, that the report of harm is wholly without substance, the investigator may determine the physical and psychological examinations of this subject child are unnecessary, and in which case they will not be required. If admission to the home, school, or any place where the child maybe, or permission of the parents or persons responsible for the child's care for the physical and psychological or psychiatric examinations cannot be obtained, the juvenile court, upon cause shown, shall order the parents or person responsible for the care of the child or the person in charge of any place where the child maybe, to allow entrance for the interview, examination, an investigation. If the report of harm indicates that abuse, neglect or sexual abuse occurred in a place other than the child's home, then, in the discretion of the investigator the investigation may include a visit to the location where the incident occurred or a personal interview with the child and the parents or the other custodians in another location instead of a visit to the child home.

authorized herein shall be conducted **prior to any other interviews or examinations arranged at the direction of the child’s parent or physical custodian.** The Court finding that this provision is imperative to preserve the integrity of the DCS and required law enforcement investigations and to protect the child from irreparable harm.”

19. Para. 3 states that “a law enforcement official with jurisdiction shall assist DCS as necessary to complete the investigation authorized by this order.”

20. Para. 4 states that “all state, county, or local agencies with information or records relevant to the child’s situation, including any public or private medical or mental health treatment resources and all educational facilities, shall release such information or records as are necessary for the management of this case to the Department of Children’s Services and to its agents.”

21. Para. 5 states “all records produced by the Department of Children’s Services during these proceedings, either in response to a discovery request or distributed at a hearing, shall be maintained by the parties and their counsel as confidential records and shall not be disclosed or re-released to anyone for any purpose other than the proceedings currently before this Court without further authorization from the Department of Children’s Services or the individual identified in the record.”

22. Para. 6 states “at the conclusion of these proceedings, all such records containing protected health information (including medical, mental health, and substance abuse treatment records) in the possession of the parties and their counsel shall be returned to the Department of Children’s Services or destroyed.”

23. This order is prepared by Defendant Matthew Wright and signed by Defendant Judge Donna Davenport of the Rutherford County Juvenile Court. There is no summons issued by the Clerk for confirmation of service as required under Tenn. R. Civ. P. 4. The policies and practices of Defendants Matthew Wright and Judge Donna Davenport in this case demonstrates Davenport's "rubber stamp" of Wright's pleadings and, in whole, a pattern of procedural due process violations conjured between the actions of DCS employees, Wright and Gray, and the juvenile court judiciary.

24. Defendants DCS and Nichols are responsible for directing the policies, practices, and activities of the Attorneys employed by DCS³ to prosecute parents. An inherent conflict of interest exists between the agencies stated goal and public policy of reunification of families against its practices and the financial incentive to separate families, remove children from parents, and prosecute parents for otherwise lawful activities of parents. DCS and Nichols seek to maximize their Title IV E funding by abrogating parental rights and removing children from parents as a matter of practice. Nichols failure to balance the training for staff (investigators, case workers, and attorneys) demonstrates the lopsided efforts of DCS to maximize federal dollars to the detriment of Tennessee citizens and vulnerable children. This

³ DCS receives federal funds under Title IVE of the Social Security Act and operates under federal mandate to have a state plan that supports family reunification, kinship placement, and reasonable efforts prior to removal of a child. 42 U.S.C. Sec. 671. However, the federal funds are tied to the placement of child in foster care and therefore require removal before funds are realized. 42 U.S.C. Sec. 672.

DCS budget report at: https://www.tn.gov/content/dam/tn/dcs/documents/quality_improvement/annual-reports/Annual%20Report%2011-2018.pdf

Tenn budget report at:

<https://www.tn.gov/content/dam/tn/finance/budget/documents/2020BudgetDocumentVol1.pdf>

indifference to the constitutional rights of parents contributed to the violation of the constitutional rights of the parents. To accomplish these ends, DCS often uses deceptive practice such as those employed here. Getting ex parte orders, denying due process, and working to bias the court against the parents prior to any real evidentiary hearing.

