UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

KARI SUNDSTROM, ANDREA FIELDS, and LINDSEY BLACKWELL,

Plaintiffs,

v. Case No. 06-C-0112

MATTHEW J. FRANK, Secretary of the Wisconsin Department of Corrections; JAMES GREER, Director of the Wisconsin Department of Corrections Bureau of Health Services; JUDY P. SMITH, Warden of the Oshkosh Correctional Institution; THOMAS EDWARDS, Manager of the Health Services Unit at the Oshkosh Correctional Institution; ROBERT HUMPHREYS, Warden of the Racine Correctional Institution; and SUSAN NYGREN, Manager of the Health Services Unit at the Racine Correctional Institution, in their official capacities,

Defendants.

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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1. Kari Sundstrom, Andrea Fields, and Lindsey Blackwell (collectively, "Plaintiffs"), by their attorneys, for their Complaint against Matthew J. Frank, James Greer, Judy P. Smith, Thomas Edwards, Robert Humphreys, and Susan Nygren, in their official capacities (collectively, "Defendants"), allege as follows:

NATURE OF THE ACTION

2. This Complaint asserts a civil rights action pursuant to 42 U.S.C. § 1983 for declaratory and injunctive relief to redress Defendants' violations of Plaintiffs' rights under the

Eighth and Fourteenth Amendments to the United States Constitution. Defendants have violated the Constitution by enforcing 2005 Wisconsin Act 105 and abruptly terminating and depriving Plaintiffs of medical treatment for Plaintiffs' serious health conditions, with no exercise whatsoever of individualized medical judgment and in contrast to the treatment Defendants provide to other similarly situated inmates at Wisconsin Department of Corrections ("DOC") facilities. Plaintiffs seek an end to those actions of Defendants that violate Plaintiffs' right to equal protection and their right to be free from cruel and unusual punishment, pursuant to the Fourteenth and Eighth Amendments to the United States Constitution, and a declaration that 2005 Wisconsin Act 105 is unconstitutional on its face.

JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, as this action arises under the laws and Constitution of the United States, and 28 U.S.C. § 2201, as an actual controversy exists within this Court's jurisdiction.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391, because the majority of the events giving rise to this action occurred in this district and because Defendants are subject to personal jurisdiction in this district.

PARTIES

5. Plaintiff Kari Sundstrom ("Sundstrom") is a 41-year-old transgender woman, meaning that she[1] was born anatomically male, but has a female gender identity. Since December 2003, Sundstrom has been incarcerated at the Oshkosh Correctional Institution ("OCI") in Oshkosh, Winnebago County, Wisconsin.

[1] This Complaint uses feminine pronouns to refer to Plaintiffs, a practice consistent with their gender identity, their preference, common practice, modern judicial practice, and the advice and guidance of mental health and other professionals who work with transgender persons.

6. Plaintiff Andrea Fields ("Fields") is a 29-year-old transgender woman, meaning that she was born anatomically male, but has a female gender identity. Since August 8, 2005, Fields has been incarcerated at OCI.

7. Plaintiff Lindsey Blackwell ("Blackwell") is a 23-year-old transgender woman, meaning that she was born anatomically male, but has a female gender identity. Since September 19, 2005, Blackwell has been incarcerated at Racine Correctional Institution ("RCI").

8. Defendant Matthew J. Frank ("Frank") is an adult citizen of the United States who is the Secretary of the DOC in Madison, Wisconsin. At all material times, Frank had the authority to implement state laws regarding the treatment of inmates at DOC facilities, including OCI and RCI, and was acting under color and authority of state law. Frank is sued in his official capacity.

9. James Greer ("Greer") is an adult citizen of the United States who is the Director of the DOC Bureau of Health Services. At all material times, Greer had the authority to implement state laws regarding the treatment of inmates at DOC facilities, including OCI and RCI, and was acting under color and authority of state law. Greer is sued in his official capacity.

10. Defendant Judy P. Smith ("Smith") is an adult citizen of the United States who is the Warden of OCI. At all material times, Smith had the authority to implement state laws regarding the treatment of inmates at OCI and was acting under color and authority of state law. Smith is sued in her official capacity.

