



MR-TN-004-008

IN THE UNITED DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action
	)	
STATE OF TENNESSEE, Donald Sundquist,	)	Complaint
Governor of the State of Tennessee;	)	
John Ferguson, Commissioner, Tennessee	)	Civil Rights
Department of Finance and	)	
Administration; Marjorie Nell Cardwell,	)	
Commissioner, Tennessee Department of	)	
Mental Health and Mental Retardation;	)	
Dr. A. Jane Walters, Commissioner,	)	
Tennessee Department of Education;	)	
Stanley Lipford, Superintendent,	)	
Nat T. Winston Developmental Center,	)	
O. Stephen Roth, Superintendent,	)	
Clover Bottom Developmental Center,	)	
Robert Erb, Superintendent,	)	
Greene Valley Developmental Center,	)	
	)	
Defendants.	)	

---

COMPLAINT

1. The Attorney General of the United States brings this action on behalf of the United States of America, pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. §§ 1997-1997j, to enjoin the named Defendants from depriving persons residing at the Nat T. Winston Developmental Center, in Bolivar, Tennessee ("NWDC"), the Clover Bottom Developmental Center (including the Harold Jordan Center), in Nashville, Tennessee ("CBDC"), and the Greene Valley Developmental Center, in Greeneville, Tennessee ("GVDC") (collectively, "the Centers") of rights, privileges or immunities

secured or protected by the laws and Constitution of the United States.

JURISDICTION, STANDING AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345.

3. The United States has standing to maintain this action pursuant to 42 U.S.C. § 1997a.

4. The Attorney General has certified that all pre-filing requirements specified in 42 U.S.C. § 1997b have been met. The certificate of the Attorney General is appended to this Complaint and is incorporated herein.

5. Venue in the United States District Court for the Middle District of Tennessee is proper pursuant to 28 U.S.C. §§ 1391 and 1392.

DEFENDANTS

6. Defendant STATE OF TENNESSEE ("State") owns and operates the Centers, institutions housing individuals with mental retardation or other developmental disabilities. Some of the individuals are also children, elderly and persons with mental illness.

7. Defendant DONALD SUNDQUIST is the Governor of the State 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 regarding the Centers. He selects and appoints the Commissioners of the

Departments of Finance and Administration, Mental Health and Mental Retardation, and Education.

8. Defendant JOHN FERGUSON is the Commissioner of the Department of Finance and Administration and, in this capacity, exercises control over budgetary and administrative matters relating to the Centers.

9. Defendant MARJORIE NELL CARDWELL is the Commissioner of the Department of Mental Health and Mental Retardation and, in this capacity, exercises administrative control of, and responsibility for, the Centers.

10. Defendant DR. A. JANE WALTERS is the Commissioner of the Department of Education and, in this capacity, exercises administrative control of, and responsibility for, educational services for school-age children living in the Centers.

11. Defendant STANLEY LIPFORD is the Superintendent of NWDC, and is responsible for the administration and day-to-day operations of NWDC.

12. Defendant O. STEPHEN ROTH is the Superintendent of CBDC, and is responsible for the administration and day-to-day operations of CBDC.

13. Defendant ROBERT ERB is the Superintendent of GVDC, and is responsible for the administration and day-to-day operations of GVDC.

14. The individual Defendants named in paragraphs 7 through 13 above are officers of the Executive Branch of the State of Tennessee and are sued in their official capacities.

15. NWDC, CBDC and GVDC are institutions as that term is defined in 42 U.S.C. § 1997(1)(A), (1)(B)(i) and (1)(B)(v).

16. Persons residing at the Centers are individuals with mental retardation or other developmental disabilities, and some of the individuals are also children, elderly and persons with mental illness. Persons residing at the Centers are "qualified individual[s] with a disability" under the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101, 12131.

17. The State of Tennessee, the Tennessee Department of Mental Health and Mental Retardation, and the Centers are "public entities" under Title II of the ADA, 42 U.S.C. § 12131.

18. Defendants Sundquist, Cardwell, Roth, Lipford, and Erb are legally responsible, in whole or in part, for the operation of and conditions at the Centers, as well as the care and treatment of persons residing at those institutions. Defendant Walters is responsible, in whole or in part, for the education of the school-age children living at the Centers. Defendant Ferguson is responsible, in whole or in part, for financial and administrative oversight over the operation of the Centers.

19. At all relevant times, Defendants have acted or failed to act, as alleged herein, under color of state law.

#### FACTUAL ALLEGATIONS

20. Defendants have failed and are continuing to fail to provide reasonably safe conditions and to ensure the reasonable safety and personal security of the Centers' residents.

21. Defendants have failed and are continuing to fail to

provide adequate medical care and related services, including psychiatric care, and physical and occupational therapy, to the Centers' residents.

22. Defendants have failed and are continuing to fail to ensure that the Centers' residents are free from undue or unreasonable restraint.

23. Defendants have failed and are continuing to fail to ensure that chemical and physical restraints are administered to the Centers' residents by appropriately qualified professionals in keeping with accepted professional standards, and are not used as punishment, in lieu of treatment, or for the convenience of staff.

24. Defendants have failed and are continuing to fail to ensure that medications are prescribed and administered to the Centers' residents by appropriately qualified professionals in keeping with accepted professional standards, and are not used as punishment, in lieu of treatment, or for the convenience of staff.

25. Defendants have failed and are continuing to fail to provide the Centers' residents with that level of training necessary to protect the Centers' residents' liberty interests, including their right to training sufficient to ensure safety and freedom from undue bodily restraint.