25. The order is drafted by and signed by Defendant Wright. This order clearly states that it was supported to the Court with a “verified application.” No such application was served on Plaintiff/Mother. Wright and Gray violated the constitutional rights of the plaintiff by providing false and misleading documents to the Court to obtain ex parte authority over the Plaintiffs.
26. Due to the nature of this order which was derived from the actions of Gray, Wright, and Davenport, Plaintiff Mother had to cancel the child’s appointment with the child psychologist, Dr. Berryman, at the last minute. Therein, the Defendants denied the parent’s right to seek medical/mental health services for her child, a fundamental parental right with no showing that Mother’s conduct created a substantial risk of harm to the child.
27. After refusing to produce any “verified application” upon which this order was based, Defendant Gray was asked to leave the premises. After she left, Ms. Reguli made at least ten calls to the cell number of Gray to inform her that the Plaintiff would seek injunctive relief on this order. Defendant Gray refused to answer the phone even after Reguli sent a text message to her asking her to answer her phone. Gray’s voice mail is full and could not take a message. Gray’s voice message gives the name of Shaneka Moore as her supervisor. Moore also failed to answer phone

at 615 906 4801. Moore's voice message gives the name Kristina Moody as her supervisor. Moody also failed to answer the phone at 615 351 4334.

28. Counsel Reguli made a diligent effort to inform Defendant Gray that Plaintiff would seek injunctive relief.

29. In spite of the honest and reasonable effort of cooperation from the Plaintiff, Defendants have usurped their authority and **acted without jurisdiction**⁴ stated in the language of the statute, and overzealously ordered seizure of the child without due process of law. It is likely that said acts were done in retaliation against Reguli and her family for Reguli's public advocacy for child welfare reform⁵.

D. CAUSE OF ACTION

1. The Fourteenth Amendment prohibits "any State" from depriving "any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

⁴ Tenn. Code Ann. § 37-5-512(b) established **subject matter jurisdiction** as the county where the child is located.

⁵ Attorney Connie Reguli has practiced family law in Tennessee for 25 years and is a public advocate for child welfare reform and protection of family constitutional rights. Through social media, Reguli's Family Forward Project has over 10,000 followers nationwide; Reguli is plaintiff's attorney in the Sixth Circuit opinion of *Andrews v. Hickman County*, 700 F.3d 845 (6th Cir. 2012); Reguli has been a public speaker in several states advocating for child welfare reform; Reguli has actively lobbied against the overzealous unconstitutional activities of Tennessee's DCS; Reguli has participated in legislative committee hearing regarding judicial accountability and parent's constitutional rights, and advocating for ADA rights of parents. In addition, Judge Donna Davenport, has executed a blanket order in the Rutherford County Juvenile Court that neither herself nor any of her magistrates are allowed to hear matters involving Attorney Reguli. This has been in effect for several years, in part to Davenport being named in a lawsuit filed in the Chancery Court of Rutherford County, where the Plaintiff (Reguli's client) alleged that Davenport has abused her judicial authority in summoning the county sheriff to protect her husband's trespass on Plaintiff's property. Although Reguli was never provided a copy of this "blanket order", it was announced in a separate proceeding. Reguli has never been informed that this "blanket order" has been vacated by any Court.

2. The acts taken by Defendants Gray, Wright, Davenport, and the Department of Children's Services, that is the deceptive, and false preparation, execution, and service of the Ex Parte Order **without jurisdiction**, violates the Plaintiff/Mother's Fourteenth Amendment fundamental right to parent her child and provide safety, security, and psychological care for her child. These acts also violate the Plaintiff/Mother's Fourteenth Amendment due process rights of notice and a right to be heard prior to the stripping her parental rights.
3. The acts taken by Defendants Gray, Wright, Davenport, and the Department of Children's Services, that is the unwarranted immediate order without verified expression of immediate threat of harm for seizure of the person of A.C. in the preparation, execution, and service of the Ex Parte Order violates the Plaintiff A.C.'s Fourth Amendment fundamental right to be free of unreasonable search and seizure.
4. The acts taken by Defendants Gray, Wright, Davenport, and the Department of Children's Services, that is the unwarranted immediate order to compel an interview (without parent supervision) of A.C. is an unlawful search for which the child cannot provide consent.
5. The acts taken by Defendant Gray, Wright, Davenport, and the Department of Children's Services, that is the preparation, execution, and service of the Ex Parte Order **without jurisdiction** of stripping fundamental parental rights, due process rights, and right to be free of unreasonable search and seizure should be declared by this Court as unconstitutional acts taken by the defendants notwithstanding the state laws regarding child abuse investigations.

