

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION

MILLER FRANK JOHNSON, et al., Plaintiffs  
UNITED STATES OF AMERICA, Applicant for Intervention

v.

STATE OF FLORIDA, LAWTON CHILES, Governor of the State of Florida; ED FEAVER, Secretary, Department of Health and Rehabilitative Services ("HRS"); ROBERT CONSTANTINE, Assistant Secretary of the Office of Alcohol, Drug Abuse & Mental Health; PHILIP L. DORSEY, HRS District 8 Administrator; MICHAEL BECKER, HRS District 5 Administrator; CHIP TAYLOR, HRS District 6 Administrator; SUE GRAY, HRS District 14 Administrator; WILBUR WILLIAMS, HRS District 15 Administrator; MYERS KURTZ, Director, G. Pierce Wood Memorial Hospital, Defendants

Civil Action No. 87-369-CIV-T-24

COMPLAINT IN INTERVENTION

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THE UNITED STATES OF AMERICA alleges:

1. This action is brought by the Attorney General on behalf of the United States of America pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 *et seq.*, to enjoin the named Defendants from depriving persons admitted to G. Pierce Wood Memorial Hospital in Arcadia, Florida ("G. Pierce Wood") of rights, privileges, or immunities secured and protected by the laws and Constitution of United States.

JURISDICTION, STANDING AND VENUE

2. This Court has jurisdiction over this action under 28 U.S.C. § 1345.
3. The United States has standing to maintain this action pursuant to 42 U.S.C. § 1997c.
4. The Attorney General has certified that all pre-filing requirements specified in 42 U.S.C. § 1997c have been met. The Certificate of the Attorney General is appended to this Complaint and is incorporated herein.
5. Venue in the Middle District of Florida, Tampa Division, is proper pursuant to 28 U.S.C. § 1391. The claims set forth in this Complaint arose in said District.

DEFENDANTS

6. Defendant STATE OF FLORIDA owns and operates G. Pierce Wood, which is a state mental health facility located in Arcadia, Florida.
7. Defendant LAWTON CHILES is the Governor of Florida and, in this capacity, heads the Executive Branch of the State's government and, among other duties, reviews and approves budget requests submitted by Executive Branch agencies. He selects and appoints the Secretary of the Department of

Health and Rehabilitative Services ("HRS").

8. Defendant ED FEAVER is the Secretary of HRS and, in this capacity, exercises administrative control of, and responsibility for, G. Pierce Wood.

9. Defendant ROBERT CONSTANTINE is the Assistant Secretary for the Office of Alcohol, Drug Abuse & Mental Health and, in this capacity, administers the alcohol, drug abuse, and mental health programs operated by HRS, and who, along with Defendants FEAVER and DORSEY, has responsibility for the administration of G. Pierce Wood.

10. Defendant PHILIP L. DORSEY is the HRS District 8 Administrator and, in this capacity, administers the programs of health, social, and rehabilitative services in the district in which G. Pierce Wood is located and who, along with Defendants FEAVER and CONSTANTINE, has responsibility for the administration of G. Pierce Wood.

11. Defendant MICHAEL BECKER is the HRS District 5 Administrator and, in this capacity, administers the programs of health, social, and rehabilitative services in a district which is part of the catchment area served by G. Pierce Wood and who, along with Defendants FEAVER and CONSTANTINE, has responsibility for the services G. Pierce Wood patients receive in the community.

12. Defendant CHIP TAYLOR is the HRS District 6 Administrator and, in this capacity, administers the programs of health, social, and rehabilitative services in a district which is part of the catchment area served by G. Pierce Wood and who, along with Defendants FEAVER and CONSTANTINE, has responsibility for the services G. Pierce Wood patients receive in the community.

13. Defendant SUE GRAY is the HRS District 14 Administrator and, in this capacity, administers the programs of health, social, and rehabilitative services in a district which is part of the catchment area served by G. Pierce Wood and who, along with Defendants FEAVER and CONSTANTINE, has responsibility for the services G. Pierce Wood patients receive in the community.

14. Defendant WILBUR WILLIAMS is the HRS District 15 Administrator and, in this capacity, administers the programs of health, social, and rehabilitative services in a district which is part of the catchment area served by G. Pierce Wood and who, along with Defendants FEAVER and CONSTANTINE, has responsibility for the services G. Pierce Wood patients receive in the community.

15. Defendant MYERS KURTZ is the Director of G. Pierce Wood and, in this capacity, is responsible for the day-to-day operations of G. Pierce Wood.