26. Defendants have failed and are continuing to fail to provide a sufficient number of adequately trained staff to render

essential care, treatment and training to individuals living at the Centers.

27. Defendants have failed and are continuing to fail to maintain professionally based recordkeeping and record review systems to ensure that resident records contain accurate, up-to-date and relevant information necessary to enable staff to provide adequate care, treatment, and training to the Centers' residents.

28. Defendants have failed and are continuing to fail to ensure that the Centers' residents are adequately evaluated for community placement, that those individual residents who professionals determine should be placed in community programs are placed in such programs, and that all residents are served in the most integrated setting appropriate to each resident's individual needs.

29. Defendants have failed and are continuing to fail to meet the requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., and the regulations promulgated pursuant thereto, by excluding the individuals living at the Centers, 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.

30. Defendants have violated and continue to violate the due process rights of the Centers' residents guaranteed under the

Fourteenth Amendment to the Constitution of the United States by denying the Centers' residents their rights under Tennessee state law. See, e.g., Tenn. Code Ann. § 33-3-104 and § 33-5-201.

31. Defendants have failed and are continuing to fail to meet the requirements of the Individuals With Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400-1486, by failing to educate their school-age children in the least restrictive environment appropriate to their needs and failing to provide these children with, inter alia, appropriate, individualized education plans, and adequate related services, including physical therapy and behavioral services.

#### VIOLATIONS ALLEGED

32. The acts and omissions alleged in paragraphs 20 through 31 violate the rights, privileges and immunities of residents of the Centers secured or protected by the laws and Constitution of the United States, and deprive the Centers' residents of such rights, privileges and immunities.

33. Unless restrained by this Court, Defendants will continue to engage in the conduct and practices set forth in paragraphs 20 through 31 that deprive residents of the Centers of rights privileges, or immunities secured or protected by the laws and Constitution of the United States, and cause irreparable harm to the residents.

PRAYER FOR RELIEF

34. The Attorney General is authorized under 42 U.S.C. § 1997a to seek only equitable relief.

WHEREFORE, the United States prays that this Court enter an order permanently enjoining Defendants, their agents, employees, subordinates, successors in office, and all those acting in concert or participation with them from continuing the acts, practices and omissions at the Centers set forth in paragraphs 20 through 31 above, and to require Defendants to take such action as will bring Defendants into compliance with federal law and provide Constitutional conditions of care to persons who reside at the Centers. The United States further prays that this Court

/

/

/

/

/

/

/

/

/

/

/

/

/

/

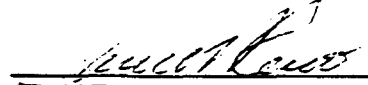
/

/

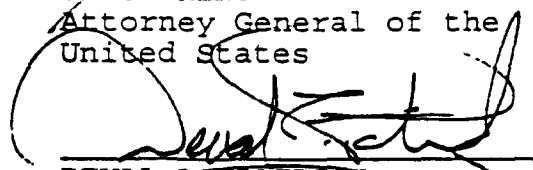


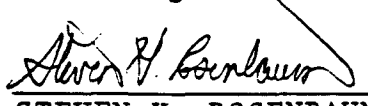
grant such other and further equitable relief as it may deem just and proper.

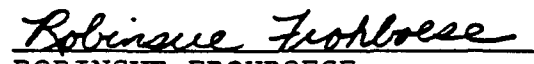
Respectfully submitted,


  
\_\_\_\_\_  
JANET RENO  
Attorney General of the  
United States

\_\_\_\_\_  
JOHN M. ROBERTS  
United States Attorney  
Middle District of  
Tennessee

  
\_\_\_\_\_  
DEVAL C. PATRICK  
Assistant Attorney General  
Civil Rights Division

  
\_\_\_\_\_  
STEVEN H. ROSENBAUM  
Chief  
Special Litigation Section

  
\_\_\_\_\_  
ROBINSUE FROHBOESE  
Deputy Chief  
Special Litigation Section

  
\_\_\_\_\_  
ROBERT C. BOWMAN  
LAURIE J. WEINSTEIN  
VERLIN P. HUGHES  
Senior Trial Attorneys  
Special Litigation Section  
U.S. Department of Justice  
Civil Rights Division  
Special Litigation Section

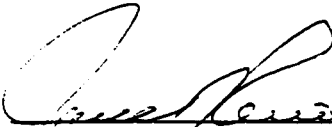
CERTIFICATE OF THE ATTORNEY GENERAL

I, Janet Reno, Attorney General of the United States, certify that with regard to the foregoing Complaint, United States v. State of Tennessee, et al., I have complied with all subsections of 42 U.S.C. § 1997b(a)(1). I certify as well that I have complied with all subsections of 42 U.S.C. § 1997b(a)(2). I further certify, pursuant to 42 U.S.C. § 1997b(a)(3), my belief that this action by the United States is of general public importance and will materially further the vindication of rights, privileges, or immunities secured or protected by the laws and Constitution of the United States.

I further certify that I have the "reasonable cause to believe" set forth in 42 U.S.C. § 1997a to initiate this action. Finally, I certify that all prerequisites to the initiation of suit under 42 U.S.C. § 1997 et seq., have been met.

Pursuant to 42 U.S.C. § 1997a(c), I have personally signed the foregoing Complaint. Pursuant to 42 U.S.C. § 1997b(b), I am personally signing this Certificate.

Signed this 21 day of October, 1996 at  
Washington, D.C.

  
\_\_\_\_\_  
JANET RENO  
Attorney General  
of the United States