6. The acts of the Defendants as stated herein constitute violations of the Ninth Amendment.
7. To the extent necessary for this Complaint, Plaintiffs would show that said statutes are unconstitutional as applied in that the Defendants have extended the statutes to strip parental rights during an investigation without a finding of abuse or neglect by a custodian or parent.
8. There is no relief in the Juvenile Court to bring an action for violation of civil rights for the appropriate remedy requested herein.

MEMORANDUM OF LAW

UNCONSTITUTIONAL APPLICATION OF STATUTES

Plaintiff would show that this Court can find that the ex parte process utilized by the Defendants in this case does not require an analysis of whether the cited statutes are unconstitutional as applied. However, should this Court allow Defendants to rely on this statutory scheme, Plaintiffs would show that said statutes are unconstitutional as applied.

In this case, the minor child was presented to DCS for examination and interview, and DCS was invited to conduct a home visit. Further, Plaintiff even explained that the child would meet with a psychologist for an interview two days later.

The statutory provisions relied upon by the Defendants do NOT prevent a parent (especially a non-offending parent) from seeking psychological services of the child during an investigation; they require the child to be isolated from a parent or caretaker during any investigative interview; nor removed from a parent's control and custody.

Although Tennessee statutes are permitted a strong presumption of constitutionality *Lynch v. City of Jellico*, 205 S.W.3d 384, 390 (Tenn. 2006) (citing

Osborn v. Marr, 127 S.W.3d 737, 740–41 (Tenn. 2004)); see also *Waters v. Farr*, 291 S.W.3d 873, 882 (Tenn. 2009), the General Assembly’s power to change the common law is subject to “constitutional limits.” *Lavin v. Jordon*, 16 S.W. 3d 362, 368 (Tenn. 2000), citing *S. Ry. Co. V. Sanders*, 246 S.W.2d 65, 57 (Tenn. 1952).

Any interpretation of these statutes that would summarily strip a parent of seeking psychological services without a finding of substantial harm, usurps the constitutional right to parents described below.

The state’s compelling interest in the protection and care of minor and the prevention of child sexual abuse has been established. *Munke v. Munke*, 882 S.W.2d 803, 806 (Tenn. App. 1994) However, that interest must be narrowly drawn such that the laws and regulations associated therein do not violate the constitutional rights of the non-offending parent and the right to be free of unreasonable seizure of the child.

The State of Tennessee has equally expressed its compelling interest in assuring that a parent who proffers false allegations of sexual abuse is substantial enough evidence to remove the child from a parent finding: Accusations of child sexual abuse against a parent presents one of the most difficult issues faced by a trial court. Suspicion of such abuse must be taken seriously and are investigated thoroughly, for the consequences to the child of allowing any abuse to continue are grave. However, mistakenly concluding that a parent has abused his child, when in fact there has been no abuse, has serious consequences as well, including the almost-certain destruction of the parent-child relationship and disgrace to the accused parent. In addition, determining whether abuse has occurred can be enormously difficult; there is frequently a paucity of physical evidence, and the alleged child victim may be unable to accurately relate

pertinent events. Finally, even investigating the accusation is delicate; the suggestibility of the alleged victim is almost invariably an issue, and heavy-handed or repetitive interrogation or physical examination can itself inflict long-lasting trauma on a child. In such a case, any concern about reporting allegations of child sexual abuse must be balanced with the awareness that false accusations of such abuse can be a reprehensible tool, remarkable for its brutal effectiveness. *In re Avery*, W2016-02542-COA-R3-JV, (Tenn. App. 2018)

Therefore, the Plaintiff's⁶ actions of seeking professional services through a licensed psychologist protects the interests of the state and her constitutional parental rights. The statutes relied on by the Defendants, as applied, are unconstitutional.