11. Defendant Thomas Edwards ("Edwards") is an adult citizen of the United States who is the Manager of the Health Services Unit at OCI. At all material times, Edwards had the authority to implement state laws regarding the treatment of inmates at OCI and was acting

under color and authority of state law. Edwards is sued in his official capacity.

12. Defendant Robert Humphreys ("Humphreys") is an adult citizen of the United States who is the Warden of RCI. At all material times, Humphreys had the authority to implement state laws regarding the treatment of inmates at RCI and was acting under color and authority of state law. Humphreys is sued in his official capacity.

13. Defendant Susan Nygren ("Nygren") is an adult citizen of the United States who is the Manager of the Health Services Unit at RCI. At all material times, Nygren had the authority to implement state laws regarding the treatment of inmates at RCI and was acting under color and authority of state law. Nygren is sued in her official capacity.

ALLEGATIONS OF FACT

14. Gender Identity Disorder ("GID") is a recognized medical condition identified in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*. DSM-IV 532 (4th ed. 1994).

15. GID, sometimes known as gender dysphoria or transsexualism, is a serious health condition that involves a strong and consistent cross-gender identification and a persistent discomfort with one's anatomical sex.

16. For people with gender dysphoria, the conflict between their gender identity and their anatomy causes extreme psychological distress. Contemporary medical knowledge indicates that gender identity cannot be changed, and that attempts to change a person's gender identity are futile and unethical.

17. Mounting medical research indicates that gender dysphoria may not be a psychiatric condition but might, in fact, be caused by biological or physiological factors that are not yet fully understood. For example, an article entitled "A Sex Difference in the Human Brain

and Its Relations to Transsexualism," authored by J.-N. Zhou, M.A. Hofman, L.J. Gooren, D.F. Swaab and published at *International Journal of Transgenderism* 1 (1997), reports that an area of the brain that may be involved in human sexual or reproductive functions was female-sized in male-to-female transsexuals.

18. Regardless of the etiology of gender dysphoria, the prevailing medical standards of care dictate that hormone therapy is an appropriate treatment for that condition, and experienced health care providers consider those who seek such treatment to have a serious health condition.

19. The Harry Benjamin International Gender Dysphoria Association ("HBIGDA") is the leading professional association for surgeons, doctors, medical researchers and others who specialize in the medical treatment of people with gender dysphoria. Based on decades of clinical experience, HBIGDA has promulgated medical standards of care for treating patients with gender dysphoria.

20. The HBIGDA Standards of Care for Gender Identity Disorders ("SOC") recognize that treatment is medically necessary for people with gender dysphoria. The SOC further indicate that the therapeutic approach includes three components (hormone therapy, living full-time as a member of the gender corresponding with one's identity, and sex reassignment surgery), and that the appropriate course of treatment should be determined based upon individualized medical evaluation.

21. Plaintiff Sundstrom was identified as male when she was born but has a female gender identity, *i.e.*, an innate sense of being female. Starting around the age of four, she felt uncomfortable about being perceived as a boy. During high school, she secretly dressed in girls' clothing.

22. In or around 1990, when Sundstrom was 25 years old, a psychiatrist diagnosed her with Gender Identity Disorder ("GID"). Several months later, that psychiatrist gave Sundstrom a prescription for testosterone blockers and feminizing hormone therapy. At that time, Sundstrom came out as transgender to her family and friends and began living full-time as a woman. In 1995, Sundstrom underwent a tracheal shave and rhinoplasty as components of her gender transition.

23. Sundstrom's hormone therapy has not been interrupted at any time since she began hormone therapy in or around 1990.

24. In 2003, an endocrinologist increased Sundstrom's dosage of feminizing hormones.

25. Sundstrom's GID diagnosis has been confirmed numerous times by her physicians and health care providers, including several providers employed by the DOC.

26. In or around December 2003, Sundstrom was convicted of a probation violation. As a result of that conviction, she currently is incarcerated at OCI.