16. The individual Defendants named in paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 above are officers of the Executive Branch of the State of Florida and are sued in their official capacities.

17. G. Pierce Wood is an institution within the meaning of 42 U.S.C. § 1997(1).

18. Persons residing at G. Pierce Wood are individuals with special needs, including those with mental illness. Persons residing at G. Pierce Wood are "qualified individual[s] with a disability" pursuant to the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101, 12131.

19. The State of Florida, the Department of Health and Rehabilitative Services, and G. Pierce Wood are "public entities" pursuant to Title II of the ADA, 42 U.S.C. § 12131.

20. At all relevant times, the Defendants or their predecessors in office have acted or failed to act, as alleged herein, under color of state law.

#### FACTUAL ALLEGATIONS

21. Defendants have failed and continue to fail to protect patients from harm by, inter alia:

- a) Failing to identify, monitor, and appropriately identify those patients who need one-to-one or close supervision;
- b) Failing to adequately deploy and supervise staff;
- c) Failing to take adequate steps to prevent patient injuries; and
- d) Failing to develop and implement an adequate system for investigating abuse and injuries.

22. Defendants have failed and are continuing to fail to provide patients residing at G. Pierce Wood with that level of care and treatment necessary to protect the liberty interests of patients by, inter alia:

- a) Failing to properly assess and diagnose patients consistent with professional standards;
- b) Failing to develop and implement appropriate treatment plans;
- c) Failing to provide adequate, appropriate and individualized training programs and psychosocial rehabilitation; and
- d) Failing to maintain professionally based recordkeeping systems.

23. Defendants have failed and are continuing to fail to ensure that each person confined at G. Pierce Wood is served in the most integrated setting necessary to meet the patient's individual need by, inter alia:

- a) Failing to adequately evaluate patients for community placement;
- b) Failing to place those patients whom professionals have determined should be placed in community programs in such programs; and
- c) Failing to provide discharged patients with appropriate individualized discharge plans and aftercare services.

24. Defendants have failed and are continuing to fail to provide conditions of confinement that protect patients' substantive due process rights under the Fourteenth Amendment.

25. Defendants have failed and are continuing to fail to meet the requirements of the ADA, 42 U.S.C. § 12101 et seq., and the regulations promulgated pursuant thereto, by excluding G. Pierce Wood patients, by reason of their disability, from participation in or by denying them the benefits of services, programs, or activities, or by subjecting them to discrimination, and by failing to administer services, programs, and activities in the most integrated setting appropriate to their needs.

#### VIOLATIONS ALLEGED

26. The acts and omissions alleged in paragraphs 21 - 25 violate the rights, privileges, or immunities of G. Pierce Wood patients secured or protected by the laws and Constitution of the United States and deprive G. Pierce Wood patients of such rights, privileges, or immunities.

27. Unless restrained by this Court, Defendants will continue to engage in the conduct and practices set forth in paragraphs 21 through 25 that deprive the patients of G. Pierce Wood of their rights, privileges, or immunities secured or protected by the laws and Constitution of the United States and cause them irreparable harm.

PRAYER FOR RELIEF

28. The Attorney General is authorized under 42 U.S.C. § 1997 et seq. to seek equitable relief.

WHEREFORE, the United States prays that this Court enter an order permanently enjoining Defendants, their officers, agents, employees, subordinates, successors in office, and all those acting in concert or participation with them from continuing the acts, omissions, and practices set forth in paragraphs 21 through 25 and to require

Defendants to take such actions as will ensure lawful conditions of confinement are afforded to patients at G. Pierce Wood. The United States further prays that this Court grant such other and further equitable relief as it may deem just and proper.

Respectfully submitted,

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JANET RENO, Attorney General of the United States

MICHAEL L. SEIGEL, Acting U.S. Attorney, Middle District of Florida

DEVAL L. PATRICK, Assistant Attorney General, Civil Rights Division

WARREN A. ZIMMERMAN, Chief, Civil Division

Assistant U.S. Attorney

Middle District of Florida

500 Zack Street, Room 400

Tampa, Florida 33602

(813) 274-6000

ARTHUR E. PEABODY, JR., Chief, Special Litigation Section

ROBINSUE FROHBOESE, Deputy Chief, Special Litigation Section

TAWANA E. DAVIS

WILLIAM G. MADDOX

Attorneys

U.S. Department of Justice

Civil Rights Division

Special Litigation Section

P.O. Box 66400

Washington, D.C. 20035-6400

(202) 514-6534