INJUNCTIVE RELIEF

If this Court does not grant a preliminary injunction, Plaintiffs are at risk of immediate and irreparable harm. Said order denies Plaintiff/Mother's right to seek mental health services for her child and subjects the child to risk of immediate seizure.

Plaintiffs would show this Court that the factors necessary for the granting of injunctive relief are present: (1) a substantial likelihood of success on the merits, (2) Plaintiffs would suffer irreparable injury if the injunction were not granted, (3) the injunction would not substantially injure other interested parties, and (4) the public interest would be furthered by the injunction. *Michigan Coalition of Radioactive Material Users, Inc., v. Griepentrog*, 945 F. 2d 150, 153 (6th Cir. 1991)

Plaintiffs seeks specific injunctive relief against the Defendants from the exercise of the mandates set forth in the Ex Parte Order, and more specifically from enjoining or

⁶ Plaintiff has not raised allegations of abuse or sexual abuse in any court action.

attempting to enjoin the Plaintiff/Mother from seeking professional psychological services; from being present during any interview with the child; from taking temporary custody of the child; and from any further examination or interview with the child until Plaintiff/Mother has presented the child to her psychologist of her choice.

As stated fully herein, the Plaintiffs constitutional right to parent is well-settled and Plaintiffs have a high likelihood of success (**LACK OF JURISDICTION**); the Plaintiff A.C. would suffer irreparable injury if the injunction is not granted (heavy handed repetitive interrogation is held as damaging); there is no injury to DCS or law enforcement and in fact, the professional choice of Mother has often been utilized by DCS; and the public interest in protecting the rights of parents would be furthered.

FUNDAMENTAL RIGHTS OF THE PLAINTIFFS

It is well established by these Courts that parents have fundamental interest to parent their children. The state may not interfere in child rearing decisions when a fit parent is available. *Troxel v. Granville*, 530 U.S. 57 (2000), *Prince v. Massachusetts*, 321 U.S. 158 (1944), *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), *Meyer v. Nebraska*, 262 U.S. 390 (1923). A child also has a constitutionally protected interest in the companionship and society of his or her parent. *Ward v. San Jose*, 967 F. 2d 280 (9th Cir. 1992) A state employee who withholds a child from her family may infringe on the family's liberty of familial association. *Murphy v. Morgan* 914 F. 2d 846 (7th Cir. 1990) The forced separation of parent from child, even for a short time; represent a serious infringement upon the rights of both. *J.B. v. Washington County*, 127 F. 3d 919 (10th Cir. 1997) Absent extraordinary circumstances, a parent has a liberty interest in familial association and privacy that cannot be violated without adequate pre-deprivation

procedures. *Malik v. Arapahoe Cty. Dept. of Social Services* 91 F. 3d 1306 (10th Cir. 1999) Parent's interest is of "the highest order," and the court recognizes "the vital importance of curbing overzealous suspicion and intervention on the part of health care professionals and government officials. *Thomason v. Scan Volunteer Services, Inc.* 787 F. 2d 403 (8th Cir. 1996)

The Fourth Amendment protection against unreasonable searches and seizures extends beyond criminal investigations and includes conduct by social workers in the context of a child neglect/abuse investigation. *Lenz v. Winburn* 51 F.3d 1540 (11th Cir. 1995). Sham procedures that violate parental rights don't constitute true procedural due process. *Brokaw v. Mercer County*, 235 F.3d 1000 (7th Cir. 2000) Post-deprivation remedies do not provide due process if pre-deprivation remedies are practicable. *Bendiburg v. Dempsey*, 909 F. 2d 463 (11th Cir. 1990)

A social worker who received a telephone accusation of abuse and threatened to remove a child from the home unless the father himself left, and who did not have grounds to believe the child was in imminent danger engaged in arbitrary abuse of governmental power in ordering the father to leave. *Croft v. Westmoreland Cty. Children and Youth Services*, 103 F. 3d 1123 (3rd Cir. 1997)

Children may not be removed from their home by police officers or social workers without notice and a hearing unless the officials have a reasonable belief that the children were in imminent danger. *Ram v. Rubin*, 118 F. 3d 1306 (9th Cir. 1997)