27. During all periods of her incarceration, up until January 12, 2006, Defendants have provided Sundstrom with feminizing hormones and testosterone blockers at the same dosage that she received prior to incarceration.

28. Plaintiff Fields was identified as male when she was born but has a female gender identity, *i.e.*, an innate sense of being female. Starting around the age of fourteen, she has identified herself as transgender.

29. In or around 1993, when she was 16 years old, Fields was diagnosed with GID by a psychiatrist. At age 18, she began living full-time as a woman. At age 19, she began a course of hormone therapy.

30. In or around 1997, a physician confirmed Fields' GID diagnosis and gave her a prescription for feminizing hormones. Around that same time, Fields came out as transgender to her family members and siblings. In the summer of 2003, Fields underwent breast augmentation surgery as a component of her gender transition.

31. Fields' hormone therapy has not been interrupted at any time since she began hormone therapy in or around 1996.

32. In or around 2002, a physician increased Fields' dosage of feminizing hormones.

33. In or around June 2005, Fields was convicted of forgery. As a result of that conviction, she currently is incarcerated at OCI.

34. During all periods of her incarceration, up until January 12, 2006, Defendants have provided Fields with feminizing hormone therapy.

35. Plaintiff Blackwell was identified as male when she was born but has a female gender identity, *i.e.*, an innate sense of being female. Starting around the age of twelve, she has identified herself as transgender. When Blackwell was eleven or twelve years old, she attempted suicide as a result of her severe discomfort with her gender identity.

36. In or around August 1998, when she was fifteen years old, Blackwell's grandmother took her to a psychiatrist who diagnosed her as a transsexual and prescribed feminizing hormones to her. Around that same time, Blackwell began living full-time as a woman.

37. Blackwell's hormone therapy has not been interrupted at any time since she began hormone therapy in or around 1998.

38. Blackwell is currently incarcerated at RCI. During all periods of her incarceration, up until January 23, 2006, Defendants have provided Blackwell with feminizing

hormone therapy.

39. On December 6, 2005, the Wisconsin legislature passed 2005 Wisconsin Act 105, codified at Wis. Stat. § 302.386(5m) ("the Act"). The Act provides that the DOC "may not authorize the payment of any funds or the use of any resources of this state or the payment of any federal funds passing through the state treasury to provide or to facilitate the provision of hormonal therapy or sexual reassignment surgery" to any inmate in a state prison, correctional facility, or secured child caring institution, or to any forensic patient in a state institution.

40. The Act defines "hormonal therapy" as "the use of hormones to stimulate the development or alteration of a person's sexual characteristics in order to alter the person's physical appearance so that the person appears more like the opposite gender," and defines "sexual reassignment surgery" as "surgical procedures to alter a person's physical appearance so that the person appears more like the opposite gender."

41. After its passage, co-sponsors of the Act issued press releases calling it the "Inmate Sex Change Prevention Act," describing medical treatment for GID as "bizarre."

42. The Act takes effect on January 24, 2006.

43. Prior to the Act's passage, the Defendants provided hormone therapy to DOC inmates in accordance with individualized medical judgments, patient needs, and prevailing medical standards of care.

44. On or about January 12, 2006, Defendant Edwards and Dr. Roman Kaplan, M.D., a medical doctor at OCI, notified Plaintiffs Sundstrom and Fields that the Act had passed. Defendants promptly halved Sundstrom and Fields' hormone dosage and notified them that their dosage would be halved again in 30 days, and terminated entirely 30 days after that.

45. Since the dramatic reduction in her hormone therapy, Sundstrom has experienced

mood swings, crying fits, hot flashes, bloating, and severe headaches. Sundstrom has a history of suicidal ideation, and fears and expects that she will become suicidal again as a result of the reduction in her hormone dosage.

46. Since the dramatic reduction in her hormone therapy, Fields has experienced depression, nausea, muscle weakness, loss of appetite, increased hair growth, and skin bumps. Fields is afraid of the effects that reduction and termination of her hormones will have on her body.