Absent extraordinary circumstances, a parent has a liberty interest in familial association and privacy that cannot be violated without adequate pre-deprivation

procedures. An ex parte hearing **based on misrepresentation and omission**⁷ does not constitute notice and an opportunity to be heard. Procurement of an order to seize a child through distortion, misrepresentation and/or omission is a violation of the Fourth Amendment. Parents may assert their children's Fourth Amendment claim on behalf of their children as well as asserting their own Fourteenth Amendment claim. *Malik v. Arapahoe Cty. Dept. of Social Services*, 91 F. 3d 1306 (10th Cir. 1999)

Parental consent is required to take children for medical exams, or an overriding order from the court after parents have been heard. *Wallis v. Spencer*, 202 F. 3d 1126 (9th Cir. 1999)

The laws protecting the privacy interest of parents, the familial interest of children, and the right to be free of unreasonable search and seizure for actions brought by child protective services state actors is clearly established.

These rights, however, are not absolute and, certain state interests may at some point become sufficiently compelling to sustain regulation. Compelling is the key word and regulations imposing a burden on it may be justified only by a compelling state interest and must be narrowly drawn to express only those interests. *Maher v. Roe*, 432

⁷ Note that the Plaintiffs assumption that the ex parte order was based on false statements or misrepresentations is based on Defendants Wright and Gray refusing to produce the verified application described in the first sentence of the order. The order makes no findings of fact and only states that DCS has been unable to complete its investigation "due to the actions of the Mother, Victoria Cunningham, and the Maternal Grandmother, Connie Reguli." The Sixth Circuit has also held that social workers may not provide false or misleading information to procure an ex parte order from the Court. Social workers like police officers cannot make false statements and omissions to the judge such that but for these falsities the judge would not have issued the warrant or order. *Brent v. Wayne County Dep't of Human Services*, 901 F.3d 656 (6th Cir. 2018) *Brent* also holds that social workers are only entitled to qualified immunity when executing the removal order.

U.S. 464, 476-479 (1977) *Parham v. J.R.*, 442 U.S. 584 (1979); *Hodges v. Minnesota*, 497 U.S. 417 (1990)

Individuals are not immune for the results of their official conduct simply because they were enforcing policies or orders. Where a statute authorizes official conduct which is patently in violation of fundamental constitutional principles, an officer who enforces that statute is not entitled to qualified immunity. *Grossman v. City of Portland*, 33 F.3d 1200 (9th Cir. 1994)

The right of a parent not to be deprived of parental rights without a showing of unfitness, abandonment or substantial neglect is so fundamental and basic as to stand among the rights contain in the Ninth Amendment. The Ninth Amendment acknowledged the prior existence of fundamental rights with it: “the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” The United States Supreme Court in a long line of decisions has recognized that matters involving marriage, procreation, and the parent-child relationship are among those fundamental liberty interests protected by the Constitution. *Roe v. Wade*, 410 U.S. 113 (1973)

SECTION 1983 LIABILITY

Section 1983 places liability on ANY person who “subjects or causes to be subjected” another to a constitutional deprivation, 42 U.S.C. 1983. This language allows an action to be brought against a defendant in two ways: (1) direct, personal involvement in the alleged constitutional violation on the part of the defendant, or (2) actions or omissions that are not constitutional violations in themselves, but foreseeably leads to a constitutional violation. *Arnold v. International Bus. Machines Corp.*, 637 F. 2d 1350

(9th Cir. 1981) A person subjects another to the deprivation of a constitutional right, within the meaning of section 1983, if he does an affirmative act, participates in another's affirmative acts, or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made. Moreover, personal participation is not the only predicate for section 1983 liability. Anyone who "causes" any citizen to be subjected to a constitutional deprivation is also liable. The requisite casual connection can be established not only by some kind of direct personal participation in the deprivation, but also by setting in motion a series of acts by others which the actor knows or reasonably should know would cause others to inflict constitutional injury. *Johnson v. Duffy*, 588 F. 2d 740, 743 (9th Cir. 1978). A supervisor can be liable in his individual capacity if he sets in motion a series of acts by others, or knowingly refused to terminate a series of acts by others, which he knew or reasonably should have known would cause others to inflict the constitutional injury. *Larez v. City of Los Angeles*, 946 F. 2d 630, 646 (9th Cir. 1991)

RULE 57 / 28 U.S.C. Sec. 2201 - DECLARATORY JUDGMENT RELIEF

Plaintiff seeks declaratory relief finding that the actions taken by the defendants violate the constitutional freedoms of the Plaintiffs as stated herein. Plaintiffs have standing as the matter described herein create a live controversy. *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) And in the event, any of the defendants withdraw the ex parte order, modify its terms, or otherwise seeks to repair the deficiencies of the pending ex parte order, this matter does not become moot and should still be considered by the Court on declaratory relief and for damages. A case become moot only when subsequent events make it absolutely clear the the allegedly wrongful behavior cannot reasonably be expected to recur and interim relief or events have completely and irrevocably eradicated

the effects of the alleged violation. *Cleveland Brand, NAACP v. City of Parma*, 263 F. 3d 513, 530 (6th Cir. 2001)

Further, it is likely that the Defendants will take the extraordinary step of seeking ex parte removal of A.C. prior to this matter being heard, even though cause cannot be made for immediate threat of harm pending any investigation.

ROOKER – FELDMAN DOCTRINE DOES NOT APPLY

The Rooker – Feldman doctrine should not be relied on to prevent relief to plaintiff in that the inquiry is the source of the injury the plaintiff alleges in the federal complaint. If the source of the injury is the state court decision, then the Rooker-Feldman doctrine would prevent the district court from asserting jurisdiction. If there is some other source of injury, such as a third-party's actions, then the plaintiff asserts an independent claim. *McCormick v. Braverman*, 451 F. 3d 382, 393 (6th Cir. 2006). In the action brought in this Court, the Plaintiff seeks relief against the unconstitutional acts of the Defendants. Defendants Gray, Wright, and Davenport are not parties to the state court action and constitutional relief under Section 1983 can not be sought against the Defendants in the Juvenile Court of Rutherford County.

CONCLUSION

In 1967, the United States Supreme Court referred to the juvenile court system as a kangaroo court when is denied basic constitutional rights to children subject to the authority of the Court. This case says the condition of a boy does not justify a kangaroo court. The case held that the constitution applies to children and juvenile court must provide basic due process rights. Fifty-two years later, the juvenile court system continues to ignore the most basic constitutional rights in the name of child protection

and best interests of the child, in spite of the litany of cases that hold parental rights as constitutionally protected. *In re Gault*, 387 U.S. 1, (1967).

In 1965, the United State Supreme Court found that the abstention doctrine did not apply where a statute was justifiably attacked where it was being applied to suppress protected activities. *Dombrowski v. Pfister*, 380 U.S. 479 (1965) Although the use of the *Dombrowski* has been severely truncated by the Court since its ruling, and although it concerns civil rights oppression of First Amendment activities, the juvenile court and DCS have equally abused its powers with ex parte order denying all due process rights.

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs in this matter seek immediate emergency injunctive relief against the Defendants from interfering with the fundamental parental rights against unwarranted governmental interference, and procedural due process rights of Plaintiff/Mother; and from interfering with the fundamental right against unreasonable search and seizure protected by the Fourth Amendment for Plaintiff A.C. The proposed injunction is attached.

Further, Plaintiff also seeks:

1. That this matter be served upon the Defendants and that they be required to answer as provided by law. And that a jury of 12 hear this matter.
2. That this Court grant declaratory relief against the Defendants finding that the actions taken by the Defendants to acquire an Ex Parte Order Allowing DCS Investigation is a fundamental due process right violation for the reasons stated herein.

4. That injunctive relief be granted.
5. That the jury award monetary damages against Defendants Gray and Wright for the constitutional violations stated herein, constitutional damages, compensatory damages, attorney's fees, and punitive/exemplary damages not to exceed \$1,000,000.
6. For other relief as deemed appropriate by the Court.

This is the 13 day of June 2019.

Respectfully submitted,



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615 661 0122

I declare under penalty of perjury under the laws of the United States of America that
the foregoing is true and correct.

28 U.S.C. Sec. 1746; 32 C.F.R. 516.26.



VICTORIA CUNNINGHAM

Executed on this 13 day of June 2019.