47. On or around January 23, 2006, DOC personnel notified Plaintiff Blackwell that the Act had passed. Defendants promptly halved Blackwell's hormone dosage and notified her that her dosage would be halved again in 30 days, and terminated entirely 30 days after that.

48. Since the dramatic reduction in her hormone therapy, Blackwell has experienced mental and physical changes, including emotional fluctuations and change in breast sensation.

49. Medical professionals experienced in the treatment of GID recognize that the abrupt reduction and termination of hormone therapy can have disastrous consequences for transgender people, including serious risk of permanent physical and emotional harm, severe danger of self-mutilation, and suicidal ideation and attempts.

50. Defendants restricted Plaintiffs' hormone dosage, and notified them of Defendants' intention to terminate Plaintiffs' hormone therapy, despite Defendants' knowledge that all Plaintiffs previously had received hormone therapy and despite having provided that hormone therapy to all Plaintiffs on an ongoing basis during all prior periods of Plaintiffs' incarceration.

51. Defendants' actions, which were undertaken without regard for any individualized medical determination and contradicted previously-existing policies regarding the provision of

hormone therapy, were performed with deliberate indifference to Plaintiffs' serious medical needs.

FIRST CLAIM FOR RELIEF

Brought under 42 U.S.C. Section 1983 for Violation of the Eighth Amendment to the United States Constitution
(against all Defendants)

52. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

53. Plaintiffs receive hormone therapy as treatment for their serious health condition.

54. Defendants' application of the Act to Plaintiffs by denying them hormone therapy without consideration of any individualized medical judgment formed by Plaintiffs' health care providers constitutes deliberate indifference to Plaintiffs' serious medical needs and violates the Eighth Amendment's prohibition on cruel and unusual punishment.

55. The Act, which Defendants have followed and have announced they will follow, establishes a blanket rule that denies medical treatment to Plaintiffs and all other inmates of DOC facilities without consideration of any individualized medical judgment formed by health care providers, and therefore violates the Eighth Amendment's prohibition on cruel and unusual punishment.

56. As a direct and proximate result of Defendants' purposeful and intentional actions, Plaintiffs have suffered and continue to suffer injury, including, without limitation, serious physical, psychological and emotional harm, mental anguish, distress, humiliation, and indignity.

SECOND CLAIM FOR RELIEF

Brought under 42 U.S.C. Section 1983 for Violation of the Fourteenth Amendment to the United States Constitution
(against all Defendants)

57. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

58. As transgender inmates of DOC facilities, Plaintiffs are members of an identifiable group of people.

59. Defendants provide individualized medical evaluations to other inmates at DOC facilities with serious health conditions. Those evaluations result in medical judgments that determine the course of treatment that Defendants provide to those inmates.

60. The Act, and Defendants' application of the Act, treat Plaintiffs differently from similarly situated inmates at DOC facilities by singling Plaintiffs out for termination and denial of medical treatment, and by failing to provide treatment in accordance with individualized medical judgment.

61. Defendants' actions towards Plaintiffs are undertaken purposefully and intentionally and bear no rational relationship to any legitimate governmental or penological interest.

62. As a direct and proximate result of Defendants' actions, Plaintiffs have suffered and continue to suffer injury, including, without limitation, serious physical, psychological and emotional harm, mental anguish, distress, humiliation, and indignity.

RELIEF

WHEREFORE, Plaintiffs pray for judgment under all their causes of action:

(a) Awarding Plaintiffs a temporary restraining order and preliminary and

permanent injunctive relief against Defendants' enforcement of the Act against them;

(b) Declaring that the Act, both on its face and as applied to Plaintiffs, violates the Eighth and Fourteenth Amendments to the United States Constitution;

(c) Awarding costs for the suit herein, including Plaintiffs' reasonable attorneys' fees and expert fees pursuant to 42 U.S.C. § 1988; and

(d) Awarding all other relief that the Court deems just and proper.

Dated this 27th day of January, 2006.

Respectfully submitted,

s/Laurence J. Dupuis_____
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